In The
Court of Special Appeals of Maryland

No. 01509
September Term, 2006

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)

RECORD EXTRACT
VOLUME II

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5) Clubs and/or lodges

6) Automobile parking lots

7) Theaters and places of indoor amusement

8) Bed & Breakfast – Inns

9) Libraries and schools as defined in Section 20 of this ordinance

10) Police stations and other government services

11) Public Parks

b. Accessory uses and structures permitted are those which are clearly incidental and customary to and associated with the permitted use.

c. The following uses may be permitted as special exceptions following approval by the Board of Appeals:

1) Accessory apartments, as defined in Section 20 (Definitions) of this ordinance

2) Cemeteries

3) Churches and temples

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

Ex. 8

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 a 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) acre 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 limitations 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 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 6.17.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 slips, community piers or community 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:

1) 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

2) 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 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) Mooring 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 dependent uses shall be permitted to locate in the Buffer:

i) Docks, piers, launching ramps
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) 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.

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, except for water-dependent facilities, 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) provide for the retention of natural streambed substrate;

iii) minimize 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 area 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 of 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 1 June 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 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) 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) 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 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, tidal and non-tidal wetlands) 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 activates or vessels, or from boat cleaning and maintenance operations are minimized;

e) That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;

f) That dredging shall be conducted in a manner, and using a method, which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the Critical Area.

g) That dredged spoil, except for clean sand for beach nourishment, will not be placed within the Buffer or elsewhere in that portion of the Critical Area which has been designated as a Habitat Protection Area; and

h) That interference with the natural transport of sand will be minimized.

i) That no disturbances will occur to historic waterfowl staging and concentration areas.

11. Growth Allocation District - GA

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

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

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Growth Allocation ("GA") district classification shall further be limited as set forth below.

Growth Allocation is a finite resource, created by the State and delegated to the counties of Maryland. Talbot County has delegated a part of its Growth Allocation to the Town. Because it is limited in amount, and that amount is intended to serve the needs of the Town forever, Growth Allocation must be managed to address the most meritorious current needs of the Town, and conserved to meet the future needs of the Town. Despite the fact that the Town may currently have more acres of unawarded Growth Allocation assigned to it than the number of undeveloped acres currently located within the RCA and/or LDA overlay zones in the Town, there are hundreds of additional acres of land located within the Chesapeake Bay Critical Area and within close proximity to the Town, such that substantial additional acres classified as RCA and/or LDA could be annexed to the Town in the future. Consistent with the "smart Growth" policy of the State, encouraging expansion of development in and around established population centers, it is anticipated that pressure on the Town for such annexations will increase in the future. Therefore, Growth allocation is a precious resource which must be conserved and managed wisely by the Town in accordance with the goals and objectives of the Town's comprehensive plan.

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

1) Submission Requirements:

a) Ten (10) copies of the request for Growth Allocation and "GA" floating zone classification and all required items for submission shall be submitted to the Town of St. Michaels Planning Commission.

b) Concept plans, site plans and subdivision plats shall be prepared as per the applicable requirements of the Zoning Ordinance and/or Subdivision Regulations.

c) Such other information and documentation as the Planning Commission may require.

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) Multiple applications:

i) An applicant may withdraw an application for the award of Growth Allocation at any time; however, such withdrawal shall not relieve the applicant from the duty to pay the fees and costs incurred by the Town to the time of such withdrawal. Within twelve (12) months after the withdrawal of an application for the award of Growth Allocation, no subsequent application shall be filed with the Town by an Applicant, or accepted by the Town, for processing for the award of Growth Allocation, involving some or all of the same land which is the subject of such withdrawn application, except that the Town Commissioners may, in their sole discretion, upon such conditions as they deem in the best interest of the Town, by resolution specify that the said time limitation shall not apply to a particular subsequent application and allow the filing and processing of such subsequent application. Under no circumstances shall there be more than one application for growth allocation, relating to some or all of the same land, being actively processed by the Town or on appeal at the same time.

ii) An application for the award of Growth Allocation shall not be filed with the Town by an applicant, or accepted for filing by the Town, if that application is for the same land which is in whole or in part the subject of a previously filed application that is a pending application for the award of Growth Allocation filed with the Town, except that the Town Commissioners may, in their sole discretion, upon such conditions as they deem in the best interest of the Town, by resolution permit the filing of an application for the award of Grown Allocation for the same land which is in whole or in part the subject of a previously filed application that is pending if the applicant agrees to stay the previously filed pending application until a final decision is rendered on the subsequent application. If the subsequently filed application for growth allocation is granted, the previously filed application that was stayed shall be automatically deemed withdrawn. If the subsequently filed application is denied by a final decision, thereafter upon written request by the applicant the previously filed and stayed application shall be activated for processing by the

Town. Under no circumstances shall there be more than one application for growth allocation, relating to some or all of the same land, being actively processed by the Town or on appeal at the same time.

iii) Within twelve (12) months after the date of a final decision the merits regarding an application for the award of Growth Allocation, no subsequent application for the award of Growth Allocation shall be filed with the Town by an applicant, or accepted by the Town for processing for the award of Growth Allocation, involving some or all of the same land which was the subject of such previous final decision. However, the time limitation imposed by this Subpart (iii) of this Part c) (Multiple Applications) shall not apply to prohibit or delay the processing of a previously filed application that was stayed pending a final decision that denied a subsequently filed application that is permitted to be processed, in the sole discretion of the Town Commissioners, pursuant to Subpart (ii) of this Part c) (Multiple Applications).

d) 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, and where applicable the Subdivision Ordinance. The Planning Commission shall make a determination of consistency and make additional recommendations concerning conditions of approval.

e) After revising the site plan or plat based on the Planning Commission review, the developer shall submit a preliminary site plan or plat, and such other information as the Planning Commission may request.

f) Within ninety (90) days after staff has informed the applicant in writing that it has complied with the minimum filing and fee payment requirements of this Ordinance or within such extension of time to which the applicant may agree, the Planning Commission shall begin a public hearing on all submissions by the applicant relating to the request for Growth Allocation. Submissions shall include the following:

i) Presentation of the proposed development project by the applicant;

ii) Staff and/or consultants review comments; and

iii) Public Comments

g) Within one hundred and fifty (150) days after the Planning Commission begins its public hearing as provided in this subsection 11 (Growth Allocation District - GA), paragraph a. (Growth Allocation District ("GA")), subparagraph 2) (Procedure for Processing GA District Applications), part f) hereof, or within such extension of time to which the applicant may agree, the Planning Commission shall then make its final recommendation, and thereafter forward the application and recommendation to the Town Commissioners for their review and consideration of approval.

h) Within ninety (90) days after receiving the final recommendation of the Planning Commission as provided in this subsection 11 (Growth Allocation District - GA), paragraph a. (Growth Allocation District ("GA")), subparagraph 2) (Procedure for Processing GA District Applications), part g) hereof, the Town Commissioners shall begin a public hearing on the application. The hearing shall include the following:

i) Presentation by the applicant;

ii) Such other information and documentation as the Town Commissioners may require;

iii) Comments by Town staff and/or consultants;

iv) Planning Commission recommendations;

v) Public comments; and

vi) Such other relevant information as the Commissioners may require or elect to receive.

i) Within one hundred and fifty (150) days after the Town Commissioners begin their public hearing as provided in this subsection 11 (Growth Allocation District - GA), paragraph a. (Growth Allocation district ("GA")), subparagraph 2) (Procedure for Processing GA District Applications), part h) hereof, the Town Commissioners shall render a decision on the application for award of Growth Allocation, and may grant the request for the award of Growth Allocation as a floating zone, subject to the final review an decision of the Maryland Critical Area Commission. In

considering an application for award of Growth Allocation the Town Commissioners shall make findings of fact in each application for award of Growth Allocation with regard to the proposed development of the land for which the award of Growth Allocation is sought, including, but not limited to, the following matters: Change in the Town's population, availability of public facilities, affect on present and future transportation patterns, compatibility with existing and proposed development for the area, the recommendation of the planning commission, and the compatibility with the Town's comprehensive plan; and may award, but shall not be required to award, Growth Allocation based upon a finding that all express criteria of this Zoning Ordinance and the Town's Local Critical Area Program for the award of Growth Allocation will be satisfied. The Town Commissioners may award Growth Allocation based upon their finding that all of the criteria required by law are satisfied, and upon their finding that the award of such Growth Allocation is in the public interest. 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. A complete record of the hearing and the votes of all members of the Town Commissioners shall be kept.

j) The application for Growth Allocation shall thereafter be referred to the Critical Area Commission for its final review and decision.

k) Any of the time limitations provided in this subsection 11 (Growth Allocation District - GA), paragraph a. (Growth Allocation District ("GA")), subparagraph 2) (Procedure for Processing GA District Applications), may be extended by a majority of the Planning Commission or the Town Commissioners, as the case may be, with the written consent by the applicant.

3) Recording the GA Growth Allocation District

a) The Official Critical Area Map(s) shall 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 shall 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.

ANNEXATION AGREEMENT

PERRY CABIN FARM

State of Maryland,
Talbot County, To-wit:

Received the 28th day of Aug A.D. 1980 at 11:30 o'clock A.M. to be recorded, and same day recorded in Liber J.T.B. No. 548 folio 167 one of the LAND Record Books of Talbot County.

per John T. Baynard
Clerk

Return to:

H. Michael Hickson, Esquire
Banks & Nason, P. A.
216 East Main Street
Salisbury, Maryland 21801

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AUG 28 80 A 23527 ****60.00
Time: 11:30 A.M.

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made as of this 6th 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

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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

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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

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

2.2 The Inn Property and the 11.008 acre parcel, now owned by Talbot County, shall, simultaneously with annexation, be considered as two separate subdivided lots pursuant to the Land Subdivision Regulations of St. Michaels. The balance of 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

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

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

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

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

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(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-

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

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

5. ZONING.

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

side of 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.

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12. MISCELLANEOUS PROVISIONS.

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

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

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

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

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

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

ATTEST:

Mary Foster
County Clerk

TALBOT COUNTY MARYLAND

By: Herbert L. Anderson III (SEAL)
President

ATTEST:

Milford H. Sprecher
Milford H. Sprecher,
Town Clerk

THE COMMISSIONERS OF ST. MICHAELS

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

WITNESS:

Teresa K. Meyerhoff

PERRY CABIN ASSOCIATES

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

STATE OF MARYLAND, COUNTY OF TALBOT, TO WIT:

I HEREBY CERTIFY, that on this 7th day of Aug., 1980, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Harry C. Meyerhoff, who acknowledged himself to be a General Partner of Perry Cabin Associates, a Maryland limited partnership, and that he, as such General Partner, being authorized so to do, executed the name of the limited partnership by himself as General Partner.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Patricia K Edmondson
NOTARY PUBLIC
My Commission Expires: July 1, 1982

EXHIBIT A and EXHIBIT B

are intended to be recorded simultaneously herewith

among the Plat Records of Talbot County, Maryland.

E. 718

001966

RESOLUTION FOR AN AMENDMENT
TO THE CHARTER OF
THE TOWN OF ST. MICHAELS
"PERRY CABIN FARM ANNEXATION"

A RESOLUTION OF THE COMMISSIONERS OF ST. MICHAELS, PURSUANT TO THE AUTHORITY OF ARTICLE 11-E OF THE CONSTITUTION OF THE STATE OF MARYLAND, AND MARYLAND CODE (1957), ARTICLE 23A, SECTION 19, AS AMENDED, TO AMEND THE CHARTER OF ST. MICHAELS, THIS AMENDMENT TO BE ENTITLED "PERRY CABIN FARM ANNEXATION", TO EXTEND THE BOUNDARIES OF ST. MICHAELS AND TO PROVIDE FOR CERTAIN CONDITIONS WITHIN THE AREA THUS ANNEXED.

WHEREAS, the Upper Shore Aging Housing Corporation is the owner of a parcel of land located near Mitchell Street, partially within and partially outside of the corporate limits of the Town of St. Michaels; and

WHEREAS, the Upper Shore Aging Housing Corporation desires and consents to have all of its land annexed and included within the corporate boundaries of St. Michaels, and subject to the ordinances thereof; and

WHEREAS, Talbot County, Maryland is the owner of a parcel of land located adjacent to the corporate limits of the Town of St. Michaels, which land is a portion of Parcel No. 3 as shown on a Plat entitled "Final Plat, Plat Showing A Survey Of Perry Cabin Farm, In And Near The Town Of St. Michaels, Talbot County, Maryland"; being the land shown upon a plat entitled "Part Of The Land Of Harry C. Meyerhoff, Et Al., To Be Conveyed To Talbot County Council, Near The Town of St. Michaels, Tal. Co., Md."; and

WHEREAS, Talbot County, Maryland desires and hereby consents to have the above described land annexed and included within the corporate boundaries of St. Michaels, and subject to the ordinances thereof; and

WHEREAS, Perry Cabin Associates, the owner of Parcel No. 2 and the remainder of Parcel No. 3 as shown upon a Plat entitled "Final Plat, Plat Showing A Survey Of Perry Cabin Farm, In And Near St. Michaels, Talbot County, Maryland", dated August 1977, made by J. R. McCrone, Jr., Inc., and recorded among the plat record books of Talbot County, Maryland in Plat Liber 45, Folio 8, located adjacent and to the North of the Town of St. Michaels, have expressed a desire to have the said Perry Cabin Farm annexed to The Town of St. Michaels, and to have the same subjected to the Zoning Ordinance, Subdivision Regulations, and other ordinances of the Town of St. Michaels to provide for

OFFICES OF
NASON
MAIN ST.
MD.

LIBER 548 PAGE 179 001967 EXHIBIT 'C'

the orderly development of and for the supply of municipal services to the said property, all pursuant to the Annexation Agreement between The Commissioners of St. Michaels, Talbot County, and Perry Cabin Associates, dated May [illegible], 1980; and

WHEREAS, The Commissioners of St. Michaels have expressed a desire to annex the Perry Cabin Farm and to provide for zoning, subdivision and municipal services to the said property; and

WHEREAS, the Owners of one hundred percent (100%) of the assessed valuation of the real property located in the area to be annexed, by their execution of Consents To Annexation or the said Annexation Agreement have consented to the proposed annexation; and

WHEREAS, nobody presently resides within the area of land which is to be hereby annexed.

SECTION 1. NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF ST. MICHAELS that the boundaries of the Town of St. Michaels are hereby extended to include the following land area, comprising the entire tract of land now or heretofore known as Perry Cabin Farm and other adjacent parcels of land, all such land being contiguous and adjoining the existing corporate area, which land is hereby added to said corporate area, being shown upon a plat entitled, "Plat Showing, Exhibit A, Perry Cabin Farm And Adjacent Lands, In And Near The Town Of St. Michaels, Talbot County, Maryland", dated April 1980, made by J. R. McCrone, Jr., Inc. being located in the St. Michaels Election District, Talbot County, Maryland, and more particularly described as follows:

LAW OFFICES OF
[illegible] & MASON
[illegible]
[illegible] EAST MAIN ST.
[illegible], MD.
21601

Beginning for the same at a Concrete Monument at the intersection of the public road leading from St. Michaels to McDaniel, known as Maryland Highway No. 33 and the northerly Boundary Line of the Town of St. Michaels, and from said Place of Beginning running by and with the said Town of St. Michaels the following nine courses and distances: (1) North 88 degrees 24 minutes 25 seconds West 101.00 feet; thence (2) North 02 degrees 20 minutes 35 seconds East 616.16 feet; thence (3) North 85 degrees 24 minutes 25 seconds West 20.16 feet to the westerly side of the said Maryland Highway No. 33; thence (4) continuing North 85 degrees 24 minutes 25 seconds West 4.15 feet to a Post; thence (5) still continuing North 85 degrees 24 minutes 25 seconds West 643.55 feet to a Stone; thence (6) South 02 degrees 27 minutes 40 seconds West 199.05 feet to a Concrete Monument; thence (7) continuing South 02 degrees 27 minutes 40 seconds West 399.90 feet; thence (8) South 89 degrees 02 minutes 13 seconds West 125.88 feet to a Concrete Monument; thence (9) continuing South 89 degrees 02 minutes 13 seconds West 575.37 feet to a Post; thence (10) North 00 degrees 44 minutes 10 seconds East 133.08 feet to a Stone; thence (11) North 13 degrees 32 minutes 48 secon East 166.82 feet to a Stone; thence (12) North 15 degrees 22 minutes 04 seconds East 209.51 feet to a Post and the land of Myron P. Erkiletian; thence by and with the said Erkiletian land the following two courses and distances: (13) North 16 degrees 23 minutes 20 seconds East 1114.90 feet to a Concrete Monument; thence (14) North 58 degrees 18 minutes 40 seconds West 167.77 feet to a Concrete Monument and the land of John William Ayres; thence (15) by and with the said Ayres land, North 28 degrees 13 minutes 02 seconds East 157.15 feet to a Stone and the land of Helen R. Johnson; thence (16) by and with the said Johnson land,

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continuing North 28 degrees 13 minutes 02 seconds East 692.16 feet to a Post and the land of James Christopher Walsh, Jr.; thence (17) by and with the said Walsh land, South 87 degrees 37 minutes 12 seconds East 398.18 feet to a Concrete Monument and the westerly side of the aforementioned Maryland Highway No. 33; thence (18) crossing the said Maryland Highway No. 33, and continuing South 87 degrees 37 minutes 12 seconds East 159.53 feet; thence (19) by and with the southerly side of the public road leading to Miles River Yacht Club, and still continuing South 87 degrees 37 minutes 12 seconds East 1263.65 feet to a Concrete Monument and the land of Elsie Watkins Hunteman; thence by and with the said Hunteman land the following four courses and distances: (20) South 45 degrees 56 minutes 52 seconds East 386.84 feet to a Concrete Monument; thence (21) North 84 degrees 13 minutes 00 seconds East 570.00 feet to a Concrete Monument; thence (22) South 54 degrees 17 minutes 08 seconds East 1187.45 feet to a Concrete Monument; thence (23) continuing South 54 degrees 17 minutes 08 seconds East 52.00 feet to a Point at or near the mean high-water line of Miles River; thence over the waters of the said Miles River the following two courses and distances: (24) South 28 degrees 49 minutes 17 seconds West 1657.17 feet to a Point near Three Cedars Point; thence (25) South 75 degrees 04 minutes 02 seconds West 211.58 feet to the aforementioned Town of St. Michaels Boundary Line; thence by and with the said Town of St. Michaels Boundary Line the following four courses and distances: (26) North 88 degrees 24 minutes 25 seconds West 742.83 feet to the shore of Miles River; thence (27) continuing North 88 degrees 24 minutes 25 seconds West 22.00 feet to a Concrete Monument; thence (28) still continuing North 88 degrees 24 minutes 25 seconds West 617.17 feet to a Point; thence (29) still continuing North 88 degrees 24 minutes 25 seconds West 488.00 feet to the Place of Beginning, containing 185.140 Acres, more or less.

E. 722

001970

SECTION 2. AND BE IT FURTHER RESOLVED, that after introduction of this Resolution into The Commissioners of St. Michaels, the Town Clerk shall cause a public notice of this Resolution to be published not fewer than four (4) times at not less than weekly intervals in a newspaper of general circulation in the Town and the area to be annexed, briefly and accurately describing the proposed change and the conditions and circumstances applicable; said public notice to specify a time and place at which a public hearing will be held by The Commissioners of St. Michaels on this Resolution; the hearing to be set not less than fifteen (15) days after the fourth publication of the notices and shall be held at the ~~Town Office~~ St. Michaels Fire Department; and the Town Clerk shall provide the County Council of Talbot County and the Maryland State Department of Planning with a copy of the first notice upon its publication.

SECTION 3. AND BE IT FURTHER RESOLVED, that The Commissioners of St. Michaels shall not take further action on this Resolution until such time as the public hearing, as above specified, has been held.

SECTION 4. AND BE IT FURTHER RESOLVED, that this Resolution, having been passed by The Commissioners of St. Michaels on the _____ day of _____, 1980, shall become effective forty five (45) days after its enactment, thereby becoming effective on the _____ day of _____, 1980, unless a proper petition for a referendum shall have been filed as provided by Maryland Code (1957, 1973 Repl. Vol.), Art. 23A, Sec. 19 (f) or (g) or Maryland Code (1957, 1979 Cum. Supp.), Art. 23A, Sec. 19 (h) prior to such effective date.

SECTION 5. AND BE IT FURTHER RESOLVED, that the Town Clerk shall cause to be affixed to the Charter Amendment Resolution a certificate of publication of the newspaper in which such notice of hearing shall have been published and if there is no Petition for a Referendum, shall declare the Charter Amendment to be effective on the effective date as first indicated above by affixing his signature hereto in the space provided for below.

E. 723

SECTION 6. AND BE IT FURTHER RESOLVED, that, if a proper Petition for Referendum is filed, The Commissioners shall comply with the requirements of Maryland Code (1957), Art. 23A, Sec. 19, as amended, shall set a date for the referendum on

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& MASON
AL ASSOCIATION
T MAIN ST.
BURY, MD.
1801

this Ordinance, which shall be not less than fifteen (15) days and not more than ninety (90) days from the publication of notices therefor, such notices to be published twice at not less than weekly intervals in a newspaper of general circulation in the Town of St. Michaels and the area to be annexed, such notices to specify the time and place or places at which the referendum will be held, the place or places shall be within the limits of the area to be annexed for a referendum within that area and shall be within the Town limits for a referendum within the Town.

SECTION 7. AND BE IT FURTHER RESOLVED, that as soon as the Charter Amendment hereby made shall become effective, either as herein provided or following a referendum, the President of The Commissioners of St. Michaels shall promptly register both the original boundaries and the new boundaries with the Town Director of the Hall of Records, and with the Clerk of the Circuit Court for Talbot County, Maryland, and shall send separately by registered mail to the Secretary of the State of Maryland and to the Department of Legislative Reference of Maryland a complete certified copy of the text of the Resolution, the date of the referendum, if any is held, a certificate showing the number of Commissioners voting for and against the Resolution, and a report on the votes cast for and against the Charter Amendment hereby enacted in any referendum hereon and the effective date of the Charter Amendment.

THIS RESOLUTION INTRODUCED INTO THE COMMISSIONERS OF ST. MICHAELS AT THEIR ~~REGULAR MONTHLY~~ SPECIAL MEETING ON THE _____ DAY OF _____, 1980.

_____
MILFORD H. SPRECHER, Town Clerk

THIS RESOLUTION HAVING BEEN PASSED BY A YEA AND NAY VOTE OF THE COMMISSIONERS OF ST. MICHAELS ON THE _____ DAY OF _____, 1980.

Morris - _____

Evans - _____

Wales - _____

Plummer - _____

Parks - Resigned and not replaced

LAW OFFICES OF
BANKS & NASON
PROFESSIONAL ASSOCIATION
110 EAST MAIN ST.
SALISBURY, MD.
21801

I HEREBY CERTIFY, that the above Resolution was passed by a yea and nay vote of The Commissioners of St. Michaels on this _____ day of _____, 1980.

ATTEST:

THE COMMISSIONERS OF ST. MICHAELS

_____ BY: _____ (SEAL)

MILFORD H. SPRECHER, Town Clerk

HELEN K. PLUMMER, President

I HEREBY CERTIFY, that an exact copy of the aforegoing Resolution was posted on the bulletin board in the Town Office beginning on the _____ day of _____, 1980, at _____ p.m., and was there continuously posted for at least forty (40) consecutive days, said posting having terminated at _____ o'clock __.m. on the _____ day of _____, 1980.

WITNESS:

_____ _____ (SEAL)

MILFORD H. SPRECHER, Town Clerk

I HEREBY CERTIFY, that a summary of the proposed Annexation was published in a newspaper of general circulation in the Town of St. Michaels and in the area to be annexed not less than four (4) times, at weekly intervals in a period of at least forty (40) days after the adoption of the above Resolution.

WITNESS:

_____ _____ (SEAL)

MILFORD H. SPRECHER, Town Clerk

I HEREBY CERTIFY, that the "Perry Cabin Farm Annexation" Charter Amendment enacted by the foregoing Resolution became effective on the _____ day of _____, 1980, (without) (after) a Petition for Referendum and Referendum Election having been held.

ATTEST:

_____ _____ (SEAL)

MILFORD H. SPRECHER, Town Clerk

HELEN K. PLUMMER, President
THE COMMISSIONERS OF ST. MICHAELS

OFFICES OF
KS & NASON
ASSOCIATION
MAIN ST.
MD.
21801

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R032I:10:10/5/83

PUBLIC WORKS AGREEMENT

THIS AGREEMENT, made this 11th day of October, 1983, by and between THE COMMISSIONERS OF ST. MICHAELS, a municipal body corporate of the State of Maryland, hereinafter called the "Town" and MILES RIVER HOMES, INC., a corporation of the State of Maryland, hereinafter called the "Developer".

WHEREAS, Developer is or will be the owner of that certain tract or parcel of land in the Town of St. Michaels, Talbot County, Maryland, situate on the east side of Talbot Street (Md. Rt. 33), to be developed with a planned unit development of not more than 50 townhomes, hereinafter called the "Project," which land is more particularly described on the plat entitled "Phase One - Perry Cabin at St. Michaels" attached hereto as Exhibit "A"; and

WHEREAS, the Project is a part of the larger parcel of land that was annexed and incorporated into the Town of St. Michaels by Annexation Agreement dated May 6, 1980 and recorded among the Land Records of Talbot County, Maryland in Liber J.T.B. No. 548, folio 167&c, and the project shall constitute a "Subdivision Section" as that term is used in the Annexation Agreement; and

WHEREAS, pursuant to its opinion dated May 20, 1983, the Board of Zoning Appeals of the Town approved an application for a special exception to allow development of the Project as herein contemplated; and

WHEREAS, the Annexation Agreement requires certain public improvements, as hereinafter set forth, to be made by the a developer of any of the property described therein.

NOW, THEREFORE, WITNESSETH: that in consideration of the premises and other good and other valuable considerations, the receipt and sufficiency of which are hereby acknowledge, the

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parties agree that Developer may proceed with the Project, subject to and in accordance with the aforesaid special exception and all applicable laws and regulations of the Town, file appropriate plans and specifications and other requirements for the issuance of building permits in accordance with the requirements of the Town, and have prepared and recorded among the Land Records of Talbot County, Maryland a final site plan, subdivision plat in compliance with the Annexation Agreement and all applicable zoning laws and subdivision regulations. The construction and development of the Project, and in particular the road, sewer, water and other facilities to be conveyed to the Town upon completion, shall be constructed in accordance with the following:

1. COMPLETION OF REQUIRED IMPROVEMENTS:

Developer agrees, at its expense, to make the following improvements which are hereinafter collectively called the "public improvements":

(i) Perry Cabin Drive shall be installed and improved, pursuant to standards and requirements set forth in ordinances of the Town, except that sidewalk, curbs and gutters are not required.

(ii) Sewer lines, mains and trunks installed and extended to each lot, and connected to the Talbot County Sanitary District Sewer System.

(iii) Water lines, mains and trunks installed and extended to each lot, and connected to the Town's principal water supply system in accordance with the Town's specifications, to provide water service to each lot. Additionally, Developer shall (i) install a water line inside the property line of each lot to a point where a water meter pit is to be located; (ii) construct a water meter pit to accommodate water meters of the type used by the Town; (iii) install in each pit a water

meter with a shut-off valve to be supplied by the Town without cost to Developer; and (iv) provide each pit with an appropriate cover. Upon completion to specifications and acceptance by the Town, the water lines, mains, trunks, pits, meters and valves shall be conveyed to the Town and become a part of the municipal water system.

(iv) Fire hydrants of the type specified by the Town shall be located in such a manner that no residential dwelling shall be more than 600 feet from a fire hydrant. Upon completion to specifications and acceptance by the Town, the fire hydrants shall be conveyed to the Town and become a part of the municipal water system.

(v) Install or cause to be installed, 70 watt, low-level high pressure sodium lights on Perry Cabin Drive in a manner acceptable to Delmarva Power Company using supports and fixtures acceptable to the Town.

(vi) Electric distribution lines and equipment shall be installed according to the requirements of Delmarva Power and Light Company and the St. Michaels Utilities Commission, or their successors; telephone lines shall be installed according to the requirements of the Chesapeake and Potomac Telephone Company of Maryland, or its successor; all rights-of-way for the above improvements shall be subject to the approval of The Commissioners of St. Michaels with respect to the location and sufficiency.

(vii) All necessary drainage structures and drainage ways shall be constructed and easements therefore granted to the Town in accordance with the requirements of the Town. After acceptance by the Town, Fogg Cove Homeowners Association, Inc. shall maintain the drainage structures and ways, as necessary to allow for the free flow and drainage of surface water, and shall keep the drainage ways mowed and free from obstructions. The Deed conveying the Common Areas to the Association shall impose

on the Association the foregoing obligation to maintain the drainage ways.

2. BUILDING PERMITS AND OCCUPANCY PERMITS:

The Town will issue building permits for townhouses when all of the following requirements have been met:

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

(b) A public works bond or letter of credit has been posted by the Developer as herein provided.

Occupancy permits for townhouses shall be issued when construction of a townhouse has been satisfactorily completed and approved by the Town's building inspector, and the public improvements servicing the lot are completed to the satisfaction of the Town Engineer, with the exception of landscaping, street lighting installation, the final paving course and monument placement.

3. IMPROVEMENTS INVOLVED:

The construction and installation of all public improvements set forth in this Agreement shall be completed by Developer within thirty-six months from the date hereof. The detailed projected costs of the public improvements, to be approved by the Town, have been submitted in writing to the Town by Developer. If Developer is not performing in accordance with the terms of this Agreement, the Town may complete the public improvements and the cost shall be paid from the Guaranty provided in Paragraph 4 hereof. Any money not needed to complete the public improvements will be returned by the Town to Developer immediately upon completion of the public improvements by the Town.

E. 729

4. GUARANTY:

In order to assure that adequate funds will be available for completion of the public improvements hereinabove set forth and the improvement to Md. Rt. 33 at the Project

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entrance, heretofore approved by The Maryland State Highway Administration, Developer shall furnish to the Town a public works bond or irrevocable letter(s) of credit, in a form approved by the Town's 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; the bond or letter(s) of credit shall be effect for the length of time required to complete the public improvements, and in form to allow the Town to procure the funds irrevocably committed to complete the required public improvements if Developer shall default in timely and satisfactory construction of the public improvements in accordance with the Annexation Agreement and the laws of the town. If the public improvements are not completed within the time periods established herein, the Town may, at its option, use the funds provided by the bond or letter(s) of credit and complete the public improvements in accordance with this Agreement. All costs of the Town in obtaining use of the funds shall be paid by Developer out of the bond or fund securing the letter of credit.

5. INSPECTION:

All work shall be inspected by Developer's engineer and approved and certified to the Town prior to acceptance by the Town. The Town may, at its option and at the expense of Developer, have its own testing, inspection and review of engineering and installation of public works by an engineer of the Town's choice. All inspection fees and directly related expenses, as determined by the engineer, shall be paid by Developer.

6. MAINTENANCE:

Developer shall maintain all improvements constructed by it pursuant to this Agreement until acceptance by the Town. All improvements shall be conveyed to the Town in a good state of repair.

E. 730

1978

7. CONVEYANCE AND IMPROVEMENTS:

Developer agrees to convey and the Town agrees to accept the public improvements set forth above, after satisfactory completion of and final approval by the Town engineer.

a) When the final paving course for Perry Cabin Drive is satisfactorily completed and the monuments shown on the recorded subdivision plat are properly installed, a fee simple deed will be executed by Developer to the Town and accepted by the Town and recorded among the Land Records of Talbot County. Thereafter, Perry Cabin Drive, as described in the deed, shall be maintained by the Town.

b) When the balance of the public improvements in the Project are completed a fee simple deed, right of way or easement in accordance with the Annexation Agreement and the laws of the Town shall be executed by Developer and delivered to the Town. Thereafter the public improvements shall be maintained by the Town.

c) The maintenance of the fixtures of the street lights on Perry Cabin Drive shall be by Developer, its successors or assigns.

d) Upon completion of construction of the improvements required by this Agreement, and prior to acceptance by the Town, the Developer shall submit to the Town as-built plans, signed and sealed by a registered professional engineer.

e) All improvements shall be warranted by the Developer for a period of one (1) year from the date of acceptance by the Town. Developer shall obtain a maintenancek bond in the amount of twenty percent (20%) of the costs of improvements to cover the one (1) year warranty period, or, in lieu thereof, a performance bond or letter of credit in that amount may be provided for the warranty period.

E. 731

1979

f) Upon completion of construction in accordance with the plans as accepted by the Town, inspection and testing to show construction to the required specifications in the judgment of the Town's inspection engineer, and warranty of maintenance by the Developer, the Town shall accept the improvements.

g) Upon approval and written acceptance of the improvements by the Town, all such improvements shall become the exclusive property of the Town. Upon written acceptance thereof the Town shall thereafter, unless otherwise noted above, assume the responsibility of maintenance of those improvements so accepted.

Conveyances shall be in a manner and form approved by the Town's attorney. Developer shall pay the costs of conveyances to the Town.

8. MONUMENTS:

Monuments shown on the recorded subdivision shall be placed before Perry Cabin Drive is dedicated and conveyed to the Town.

IN WITNESS WHEREOF, the parties have caused this Public Works Agreement to be executed as of the day and year first above written.

ATTEST:

_____

MILES RIVER HOMES, INC.

By: _____ (SEAL)
President

ATTEST:

_____
Milford H. Sprecher,
Town Clerk

THE COMMISSIONERS OF ST. MICHAELS

By: _____ (SEAL)
President

1

THIS LEASE, Made in duplicate this 2nd day of July, 1974, by and between The Commissioners of St. Michaels, a municipal corporation, Landlord, and The St. Michaels Fire Department, Inc., a body corporate of the State of Maryland, Tenant.

WHEREAS, said Landlord is the owner of two parcels of land on the southerly and easterly side of Green Street in the Town of St. Michaels, Talbot County, Maryland, shown as Parcel A and Parcel B on a map entitled, "PLAT OF A SURVEY OF TWO PARCELS OF LAND TO BE CONVEYED TO ST. MICHAELS FIRE DEPT., INC. BY THE COMM. OF ST. MICHAELS, MD. IN THE TOWN OF ST. MICHAELS, TALBOT CO., MD." made by J. R. McCrone, Jr., Inc.

AND WHEREAS, said Tenant owns the property which is located between said Parcels A and B on the aforesaid plat and it now desires to lease from Landlord, said Parcels A and B.

AND WHEREAS, said Tenant desires to construct a building on Parcel B of said Plat, and it desires to use Parcel A on said plat for parking area in connection with its present building and premises which is now used as a volunteer fire department.

AND WHEREAS, said Tenant feels that it would be in its best interest to enter into a formal lease agreement before beginning to make the improvements referred to above on said Landlords premises.

NOW, THEREFORE, THIS LEASE WITNESSETH, that in consideration of the premises, and the payment of the rent hereinafter expressed, said Landlord does hereby lease and demise to said Tenant, the property shown on said plat, upon the following terms and conditions, viz:

The term of this Lease shall be for a period of one (1) year beginning on the first day of July,,1974, and ending on the 31st day of May, 1975.

The rental shall be One Dollar ($1.00) annually, payable at the beginning of each year of this Lease.

The Tenant agrees to raze and clear all improvements now erected on Parcel A of said Plat and to construct a building on Parcel B, all at its expense, and it further agrees to save harmless said Landlord from any lawsuits, costs, fees, damages, or any other expenses in connection with the construction of the building and parking area.

Tenant further agrees that if the aforesaid building constructed on said plat is no longer used by it in connection with its activities, namely that of a volunteer fire department, that the improvements on said leased premises shall become the property of Landlord.

This Lease shall automatically renew itself at the end of the term set forth above, unless terminated by the mutual agreement of the parties hereto.

This Agreement shall constitute the entire agreement between the parties and shall not be amended save in writing between them and the same shall run to and bind the survivors and assigns of the parties thereto.

AS WITNESS, the signature of the proper officers of each of the corporate parties hereto and the corporate seal of each of them.

ATTEST:

Mary R. Wright
Secretary

COMMISSIONERS OF ST. MICHAELS

Betty S. Reed

Guy W Parks

ATTEST:

Secretary

ST. MICHAELS FIRE DEPARTMENT, INC.

R. Carroll Hurley
President

001982

Time 10:00 A.M.

DEC 12-75 M 24925 *****12.00
DEC 12-75 A 24925 *****12.00

THIS DEED, Made this 16th day of December, in the year nineteen seventy-five, by THE COMMISSIONERS OF ST. MICHAELS, a Municipal Corporation of the State of Maryland, herein called the Grantor, and the ST. MICHAELS FIRE DEPARTMENT, INC., a body corporate of the State of Maryland, herein called Grantee.

WHEREAS, by a Resolution duly passed and recorded among the Minutes of The Commissioners of St. Michaels, The Commissioners of St. Michaels are authorized to convey the hereinafter described property unto the St. Michaels Fire Department, Inc., a body corporate as aforesaid.

NOW, THEREFORE, THIS DEED WITNESSETH: That for and in consideration of the sum of Five Dollars ($5.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the said Grantors do hereby grant and convey unto the St. Michaels Fire Department, Inc., a body corporate as aforesaid, its successors and assigns, in fee simple, provided that the hereinafter described parcels of land are used according to the purposes set forth in the Articles of Incorporation of the St. Michaels Fire Department, Inc. and if said parcels of land ever cease to be used as aforesaid, title to said parcels of land shall revert to the Commissioners of St. Michaels all those lots or parcels of land in the Town of St. Michaels, Talbot County, Maryland, and described as follows, to wit:

PARCEL ONE: BEGINNING for the first at an iron rod on the South side of Green Street at the Northwesterly corner of a lot belonging to the St. Michaels Fire Department, Inc; thence (1) with the Fire Department's lot, South twenty-three degrees twenty-three minutes forty-five seconds East, sixty-six feet (S. 23° 23' 45" E. 66 ft.) to an iron pipe at the Southwesterly corner of the

Fire Department's lot; thence (2) South twenty-five degrees twenty-nine minutes thirty seconds East, nine and seventy-four hundredths feet (S. 25° 29' 30" E. 9.74 ft.) to a concrete monument at the Northeasterly corner of a lot now or formerly owned by Grace B. Smith; thence (3) South sixty-four degrees eleven minutes thirty seconds West, thirty feet (S. 64° 11' 30" W. 30 ft.) to a concrete monument at the Northwesterly corner of a lot now or formerly owned by Grace B. Smith; thence (4) North twenty-eight degrees thirty-four minutes thirty-two seconds West, five and twenty-three hundredths feet (N. 28° 34' 32" W. 5.23 ft.) to an iron pipe at the Northeasterly corner of a lot now or formerly owned by John Lee Dunlop, III; thence (5) South sixty-four degrees forty minutes twenty-eight seconds West fifty-four and thirty-eight hundredths feet (S. 64° 40' 28" W. 54.38 ft.) to a spike at the Northwesterly corner of a lot now or formerly owned by John Lee Dunlop, III; thence (6) North seven degrees twenty-two minutes thirty-four seconds West, sixty-eight and sixty-three hundredths feet (N. 07° 22' 34" W. 68.63 ft.) to the corner of the public way; thence (7) with the South side of Green Street, North fifty-nine degrees fifty-six minutes East, sixty-five and ninety-five hundredths feet (N. 59° 56' E. 65.95 ft.) to the place of beginning.

PARCEL TWO: BEGINNING at an iron rod on the South side of Green Street at the Northwesterly corner of Church Cove Park; thence (1) South twenty-six degrees twenty minutes East, ninety-seven and nine hundredths feet (S. 26° 20' E. 97.09 ft.) to a point at or near the Northwesterly corner of a lot now or formerly owned by Franklin A. Tinker; thence (2) South fifty-nine degrees thirty-five minutes West, seventy hundredths feet (S. 59° 35' W. 0.70 ft.) to an iron rod at or near the Northeasterly corner of a lot now or formerly owned by Charles H. Perry; thence (3) South fifty-eight degrees five minutes West, fifty-nine and twenty-eight hundredths feet (S. 58° 05' W. 59.28 ft.) to an iron pipe at the Southeasterly

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001984

corner of a lot now or formerly owned by the St. Michaels Fire Department, Inc.; thence (4) North twenty-six degrees twenty minutes West eighty-one and twenty hundredths feet (N. 26° 20' W. 81.20 ft.) to the Northeasterly corner of the lot now owned by the St. Michaels Fire Department, Inc. located on the South side of Green Street; thence (5) with the South side of Green Street, North forty-three degrees forty-two minutes East, sixty-three and fifty-three hundredths feet (N. 43° 42' E. 63.53 ft.) to the place of beginning.

PARCEL THREE: BEGINNING for the same at an Iron Rod on the Southeasterly side of Green Street, said Rod being at the most westerly corner of the herein described land and the most northerly corner of the land recently conveyed or about to be conveyed to the St. Michaels Fire Department, Inc., and bearing North 43 degrees 42 minutes East 63.53 feet from the most northerly corner of the land described in a deed from The Commissioners of St. Michaels to St. Michaels Fire Department, Inc., dated January 27, 1950, and recorded in the Land Record Books of Talbot County, Maryland under Liber 285, Folio 98, and from said Place of Beginning running (1) by and with the southeasterly side of the said Green Street, North 43 degrees 42 minutes East 21.28 feet; thence (2) by and with a new division line between the herein described land and the reserved land of The Commissioners of St. Michaels, South 26 degrees 20 minutes East 102.93 feet to the land now or formerly owned by Franklin A. Tinker (Liber 334, Folio 482); thence (3) by and with the said former Tinker land, South 59 degrees 35 minutes West 20.05 feet to the aforementioned St. Michaels Fire Department land; thence (4) by and with the said Fire Department land, North 26 degrees 20 minutes West 97.09 feet to the Place of Beginning, containing 2,000 Square Feet of Land, more or less.

THE above described lots or parcels of land being more particularly shown upon a map of a survey made by J. R. McCrone, Jr.

Inc., Registered Professional Engineers and Surveyors entitled "PLAT OF A SURVEY OF TWO PARCELS OF LAND TO BE CONVEYED TO ST. MICHAELS FIRE DEPARTMENT, INC., BY THE COMMISSIONERS OF ST. MICHAELS, MARYLAND, SCALE: 30' to 1', December, 1973". Note - Revised November 13, 1975 to show Parcel Three.

TOGETHER with the buildings and improvements thereon erected, made or being; and all and every, the rights, alleys, waters, ways, privileges, appurtenances and advantages to the same belonging or in any wise appertaining.

TO HAVE AND TO HOLD the said parcels of land and premises, above described and mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto and to the proper use and benefit of the said St. Michaels Fire Department, Inc., provided that the three parcels of land hereinbefore described are used according to the purposes set forth in the Articles of Incorporation of the St. Michaels Fire Department, Inc. and if said parcels of land ever cease to be used as aforesaid, title to said parcels shall revert to The Commissioners of St. Michaels.

AS WITNESS the Corporate Seal of said The Commissioners of St. Michaels and the signature of the President of The Commissioners of St. Michaels, attested by Mary R. Wright, Town Clerk.

ATTEST: THE COMMISSIONERS OF ST. MICHAELS

Mary R. Wright
Mary R. Wright
Town Clerk

By: James Thomas
James Thomas,
President

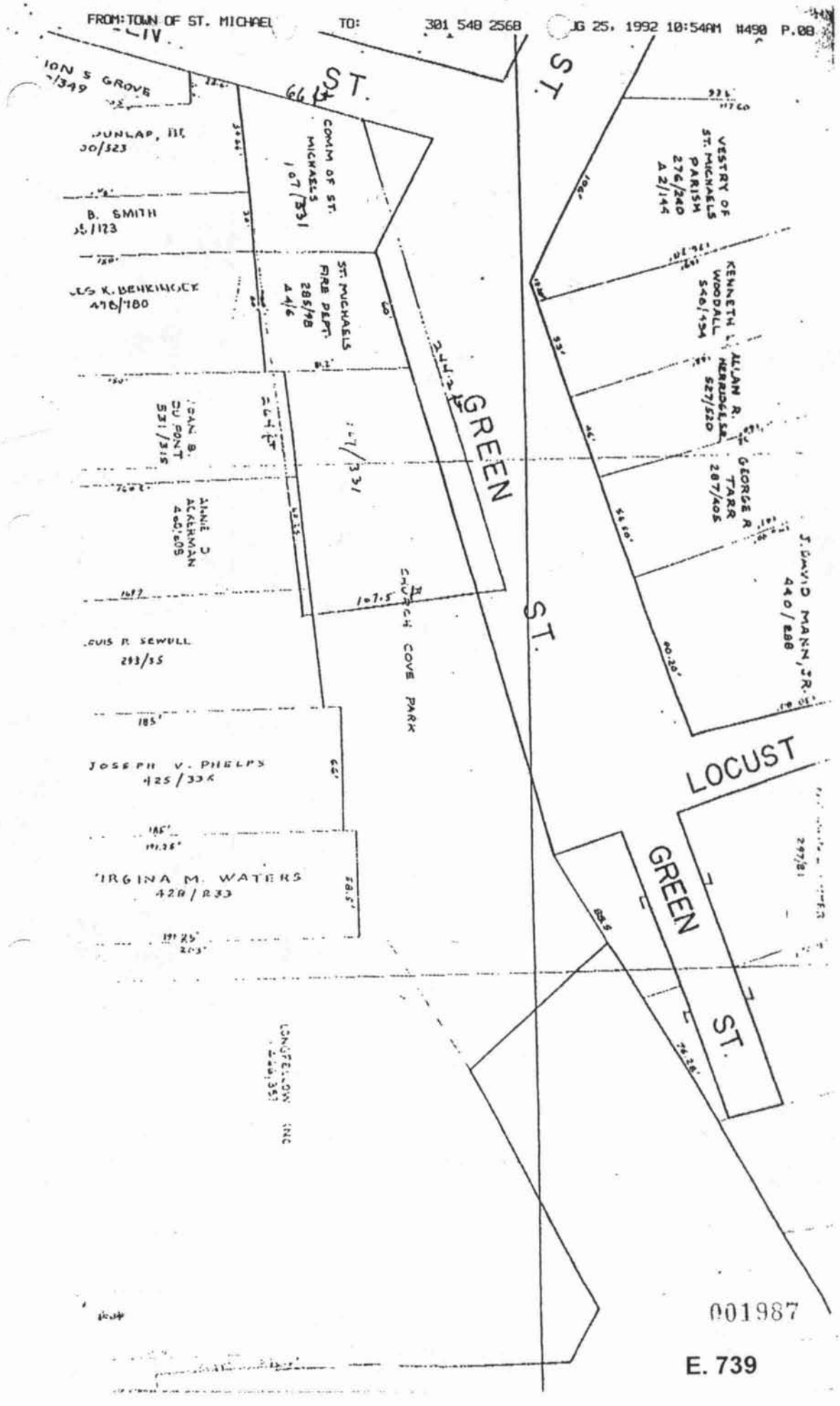
STATE OF MARYLAND, TALBOT COUNTY, to wit:

I Hereby Certify that on this 10th day of DECEMBER, 1975, before me, the subscriber, a Notary Public of the State of Maryland, in and for County aforesaid, personally appeared James Thomas, who acknowledged himself to be President of The Commissioners of St. Michaels, a Municipal Corporation of the State of Maryland, and that he as such President, being authorized so to do, executed the said Deed by signing the name of the corporation by himself as President.

Witness my hand and Notarial Seal.

Notary Public

My Commission Expires
January 1, 1978


ST.
ST.
GREEN
ST.
LOCUST
GREEN
ST.
COMM OF ST. MICHAELS
107/331
ST. MICHAELS FIRE DEPT.
285/98
VESTRY OF ST. MICHAELS PARISH
276/240
KENNETH L. WOODALL
540/434
ALLAN R. HERRIDGE, SR.
527/520
GEORGE R TARR
287/405
J. DAVID MANN, JR.
440/288
B. SMITH
JOAN B. DU PONT
531/315
ANNIE D ACKERMAN
CHURCH COVE PARK
JOSEPH V. PHELPS
425/336
VIRGINA M. WATERS
428/233
LONGFELLOW INC

001987

E. 739

Town Pond 107/331

↑

79/185

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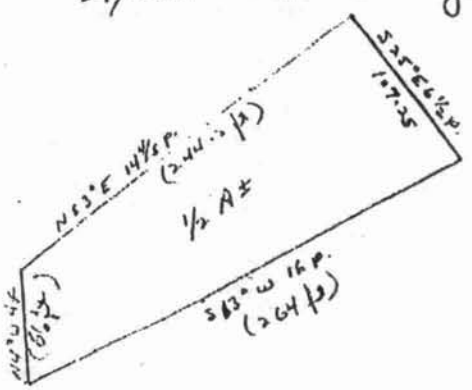
D56/196

Matthew Spencer to ↑ Samuel Hamilton to

JP D56/99

Edward Tarrant to Matthew Spencer 10/19/1841

1837 54/252 Thomas & Lucy Tarrant to Edward Ta



E. 740

001988

285/98

(NOTARIAL SEAL.)

My commission expires May 7, 1951.

Mary L. North
(Mary L. North)
Notary Public

DEED.

THE COMMISSIONERS OF ST. MICHAELS, a municipal corporation of the State of Maryland,
TO
ST. MICHAELS FIRE DEPARTMENT, INC., a body corporate of the State of Maryland.

BE IT REMEMBERED, that on this 2nd., day of February A.D. 1950, at 11:45 o'clock A.M., the following Deed or Instrument of writing was received to be recorded and is accordingly enrolled as follows, to wit:--

THIS DEED, Made this 27th day of January, in the year one thousand nine hundred and fifty, by the Commissioners of St. Michaels, a Municipal corporation of the State of Maryland, herein called Grantor, and and the St. Michaels Fire Department, Inc., a body corporate of the State of Maryland herein called Grantee.

WHEREAS, by a resolution duly passed and recorded among the minutes of the Commissioners of St. Michaels, the Commissioners of St. Michaels are authorized to convey hereinafter described property unto the St. Michaels Fire Department, Inc., a body corpor of the State of Maryland.

WITNESSETH that in consideration of One ($1.00) dollar, and other good and valu considerations, the receipt of which is hereby acknowledged, the said Commissioners of St Michaels do grant and convey unto the St. Michaels Fire Department, Inc., their successors assigns, in fee simple, all that lot or parcel of land in the Town of St. Michaels, Talbo County, Maryland, and described as follows, that is to say:

BEGINNING at an iron pipe driven at the Northwesterly corner of a lot belonging to J. Norman Marshall; thence: (1) with the said Marshall's lot, North fifty-eight degree forty-two minutes East, sixty feet (N. 58° 42' E. 60.0 ft.), to an iron pipe at the North east corner of said Marshall's lot; thence: (2) with the lands reserved to Church Cove Pa by the Commissioners of St. Michaels, North Twenty-six degrees twenty minutes West eighty one and two tenths feet (N. 26° 20'W. 81.2 ft.) to an iron pipe driven on the Southeaster side-line of Green Street; Thence: (3) With the Southeasterly side-line of Green Street, South forty-three degrees forty-two minutes West, sixty-feet (S. 43° 42'W. 60.0 ft.) to a iron pipe and the Easterly line of other lands reserved by the Commissioners of St. Miche Thence: (4) With the last mentioned reserved land, South twenty-three degrees twenty-seve minutes East, sixty-six feet (S. 23° 27'E. 66.0 ft.), to the place of beginning: Be the contents what they may.

THE above described lot or parcel of land being more particularly shown upon a map made by Kestenhuber and Anderson, Surveyors, entitled "TOWN OF ST. MICHAELS, MARYLAND MAP SHOWING NEW FIRE DEPARTMENT LOT, SCALE:1=20' to 1", Jan. 1950".

TOGETHER with the buildings and improvements thereon erected, made or being; as all and every, the rights, alleys, ways, waters, privileges, appurtenances, and advantage to the same belonging, or in any wise appertaining.

TO HAVE AND TO HOLD the said parcel of land and premises; above described and mentioned and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said St. Michaels Fire Department, Inc., its successors and assigns, in fee simple.

Liber 285 Folio 98

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001389

done nor suffered to be done anything whatsoever to encumber the property hereby granted and conveyed, and conveyed, that they will warrant specially the property hereby granted and conveyed, and that they will execute such further assurances of said property as may be requisite.

AS WITNESS the Corporate Seal of the said Commissioners of St. Michaels, and the signature of the President of the Commissioners of St. Michaels, attested by Mary Anne Sewell Town Clerk.

ATTEST: (CORPORATE SEAL.) COMMISSIONERS OF ST. MICHAELS

Mary Anne Sewell
Mary Anne Sewell, Town Clerk

BY: R. Eugene Rude
R. Eugene Rude, President

STATE OF MARYLAND, TALBOT COUNTY, TO WIT:

I HEREBY CERTIFY, that on this 27th day of January, in the year one thousand nine hundred and fifty, before me, the subscriber, a Notary Public of the State of Maryland, duly and for Talbot County aforesaid, personally appeared R. Eugene Rude who acknowledged himself to be President of the Commissioners of St. Michaels, a municipal corporation of the State of Maryland, and that he, as such President, being authorized so to do, executed the aforegoing Deed by signing the name of the corporation by himself as President.

AS WITNESS my hand and Notarial seal.

(NOTARIAL SEAL.)
My Commission Expires May 7, 1951.

Fred J. Greenfield Jr.
Fred J. Greenfield Jr.
Notary Public

D E E D.

MARY ELIZABETH POWELL, widow

TO

HERMAN D. GREENHAWK, and

ELMA C. GREENHAWK, his wife

U. S. INTERNAL REVENUE $4.40
STATE STAMPS.....$4.40

BE IT REMEMBERED, that on this 2nd., day of Fe A.D. 1950, at 12:30 o'clock P.M., the following Deed or ment of writing was received to be recorded and is accordingly enrolled as follows, to wit:-

THIS DEED, Made this 30th day of January, in t year Nineteen Hundred and Fifty, by Mary Elizabeth Powel widow, of Baltimore City, Maryland.

WITNESSETH, That in consideration of the sum of Three Thousand Seven Hundred D ($3,700.00), the receipt of which is hereby acknowledged, the said Mary Elizabeth Powel widow, does hereby grant and convey unto Herman D. Greenhawk and Elma C. Greenhawk, his of Rutledge, Pennsylvania, as tenants by the entireties, their heirs and assigns, and t heirs and assigns of the survivor of them, in fee simple, the following described prope to-wit:

ALL those two lots of ground, each contiguous to the other, and comprising one of ground on the right hand side of the Public Road leading from Bozman to Mulberry Po in the Village of Bozman, St. Michaels District, Talbot County, Maryland, and described follows, that is to say:

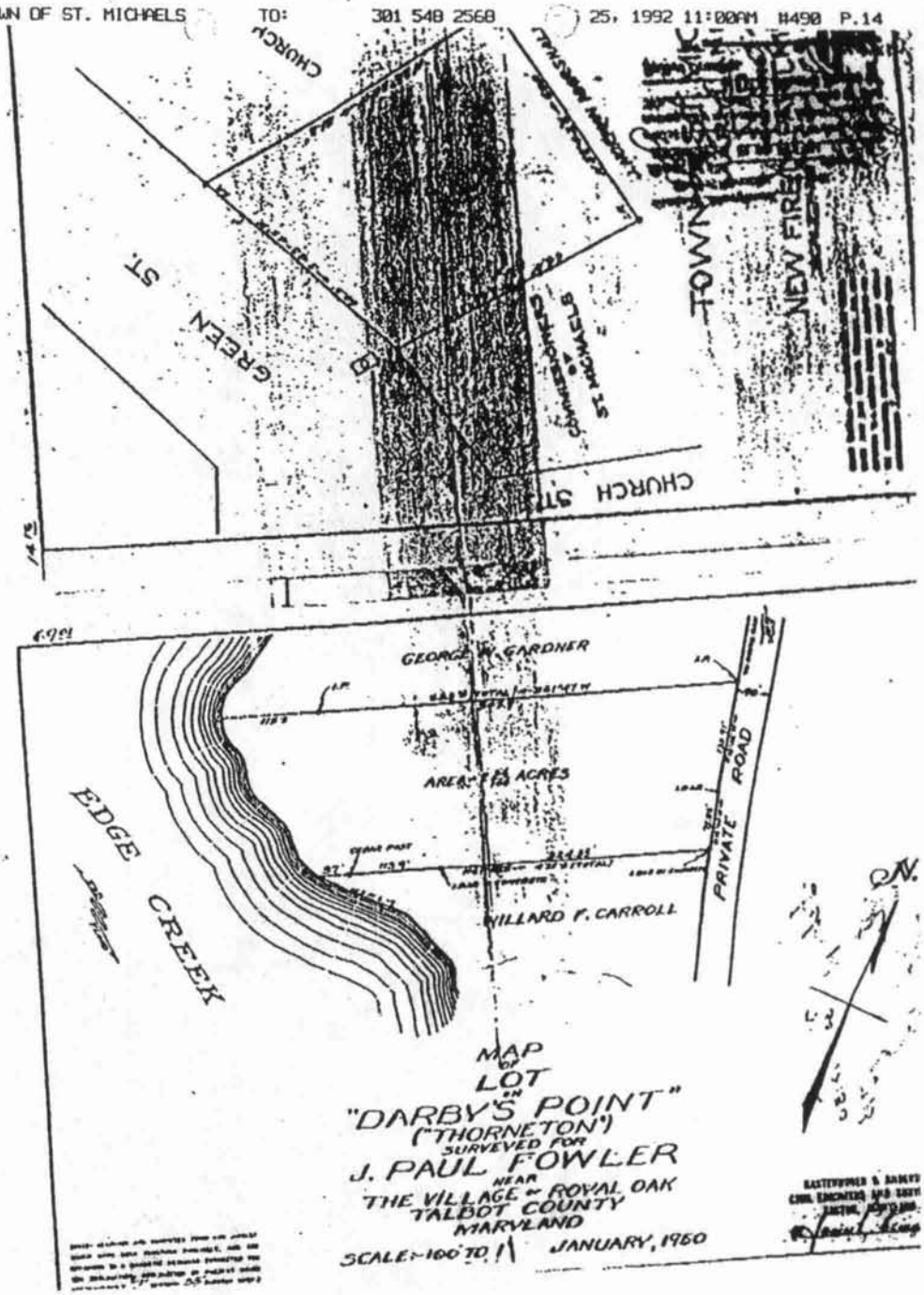
FIRST; Beginning for the same at the Southwest corner of said public school house lot, on the East side of the Quaker Neck Road; and running thence with said School House lot Southwesterly 186½ feet to the land formerly belonging to Howard H. Jones; with said Jones land Southwardly 60 feet; thence with said Jones land Eastwardly 154 fe the road aforesaid; thence with said road Northwardly 134 feet to the place of beginni

BEING the same property conveyed to Katie B. Jones (also known as Katye Butt Jones) by William D. J. Morris, Assignee, by Deed dated October 20, 1906, and recorded Liber No. 146, folio 58, Land Record Book for Talbot County.

Liber 285 Folio 99

E. 742

001990



page 6
of Folio 6

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001991

to the terms of this promissory note of even date herewith, then this mortgage shall be void. Provided that if default shall be made in the payment of the money aforesaid or the interest thereon at the time and in the manner aforesaid, then it shall be lawful for the said Rufus Frampton, his heirs, attorney or assigns to sell the said mortgaged premises at public sale at any place they may select after giving thirty days notice thereof in some newspaper published in Talbot County, to pay the debt and the surplus if any, over to the said George H. Frampton and his obligors as aforesaid.

Provided that under default of payment the said mortgagors shall possess the premises. And the said mortgagors further covenant that they will pay all taxes that may be levied on the debt intended to be secured by this mortgage. Witness our hands and seals

Test. S. H. Jumps

G. H. Frampton (Seal)
James A. Frampton (Seal)
Elizabeth J. Adams (Seal)
Joseph K. Frampton (Seal)
Emmelia E. Sabutton (Seal)
Jas. E. Sabutton (Seal)
Georgia H. Frampton (Seal)
Ellen M. Mullikin (Seal)
Chas. S. Mullikin (Seal)

State of Maryland, Talbot Co. Sct: I hereby certify, that on the third day of January in the year eighteen hundred and eighty eight before me the subscriber, a Justice of the Peace of the State of Maryland, in and for Talbot County, personally appeared George H. Frampton Elizabeth J. Adams, James A. Frampton, Joseph K. Frampton, Emmelia E. Sabutton and her husband James E. Sabutton, George H. Frampton, Ellen M. Mullikin and her husband, Charles S. Mullikin and did each acknowledge the foregoing mortgage to be their act. Also personally appeared Rufus Frampton and did make oath that the consideration expressed therein is just and true as therein set forth. Taken and acknowledged before. S. H. Jumps J.P.

James Benson and Marianna his wife to The Commissioners of St. Michaels.

Be it remembered that on this twenty fifth day of January in the year of our Lord one thousand eight hundred and eighty eight the following Deed or Instrument of writing was received to be recorded and is accordingly inrolled as follows, to wit:

This Deed, made this twenty fifth day of January, in the year eighteen hundred and eighty eight by James Benson and Marianna Benson, his wife of Talbot County, State of Maryland.

Witnesseth that the said James Benson and Marianna, his wife, in consideration of the sum of Two hundred and fifty dollars

E. 744

001992

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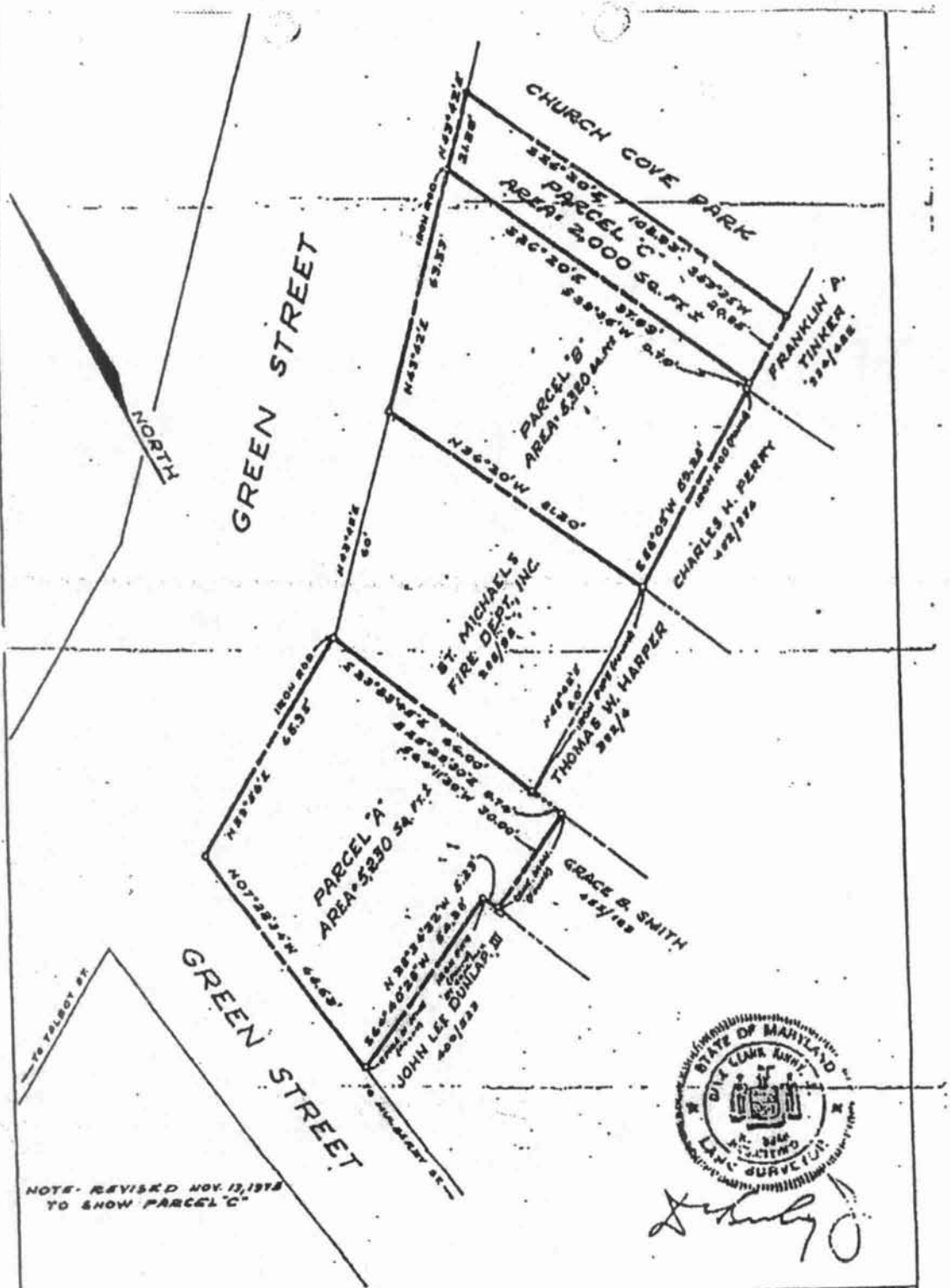
this present witness is hereby acknowledged have bargained and sold to the Commissioners of St. Michaels, a body corporate duly incorporated under the laws of the State of Maryland, all and singular that Marsh Lot situated at the head of Church Cove in the town of St. Michaels, and on Church street of said town. Beginning for the same at the corner of Joeanna Collins lot on Church Island running north four degrees west four perches, thence north five degrees east fourteen perches and four tenths of a perch thence north twenty five degrees east six and half perches thence north sixty three degrees west 16 perches to the beginning, containing one half of an acre of land more or less, being the same lot of land which was conveyed to James Benson by Samuel Hamilton, executor of John Hamilton deceased by deed dated the twenty day of June, in the year eighteen hundred and seventy three, and recorded in the office of the Land Record books of Talbot County, in Liber J.B. No. 19 folio 186 &c as by reference thereto will more fully appear. And the said James Benson and Marianna his wife, covenant that they will warrant especially the lot hereby conveyed and will execute such further assurances as may be requisite. Witness our hands and seals on the day and in the year herein first before written.

Test: Edward Malley — James Benson (Seal) — Marianna Benson (Seal)

State of Maryland, Talbot County, to wit: I hereby certify, that on this nineteenth day of January in the year eighteen hundred and eighty eight before the subscriber a Justice of the peace of the State of Maryland in and for Talbot County, personally aboared James Benson and Marianna Benson his wife, and acknowledged the aforegoing deed to be their respective act. Edward Malley J.P.

Alexander H. Barnett and Amanda L. his wife to Mary N. Easter

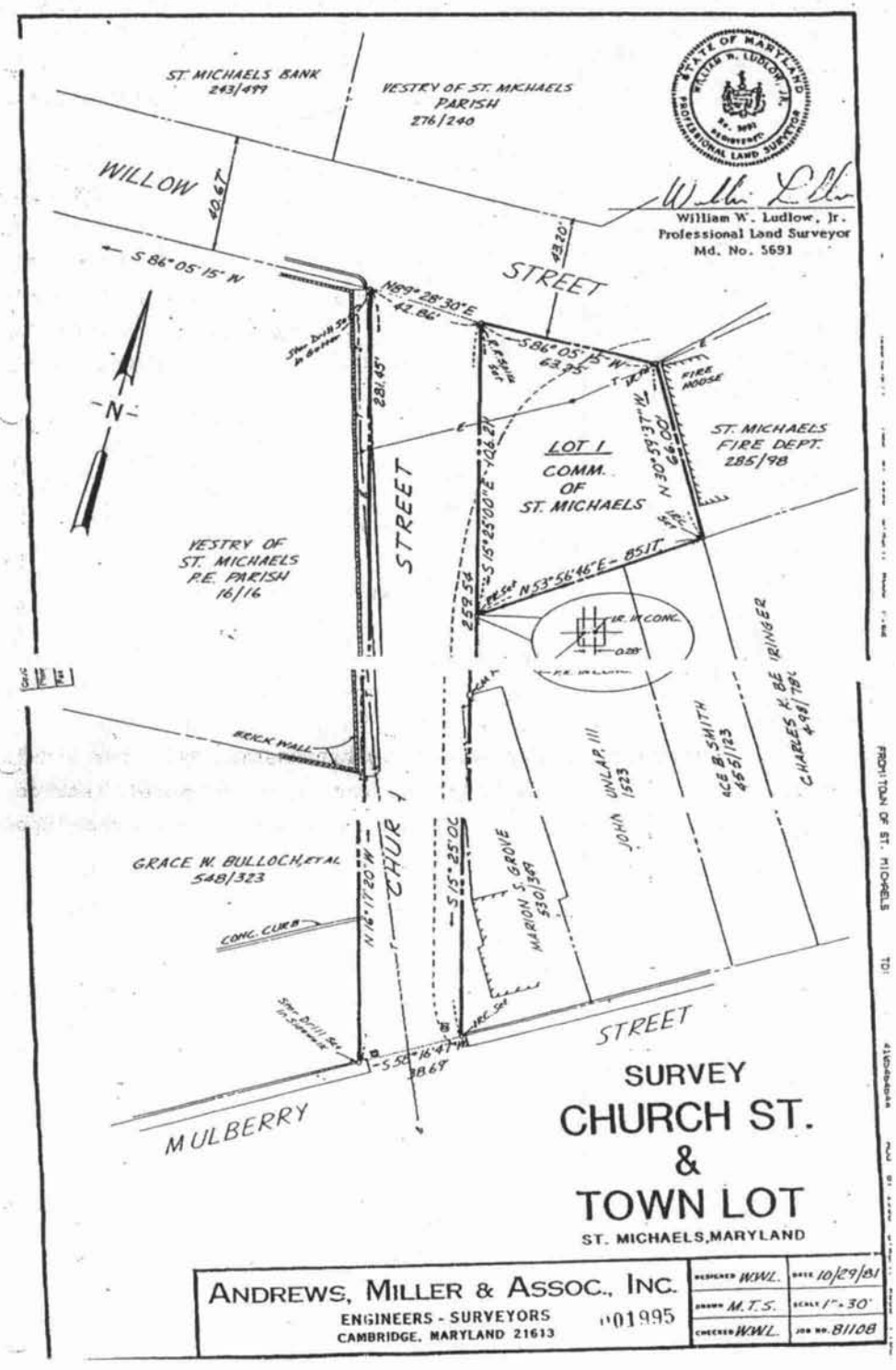
We it remembered that on this twentieth day of January in the year of our Lord one thousand eight hundred and eighty eight the following Mortgage or instrument of writing was received to be recorded and is accordingly recorded as follows towit: This Mortgage, made this sixteenth day of January in the year one thousand eight hundred and eighty eight by Alexander H. Barnett and Amanda Luriana Barnett, his wife of Talbot County, and State of Maryland. Witness. the said Alexander H. Barnett now stands indebted unto Mary N. Easter in the full and just sum of One thousand dollars for which said sum the said Barnett hath passed to the said Mary N. Easter his promissory note of even date herewith and payable three years after date being the principal



PLAT OF A SURVEY OF TWO PARCELS OF LAND TO BE CONVEYED TO ST. MICHAELS FIRE DEPT., INC. BY THE COMM. OF ST. MICHAELS, MD. IN THE TOWN OF ST. MICHAELS, TALBOT CO., MD.	J. R. McCRONE, JR., INC. REGISTERED PROFESSIONAL ENGINEERS AND SURVEYORS ANNAPOLIS, MARYLAND PRINCE FREDERICK CHESTERTOWN TRAPPE LEONARDTOWN BOWIE	DRAWN BY JC SCALE 1"=30' DATE DEC. 1977 JOB NO. K-2543 FOLDER

SUBDIVISION PLAT RECORDED IN PLAT BOOK PAGE

E. 746


ST. MICHAELS BANK
243/499
VESTRY OF ST. MICHAELS PARISH
276/240
WILLOW
40.6'
STREET
43.20'
S 86° 05' 15" W
N89° 28' 30"E
42.86'
281.45'
S86° 05' 15" W
63.95'
N 30° 59' 37" W
66.00'
FIRE HOUSE
ST. MICHAELS FIRE DEPT. 285/98
LOT 1
COMM. OF ST. MICHAELS
VESTRY OF ST. MICHAELS P.E. PARISH 16/16
STREET
S 15° 25' 00" E 126.21'
259.54'
N 53° 56' 46" E - 85.1'
BR. M CONC.
BRICK WALL
JOHN UNLAP, III 1523
ACE B. SMITH 465/123
CHARLES K. & BE IRINGER
GRACE W. BULLOCH, ET AL 548/323
CONC. CURB
N 16° 17' 20" W
CHUR
S 15° 25' 00"
MARION S. GROVE 550/369
STREET
S 52° 16' 47" E
88.69'
MULBERRY
FRONT TOWN OF ST. MICHAELS
SURVEY
CHURCH ST.
&
TOWN LOT
ST. MICHAELS, MARYLAND
ANDREWS, MILLER & ASSOC., INC.
ENGINEERS - SURVEYORS
CAMBRIDGE, MARYLAND 21613
01995
DESIGNED W.W.L.
DRAWN M.T.S.
CHECKED W.W.L.
DATE 10/29/81
SCALE 1" = 30'
JOB NO. 81108

E. 747

LEASE AGREEMENT

THIS LEASE, made this 25 day of August, 1987, by and between **ST. MICHAELS IMPROVEMENT CORPORATION**, (hereafter "Landlord"), and **THE COMMISSIONERS OF ST. MICHAELS**, a Maryland municipal corporation, (hereafter "Tenant").

WHEREAS, the Landlord is the owner of that certain parcel of land described in a Deed from Melvin Lebowitz, et al. to St. Michaels Improvement Corporation dated March 31, 1967, recorded among the Land Records for Talbot County, Maryland in Liber J.T.B. No. 418, Folio 456, which land lies between Talbot Street and Fremont Street in the Town of St. Michaels, Maryland; and

WHEREAS, the parties hereto have previously executed a Lease dated March 31, 1967 for the purpose of establishing, providing and maintaining a public parking area, which Lease commenced on April 1, 1967 for a term of fifteen (15) years; and

WHEREAS, by Agreement between the parties hereto dated August of 1970, the aforesaid Lease was amended by reducing the area of the land involved to accommodate an addition to the building of Donald R. Young; and

WHEREAS, since the expiration of the aforesaid Lease, as amended by the said Agreement, the parties hereto have continued to honor the terms thereof on a year-to-year basis, and they now wish to continue their commitment to provide and maintain the said parking area, as reduced by the aforesaid Agreement, for an additional fifteen (15) year term; and

WHEREAS, the designation of such an area for the exclusive use as a public parking area, and the continuous maintenance thereof for the term specified herein is for the mutual benefit of the public, the Landlord and the Tenant.

NOW, THEREFORE, THIS LEASE WITNESSETH, That for and in consideration of the recitals and the premises herein stated, the payment of the rent hereinafter set forth, and other good

001996

and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Landlord does hereby lease and demise to the Tenant, and the Tenant does hereby lease from the Landlord, according to the terms and conditions hereof, all that lot, parcel or piece of land situate, lying and being in the Second (St. Michaels) Election District of Talbot County, Maryland, being more particularly described in a deed dated March 31, 1967, from Melvin Lebowitz, et al. to St. Michaels Improvement Corporation, and recorded among the Land Records for Talbot County, Maryland in Liber J.T.B. No. 418, Folio 456; SAVE AND EXCEPT, therefrom so much of the said land as is set forth in the aforesaid Agreement dated August of 1970 between the St. Michaels Improvement Corporation and The Commissioners of St. Michaels, a copy of which Agreement is attached hereto and made a part hereof, upon the following terms and conditions:

1. The term of this Lease shall be for a period of fifteen (15) years beginning on July 1, 1987 and terminating on June 30, 2002.

2. The rent shall be One Dollar ($1.00) per year, payable by the Tenant to the Landlord at the beginning of each year on the anniversary date of this Lease.

3. At the option of the Tenant, the parking area may be metered with the proceeds of said parking meters to belong to the Tenant.

4. It shall be the duty and the responsibility of the Tenant to maintain the parking area with such paving, lighting, [illegible] and other improvements as it may deem appropriate. The Landlord shall have no duty to maintain or contribute toward the maintenance of parking lot on the premises.

5. This Lease shall constitute the entire agreement between the parties, which shall be interpreted under the laws of the State of Maryland, and shall not be amended unless in writing signed by all the parties hereto. This Lease shall bind

and inure to the benefit of the parties hereto, their heirs, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Lease under seal in duplicate, each of which shall constitute an original, on the day and year first above written.

ATTEST: ST. MICHAELS IMPROVEMENT CORPORATION

Douglas D Hoffa
Secretary

By: Donald R. Young (SEAL)
President

ATTEST: THE COMMISSIONERS OF ST. MICHAELS

William B Nicholson Jr.
William B. Nicholson, Jr.
Town Clerk/Manager

By: R E Brown (SEAL)
Richard E. Brown, President

STATE OF MARYLAND, COUNTY OF ~~WICOMICO~~ TALBOT, TO WIT:

I HEREBY CERTIFY, that on this 25 day of August, 1987, before me, a Notary Public in and for the State and County aforesaid, personally appeared Donald R Young, who acknowledged himself to be the President of the St. Michaels Improvement Corporation, and that he, as such President, being authorized so to do, executed the foregoing instrument on behalf of said corporation for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

Jean R Wiseman
Notary Public Comm. expires 7/1/90

STATE OF MARYLAND, COUNTY OF ~~WICOMICO~~ TALBOT, TO WIT:

I HEREBY CERTIFY, that on this 12 day of August, 1987, before me, a Notary Public in and for the State and County aforesaid, personally appeared **RICHARD E. BROWN**, who acknowledged himself to be the President of The Commissioners of St. Michaels, and that he, as such President, being authorized

001998

so to do, executed the foregoing instrument on behalf of said corporation for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

Notary Public

My commission expires: 7/1/90

Attachment: Agreement dated August, 1970

001999

002000

THIS AGREEMENT, Made this day of August, 1970, by and between St. Michaels Improvement Corporation and Commissioners of St. Michaels, a municipal corporation.

WHEREAS, on March 31, 1967, a lease was executed by and between St. Michaels Improvement Corporation, referred to as Landlord therein, and Commissioners of St. Michaels, a municipal corporation, referred to as Tenant therein.

AND WHEREAS, said lease recited that Tenant desired to promote the establishment of a parking area for the mutual benefit for the residents of St. Michaels and the general public.

AND WHEREAS, it was further stated that the purpose of said lease was to create a public parking area and that the demised premises would be used for no other purposes.

AND WHEREAS, the parties hereto have been requested to permit a portion of said public parking area to be used by Donald R. Young for the improvement of his business.

AND WHEREAS, the parties hereto feel that it is in the best interest of the citizens of St. Michaels and the general public to waive the requirement set forth in said lease that the entire premises be used as a public parking area only.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, That in consideration of the overall good and benefit to the citizens of St. Michaels and the public generally, and the sum of One Dollar ($1.00), the parties hereto waive the aforesaid requirement that the public parking area referred to in the aforesaid lease be used solely for that purpose and grant to Donald R. Young the privilege of building an addition to the rear of his present store building over and on said public parking area.

IT IS FURTHER AGREED, that the area to be used will be approximately ten feet (10 ft.) deep and with a width equal to the present width of the said store building of Donald R. Young or cover the area shown on the attached sketch or plat submitted by Donald R. Young, whichever is the smallest.

002000

002001

ATTEST:

Douglas A. [illegible]
Secretary

ST. MICHAELS IMPROVEMENT CORPORATI

Franklin L. Tinker
Franklin L. Tinker -President

ATTEST:

May Anne [illegible]

COMMISSIONERS OF ST. MICHAELS

[illegible]

Helen K. Plummer

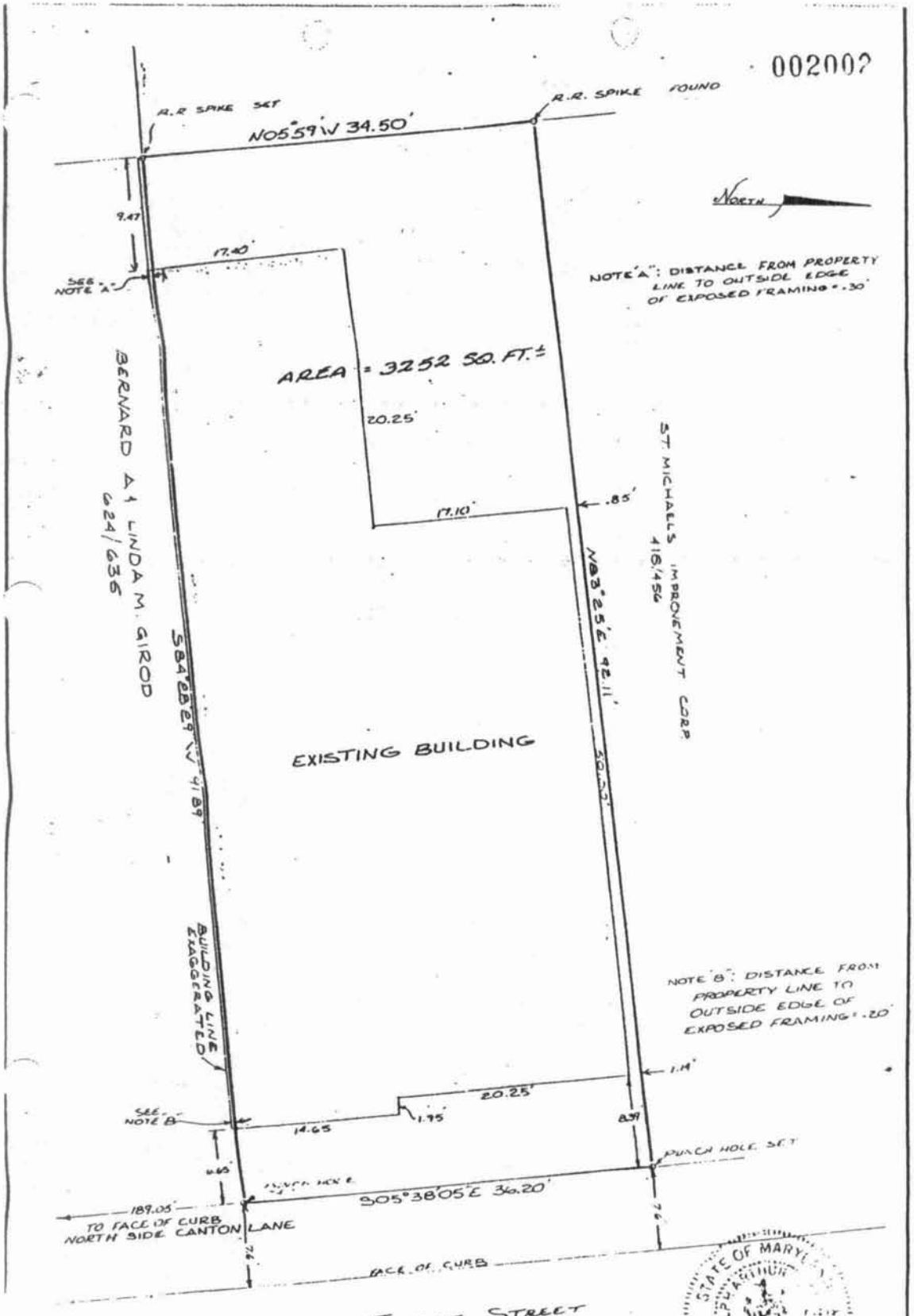
Clifford E. [illegible]

7220

NOTE: BEARD WHICH HAVE REFERRED TO THE [illegible]

002001

002002



E. 754

SURVEY OF THE LAND OF
~~J.J.T. JOINT~~ VENTURE
JACK BISHOP
IN ST. MICHAELS
TALBOT COUNTY, MARYLAND

MCRONE
Engineers • Planners
Surveyors
Annapolis, Maryland
Centreville · Chestertown · Denton · Easton
Elkton · Leonardtown · Prince Frederick

DRAWN BY MCIV
SCALE 1" = 10'
DATE MARCH 5, 87
JOB NO 510109754
FOLDER 1492

SUBDIVISION PLAT RECORDED IN PLAT BOOK PAGE

THIS LEASE, Made in duplicate this 31 day of March, 1967, by and between St. Michaels Improvement Corporation, Landlord, and Commissioners of St. Michaels, a municipal corporation, Tenant.

WHEREAS, said Landlord is about to acquire certain lands fronting on the West side of Talbot Street, and extending back to Fremont Street, in St. Michaels, Maryland, which are shown on a plat thereof made by James R. Kinnamon in January, 1967, attached hereto and made a part hereof, for the purpose of providing a public parking area;

AND WHEREAS, said Tenant desires to promote the establishment of said public parking area, and the maintenance thereof, for the mutual benefit of the residents of said Town and the general public.

NOW THEREFORE THIS LEASE WITNESSETH, That in consideration of the premises, and the payment of the rent hereinafter expressed, said Landlord does hereby lease and demise to said Tenant, the property shown on said plat, upon the following terms and conditions, viz:

The term of this Lease shall be for a period of fifteen (15) years beginning on the 1st day of April, 1967, and ending on the 31st day of March, 1982.

The rental shall be One Dollar ($1.00) annually, payable at the beginning of each year of this Lease.

The purpose of this Lease is to create a public parking area, and it is agreed that the demised premises shall be used for no other purpose.

The Tenant agrees to raze and clear all improvements on the demised property and to clear and level the same, and further to improve the surface for vehicular parking, provide adequate lighting and further to police and maintain the same, in accordance with the agreement made between the parties, all of which shall be done at the sole expense and risk of said Tenant.

It is agreed between the parties that the parking area shall be a non-metered vehicular parking area for the first year of operation, but as soon as practical after April 1, 1968 and as soon as practical after April 1st of each year thereafter said Landlord and Tenant shall meet to discuss the operation of said parking lot including the installation of parking meters; however, it is expressly agreed that the final decision as to whether the parking area is to be metered or non-metered in whole or in part will be that of Tenant.

Tenant further agrees to construct concrete side-walks five (5) feet in width with curb and gutter; to be located on both sides of Talbot Street entrance to said parking area and extend back the same distance as the existing side-walk of Donald R. Young.

This Agreement shall constitute the entire agreement between the parties and shall not be amended save in writing between them and the same shall run to and bind the survivors and assigns of the parties hereto.

AS WITNESS the signature of the proper officers of each of the corporate parties hereto and the corporate seal of each of them.

ATTEST:

Douglas A. Hope
Secretary

ST. MICHAELS IMPROVEMENT CORPORATION

By Franklin L. Tinker
Franklin L. Tinker -President

ATTEST:

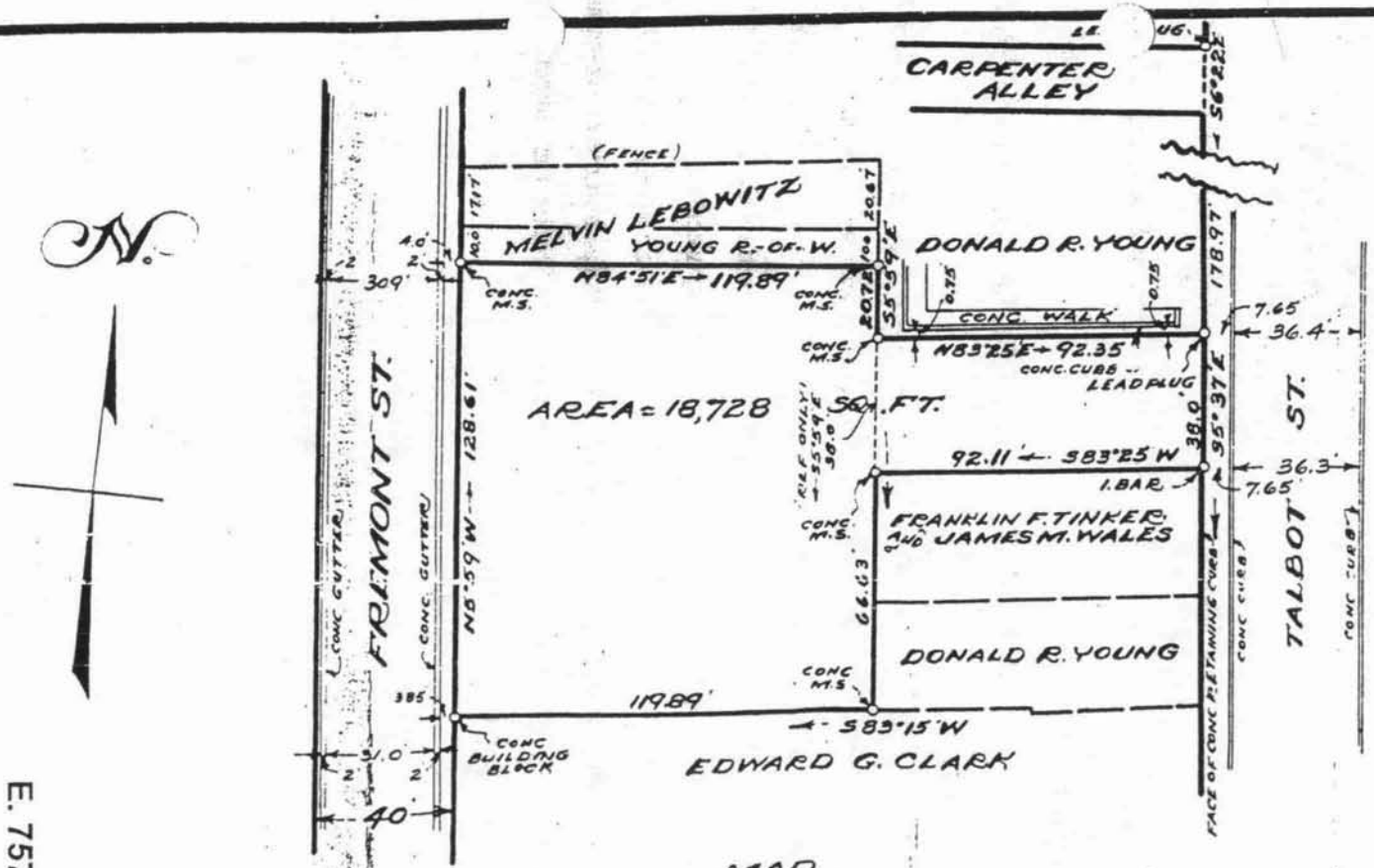
Mary Anne Lovell

COMMISSIONERS OF ST. MICHAELS

By

Helen K. Plummer

Jefferson F. Campbell



MAP
SHOWING
PROPOSED PARKING AREA
SURVEYED FOR
ST. MICHAELS IMPROVEMENT CORPORATION
IN
THE TOWN OF ST. MICHAELS
TALBOT COUNTY
MARYLAND

SCALE 1- 40' TO 1" JAN., 1967

SURVEYOR—MO. REG 1445
ODD FELLOWS BUILDING, EASTON, MD.

E. 757

002005

002005

E. BEARINGS ARE COMPUTED FROM THE ANGLES
CH HAVE BEEN OBSERVED PRECISELY AND ARE
ERRED TO A MAGNETIC MERIDIAN CORRECTED FOR
DECLINATION. DECLINATION AT PRESENT BEING
ROXIMATELY ___ DEGREES ___ MINUTES WEST

TALBOT COUNTY, MARYLAND,	*	CIVIL CASE NO. 20-C-04-005095DJ
Plaintiff	*	IN THE CIRCUIT COURT
Vs.	*	FOR
DEPARTMENT OF NATURAL RESOURCES,	*	TALBOT COUNTY
Defendant	*	STATE OF MARYLAND

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

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OF CHERIL S. THOMAS

I, CHERIL S. THOMAS, the "Affiant", do hereby solemnly declare and affirm, under the penalties of perjury, that the following matters and facts are true upon based on my personal knowledge:

1. I am over the age of 18 years and competent to testify as to the matters and facts stated herein.

2. I am currently employed as the Town Clerk and the Town Manager of The Commissioners of St. Michaels, a municipal corporation of the State of Maryland (hereinafter the "St. Michaels"), I have continuously held those positions for St. Michaels since March 1, 1999, and I am now and have been continuously during that time the custodian of records for St. Michaels. I have been employed by St. Michaels continuously since 1991.

3. I have personal knowledge of the matters and facts set forth in the following pleadings prepared and filed on behalf of St. Michaels in the above-captioned case (hereinafter the "St. Michaels Pleadings"), which St. Michaels Pleadings are attached to and incorporated in this Affidavit by reference as if fully set forth herein:

3.1 Counterclaim For Declaratory Judgment;

3.2. The St. Michaels Motion For Summary Judgment; and

3.3 Memorandum Of Law In Support Of The St. Michaels Motion For Summary Judgment.

4. All of the matters and facts set forth in this Affidavit, and the matters and facts set forth in the said St. Michaels Pleadings, are true and correct.

Ex. 11

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BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P O Box 44
Salisbury, MD
21803-0044

5. The following documents that are attached and referred to as Exhibits to St. Michaels' Pleadings, which are adopted in this Affidavit by reference as if the same were fully set forth herein and made a part hereof, are true and genuine copies of some of the material papers which constitute the basis of the relief requested in the foregoing St. Michaels' Pleadings:

Exhibit 7: The St. Michaels Local Critical Area Program

Exhibit 12: March 29, 2000 Letter from Daniel R. Cowee, Talbot County Planning Officer to Cheril S. Thomas.

6. Talbot County, Maryland (the "County") is not in the military service of the United States of America (or any military service of any nation allied with the United States of America) because the County is a charter county and political subdivision of the State of Maryland.

7. The County has not been ordered to report for induction under the Universal Military Training and Service Act, as amended, and the County is not a member of the Enlisted Reserve Corps who has been ordered to report for military service.

8. In or about 1998, St. Michaels received the first of six applications for the award of growth allocation from The Midland Companies, Inc. ("Midland"), all involving some or all of the same parcel of land (the "Perry Cabin Farm"), consisting of approximately seventy-two acres, all of which is located within the jurisdictional borders of St. Michaels and is the subject of a 1980 annexation agreement in which specific zoning was agreed to and granted by St. Michaels.

9. Between 1998 and 2002, three of the six Midland applications for growth allocation (the six applications are collectively referred to herein as the "Midland Applications") were received and processed by St. Michaels, and the growth allocation which was the subject of those applications was denied by St. Michaels. Each of these denials was appealed by Midland to the judicial system, and St. Michaels defended each of its decisions (the "Midland Litigation"). The Midland Litigation cost St. Michaels in excess of $1 million, and was frequently publicized by news accounts in the local daily newspaper.

10. At no time during the Midland Litigation did the County take any action, publicly or otherwise, to indicate that St. Michaels would not have the ability, under appropriate circumstances, to grant growth allocation to Midland, or that growth allocation which had been reserved to St. Michaels in the County Local Critical Area Program would be withdrawn by the County. In fact, during the processing and consideration of the Midland Applications by St. Michaels, on or about March 29, 2000, I received a letter from Mr. Daniel Cowee, then Talbot County Planning Officer, in

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which Mr. Cowee stated, in part, that the 245 acres of growth allocation reserved by the County to St. Michaels "can and has been used subject to [St. Michaels'] ordinance with no review by the County." Mr. Cowee went on to state that "[n]otification in writing [of] the growth allocation acres used is all that is required."

11. At the conclusion of the Midland Litigation, St. Michaels, Midland, and citizen representatives of St. Michaels engaged in non-binding mediation at the urging of the Maryland Conflict Resolution Office ("MACRO"). This mediation was funded by MACRO and resulted in common ground being reached between the parties involved. Thereafter, in the spring of 2003, the Commissioners of St. Michaels (the "St. Michaels Commissioners") conducted a public workshop with Midland, during which more specific common goals were identified and publicly announced.

12. In September 2003, the fourth of the Midland Applications was submitted to St. Michaels involving a project known as Miles Point II (the "Miles Point II Application"). The Miles Point II Application involved the Perry Cabin Farm and approximately seventeen additional acres of land (the "Hunteman Property") located immediately outside of, but proposed to be annexed into St. Michaels.

13. Between September and late December of 2003 the St. Michaels Planning Commission held public hearings on the Miles Point II Application. On or about October 9, 2003, the St. Michaels Planning Commission voted to issue a recommendation to the St. Michaels Commissioners that the St. Michaels Commissioners amend the St. Michaels Zoning Ordinance to provide for a new zone known as "Traditional Neighborhood Development", which was needed to approve the Miles Point II Application. The St. Michaels Planning Commission also voted to issue a recommendation to the St. Michaels Commissioners that it approve a "Development Rights and Responsibilities Agreement" between St. Michaels and Midland, which dealt with the Miles Point II Application.

14. In October and November of 2003, the St. Michaels Planning Commission held public hearings regarding the Miles Point II Application for growth allocation. On November 24, 2003, the St. Michaels Planning Commission issued a written recommendation to the St. Michaels Commissioners in favor of awarding growth allocation in response to the Miles Point II Application.

15. On or about November 14, 2003 an employee of St. Michaels reviewed the County's website to determine the agenda for the County Council meeting scheduled for the following

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Tuesday, November 18, 2003. At that time, for the first time, it was learned by any St. Michaels official that Talbot County Bill 933 ("Bill 933") would be introduced at the Tuesday, November 18, 2003 County Council meeting. Only the title of Bill 933 was available on the County's website: The title of Bill 933 was "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)."

16. Because the title of Bill 933 disclosed that it dealt with the "reallocation of growth allocation", I immediately called the office of the County Manager to inquire whether I could obtain a copy of Bill 933. On Friday, November 14, 2003, I was told by a County employee that no copy of Bill 933 was available. I called again on Monday, November 17, 2003 and asked for a copy of Bill 933 and was once again told that no copies were available. On Tuesday, November 18, 2003, prior to the County Council's hearing, I again inquired and was again told by a County employee that no copies of Bill 933 were available. I attended the public hearing on November 18, 2003 and requested a copy of Bill 933 and was again told by a County employee that no copies were available. The following day, Wednesday, November 19, 2003, I called and asked for a copy of Bill 933 and was told by a County employee that none were available. Thereafter, I spoke to the Commissioner Mr. Philip Dinkel, who called County Councilman Phil Foster and requested a copy of Bill 933. At that time, for the first time, the County provided, by facsimile, St. Michaels with a copy of Bill 933.

17. Prior to the review of the County's website on Friday, November 14, 2003, no official or employee of St. Michaels, who was involved in land-use or critical area matters for St. Michaels, was aware that the County Council planned to introduce Bill 933 on Tuesday, November 18, 2003, nor was any such official or employee of St. Michaels aware of the content of Bill 933. No one from the County made any contact with any such official or employee of St. Michaels to discuss Bill 933 or the prospect that the County intended to revoke the 245 acres of growth allocation reserved to St. Michaels by the County, or to seek to accommodate the growth needs of St. Michaels, or receive any suggestions, concerns or comments from St. Michaels in regard the subjects that were eventually contained in Bill 933 as drafted or enacted. On November 20, 2003, at a public meeting the St. Michaels Planning Commission voted to recommend that The Commissioners of St. Michaels approve the fourth Midland Application.

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18. At approximately noon on November 21, 2003, Commissioner A. Philip Dinkel met with Councilman Philip C. Foster regarding the fourth Midland Application. Mr. Dinkel informed Mr. Foster of the agreements reached between St. Michaels and Midland regarding the fourth Midland Application. After their meeting, Mr. Dinkel and I discussed his meeting with Mr. Foster, and Mr. Dinkel informed me of the outcome. On that same afternoon, at 4:00 p.m., the County Council convened a "workshop" that to my knowledge was not advertised. At that workshop, which I attended along with Mr. Dinkel, the County Council chided St. Michaels for considering the fourth Midland Application, and voted unanimously to recommend that The Commissioners of St. Michaels deny the fourth Midland Application.

19. The Commissioners of St. Michaels requested that the County Council relinquish its zoning control over the Hunteman Property if the outcome of impending annexation hearings for the property should result in a vote in favor of annexation. On December 16, 2003, the County Council voted to deny St. Michaels' request that the County relinquish its zoning powers over the Hunteman Property.

20. After the enactment of Bill 933 by the County, Midland, with the permission of St. Michaels, submitted the fifth Midland Application. The fifth Midland Application (also known as "MP3-100"), did not include the Hunteman Property. Thus, all of the land that was the subject of the MP3-100 application (Perry Cabin Farm) had been within the Town for 24 years, and was the subject of the 1980 annexation agreement, to which the County is a signatory. The MP3-100 application has since been the subject of public hearings by the St. Michaels Planning Commission, resulting in a favorable recommendation to the St. Michaels Town Commissioners. The St. Michaels Town Commissioners issued their approval of the Miles Point III-100 application by written decision dated February 19, 2003. While MP3-100 is the subject of litigation, with the consent of St. Michaels that litigation has been stayed so that Midland can present its sixth application for growth allocation to St. Michaels, known as MP3-150. The MP3-150 application is an attempt to resolve the differences between the MP3-100 approval by St. Michaels and conditions imposed by the Commission in its approval of MP3-100. The MP3-150 is currently being processed by St. Michaels.

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Salisbury, MD
21803-0044

CSH

Cheril S. Thomas

Cheril S. Thomas, Affiant
Town Manager, St. Michaels

NOTARIZATION

STATE OF MARYLAND, COUNTY OF TALBOT, TO WIT:

I HEREBY CERTIFY that on this 14th day of November, 2005, before me, the subscriber, a Notary Public for the State and County aforesaid, personally appeared, Cheril S. Thomas, known to me (or satisfactorily proven to be the person whose name is above subscribed) and made oath in due form of law that the matters and facts hereinabove set forth are true upon her personal knowledge.

Dorothy C. Olley

NOTARY PUBLIC

My Commission Expires: 11-3-07

DOROTHY C. OLLEY
Notary Public
Talbot County
MARYLAND
My Commission Expires November 03, 2007

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

E. 763

TALBOT COUNTY OFFICE
OF
PLANNING AND ZONING
COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601
Phone 410-770-8030
Fax 410-770-8043

DANIEL R. COWEE
Planning Officer

FRANK V. HAL
Assistant Planning Offic

March 29, 2000

Ms. Cheril Thomas
Town of St. Michaels
P.O. Box 206
St. Michaels, MD 21663

Dear Ms. Thomas,

I would like to take this opportunity to update you on Talbot County's growth allocation ordinance as it relates to your town. You are no doubt aware there have been amendments to the County's ordinance on this subject. I will limit the scope of this letter to those facts that affect the Towns.

Each Town was granted specific acreage for Limited Development Area (LDA) to Intense Development Area (IDA) conversion. The acreage is 24 for St. Michaels, 24 for Easton, and 44 for Oxford. These acreages are finite and so no additional amounts will be available in the future. Reference Section 19.14(c)(l)(iv)(j), attached.

Each Town was granted specific acreage for conversion from Resource Conservation Area (RCA) to LDA or IDA. The original acreage is 155 for Easton, 195 for Oxford and 245 for St. Michaels. This acreage can and has been used subject to your Town's ordinance with no review by the County. Notification to the County in writing of the growth allocation acres used is all that is required. Reference Section 19.14(c)(l)(iv)(i), attached. Potential additional acreage is available as discussed below.

Once combined County and Town growth allocation usage reaches a specific level the County may request an additional quantity of acreage that can be used for conversion from RCA. At that time the County will make acreage available for the Towns. Any growth allocation proposals over the Town's original allocated amount will require a joint review by both County and Town. Reference Section 19.14(c)(l)(iv)(i), attached.

Ex. 12

The County ordinance also contains language relating to growth allocation requests in growth areas (mapped around Towns). In situations where a Town denies annexation or chooses not to act on the application, a property owner may request growth allocation from the County. Reference Section 19.14(c)(l)(iv)(n), attached.

I have tried to provide a general description, but if you should need additional clarification, please feel free to call Roby Hurley or me.

Not included RH Long on mandatory subtraction from Tonicent.

Sincerely,

Daniel R. Cowee

Daniel R. Cowee
Talbot County Planning Officer

Attachments

cc: Roby Hurley

[g] 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 ninety (90) days to act on a request. If no action is taken in ninety (90) days, the request will be considered approved. A request approved by the County Council shall take effect sixty (60) days after adoption by the Council, and upon approval by the Critical Area Commission.

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 (2) 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.

Upon receipt of a written request by the property owner or the applicant, a time extension may be granted to the two (2) year period, upon a recommendation by the Planning Officer and approval by the County Council.

A request denied by the Critical Area Commission may be reconsidered by the County Council. Such a request shall be revised by the applicant to address the reasons for Critical Area Commission denial. The revised request shall be submitted to the Planning Officer for reconsideration by the County Council within ninety (90) days of Critical Area Commission denial. An extension of the ninety (90) day deadline may be requested for a specific period of time, if the applicant can demonstrate, to the satisfaction of the Planning Officer, circumstances beyond the applicant's control.*

[* Amendment, Bill 459 - Effective November 9, 1991 and Bill 642 - Effective April 25, 1997]

[h] Growth allocation district boundary amendment requests for property outside of the towns and outside of areas shown as possible annexation areas should be reviewed by the County on an annual cycle, with requests submitted to the Planning Officer by October 1st of each year.

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

allocation associated with annexations, and 618 acres is reserved for the County.

Upon request for supplemental growth allocation by any municipal corporation within the County, the County Council may transfer growth allocation to the municipal corporation and may impose such conditions, restrictions, and limitations upon the use of any such supplemental growth allocation, if any, as the County Council may consider appropriate. The procedure for awarding supplemental growth allocation shall be the same as that for initiating a text amendment to the Critical Area provisions in the Zoning Ordinance as set forth in Section 19.14(c)(iii).*

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

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

[* Amendment, Bill 699 – Effective May 29, 1999]

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

In determining whether the twenty (20) acre threshold has been reached, the contiguous areas of existing commercial and/or industrial zoning districts, whether located in the Critical Area or Non-critical Area, shall he considered. Of the 128 acres, twenty-four (24) acres is reserved for the

Town of Easton, forty-four (44) acres for the Town of Oxford twenty-four (24) acres for the Town of St. Michaels for growth allocation or growth allocation associated with annexations, and thirty-six (36) acres for the County for growth allocation for property outside of the Towns and outside of areas shown as possible annexation areas (See Maps 1, 2 and 3).*

[* Amendment, Bill 459 - Effective November 9, 1991]

[k] The number of reserved areas allocated among the Towns for rezoning in Section 19.14(c)(1)(iv)[i] & [j] & (iii) should be reviewed by the County and Towns by June 1, 1993 for possible reallocation and at least every four (4) years thereafter.

[l] In any one rezoning review cycle, not more than 100 acres should be approved by the County for reclassification from the Rural Conservation District to any other zoning district. Not more than twenty (20) acres should be reclassified from the Rural Residential, Town Residential, or Village Center Districts or area of less than twenty (20) contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial Districts to establish a total area of twenty (20) or more contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial Districts (including contiguous areas of existing Commercial or Industrial zoning districts).

[m] Zoning map amendments from the LDA zoning district to another LDA zoning district or from one IDA zoning district to another IDA zoning district shall not require growth allocation, but shall instead be required to follow the procedures of a Non-critical Area zoning map amendment as prescribed in Section 19.14(c)(1)(ii).*

[* Amendment, Bill 459 - Effective November 9, 1991]

[n] Specific annexation requests for property included in the acres reserved for the Towns in Section 19.14(c)(1)(iv)[i] & [j] & (iii) above and as shown in Maps 1, 2, and 3, shall be reviewed by the County for consistency with the County Comprehensive Plan and shall he subject to all current ordinances regulating annexations. The County shall not act on rezoning requests adjacent to the Towns as shown on Map 1, 2, and 3 until an annexation request for the property has been denied by the Town or until twelve (12) months after an annexation request for the property has been submitted to the Town, whichever occurs first.

If the County approves a rezoning request not associated with an annexation request for property adjacent to the Towns as shown on Maps 1, 2 and 3, then the acreage of the property rezoned shall be subtracted

from the acres reserved for the Town for annexation in Section 19.14(c)(1)(iv)[i] & [j].

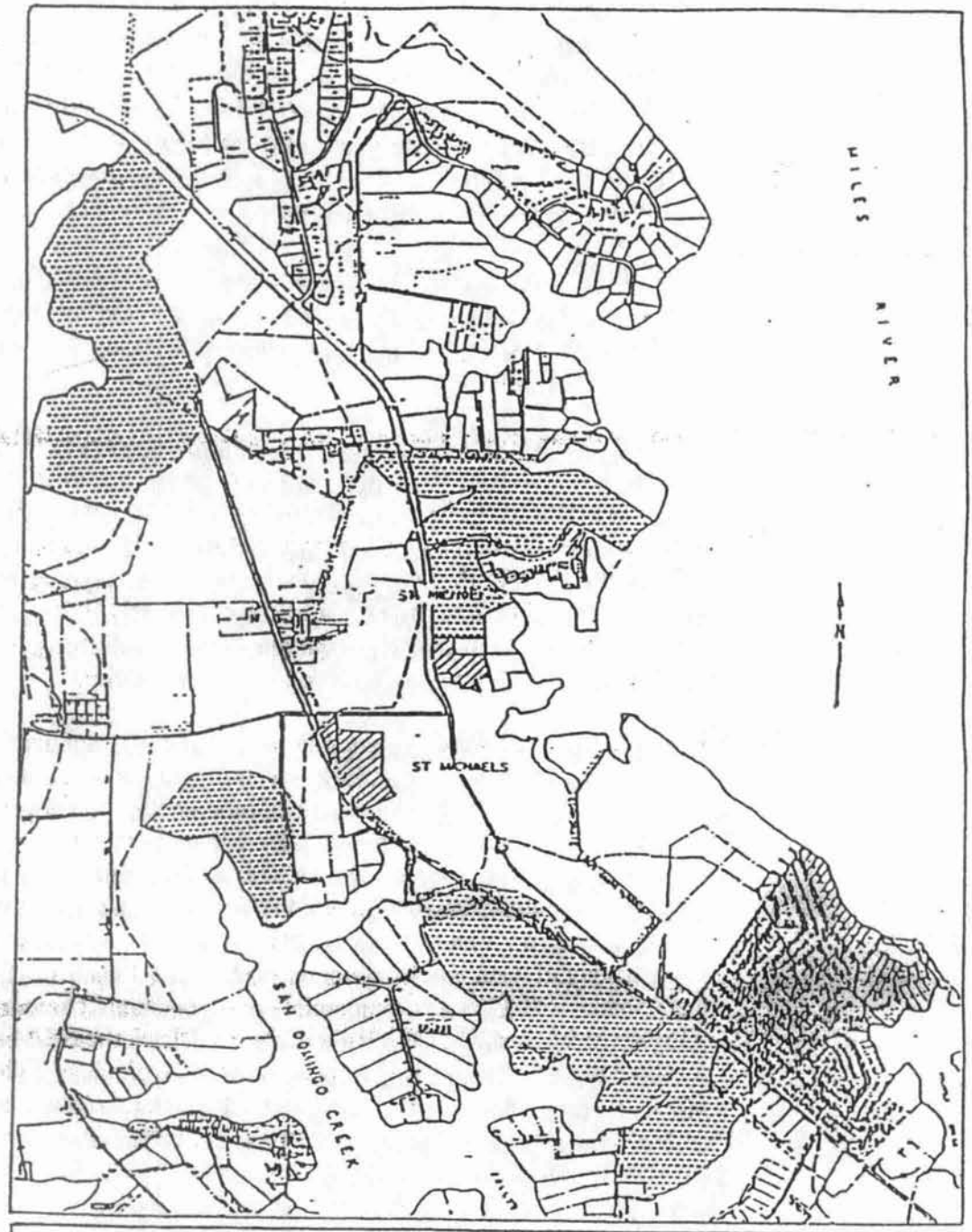
[o] Growth allocation requests for property that has been annexed within five (5) years of the request shall be reviewed by the County for consistency with the County Comprehensive Plan. Growth allocation request(s) for property that has been in the Town for more than five (5) years prior to the request does not require review by the County, however, the Towns shall inform the County of such reclassification to insure that the total reserved acres, listed above, are not exceeded.

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

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

[r] A growth allocation request for the Rural Residential District should be adjacent to existing Rural Residential, Town Residential, or Village Center Districts. Such requests should not be adjacent to Limited Commercial, General Commercial, or Limited Industrial Districts of any size. Property proposed for the Town Residential District should be adjacent to the Rural Residential, Town Residential, or Village Center Districts or to an area of less than twenty (20) contiguous acres of Limited Commercial, General Commercial, or Limited Industrial Districts, or to any area of Limited Commercial or General Commercial Districts. Property proposed for the Village Center District should be adjacent to an existing Rural Residential, Town Residential, or Village Center District or to any size area of Limited Commercial, General Commercial, or Limited Industrial Districts. For purposes of this Section adjacency means at least twenty-five (25) percent of the perimeter land boundary of the subject parcel is in common with the referenced zoning district(s). Land boundaries shall be measured at the centerline of any rights- of-way.

[s] A growth allocation request to establish a total area of less than twenty (20) contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial zoning districts (including contiguous areas of existing commercial or industrial zoning districts) shall be adjacent to the


MILES
RIVER
N
ST MICHAELS
ST MICHAELS
SAN DOMINGO CREEK
Area Allocated for Town Development
TOWN OF ST MICHAELS
Talbet County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
Map No 3
Wilce Dailey Prunske
Reston, Va
Sarasota, Fla

MR. COWEE: Well, I'm trying to get there.

MR. FOSTER: Okay. Well, I don't think she needed you to gone back to the --

MR. HIGGINS: I think, I think you need it all.

MR. COWEE: I'll go real quick.

MR. FOSTER: Okay.

MR. COWEE: The Town of Easton is out of their number of acres. They made a request to the County Council, and the County Council has decided to come up with new legislation that would put the County into a review function now of each project that the Town is making the request for. The given acreage that was allotted to them has been used up, and they have made a request. Under our current regulation, they will make a request for growth allocation, and the County Council would make a decision whether to grant it or not grant it, and what this law would do would be to clarify that function and make it a dual County-Town function, and that function would be a review of each project on a project by project basis.

MS. SPENCE: The Town and the County doing that concurrently so we don't have a whole separate County thing

and then a whole separate Town thing. We can -- the staff reviews it the same time. We have joint hearings on review of the project by the Council members, Town and County, and I think it's a way to speed up the process, and the County now wants to look at the site and wants to look at plans before we approve any growth allocation --

MR. COWEE: And the County before --

MS. SPENCE: -- to the towns.

MR. COWEE: -- and after still has the ultimate authority to grant that growth allocation for whatever it's for.

MS. SPENCE: Okay. Mrs. Welty, does that answer your question? No.

MR. FOSTER: No. I didn't think it did.

MS. SPENCE: Okay. I don't think -- the difference --

MR. FOSTER: How is the process different is --

MR. HIGGINS: Here, I can do it. I can do it in two sentences. It used to be that the Town -- and the Town of Easton did, in fact, come to the County and say we want 400 acres.

MS. WELTY: Right.

MR. HIGGINS: The County Council at that time said no, we are not going to blanket give 400 acres without commitment for a specific project, so now, it is going to be reviewed specific project by specific project jointly between, first step will be each Planning Commission, the Town Planning Commission and the County Planning Commission. Each separate group, being the County Council and the Town Council, will receive a recommendation up from each of their respective Planning Commissions, and that this process -- but what it's going to be is it's going to be a specific, site specific project by project issue as opposed to blanket saying we think that you need 400 acres for the next eight years, see you later, alligator.

Now, in my opinion, it does not affect St. Michaels and Oxford at this time --

MS. SPENCE: Right.

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

gone through theirs.

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

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

MS. SPENCE: Right, until it's used up.

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

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

MR. FOSTER: Okay.

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

MR. FOSTER: Okay.

MR. HIGGINS: But does that clear it up to Mrs. Welty where the question was?

MS. WELTY: Well, if the Town of Easton applies

and asks for growth allocation, is there -- if they have to come to you with a specific plan --

MS. SPENCE: Correct.

MS. WELTY: -- will it have a deadline, a time line on it that they have to implement this plan by a certain time, or do they get to hold it for a while?

MS. SPENCE: No, no, no. They'll be coming to us with a specific project in mind that we would look at, not just X number of acres that we want to hold on for a while. It would be for a project.

MR. COWEE: Project by project basis.

MS. SPENCE: Project by project.

MR. HIGGINS: And growth allocation --

MS. WELTY: Is there a time limit?

MR. HIGGINS: And growth allocation is issued on a use it or lose it provision, that -- and I believe it's a two-year window?

MR. COWEE: Right.

MR. HIGGINS: That you either get your site recorded in the Clerk's office -- that's using it, getting it to final plat provision. Not getting it recorded is

COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND

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December 1, 2003

Hon. Martin G. Madden, Chair
Critical Area Commission
For The Chesapeake & Atlantic Coastal Bays
1804 West St., Suite 100
Annapolis, MD 21401

Re: Midlands/Miles Point Project

Dear Senator Madden:

Talbot County is writing to express its views in connection with a recent annexation and request for growth allocation in the Town of St. Michaels known as the "Hunteman Property". Although this request for growth allocation is currently before the Commissioners of the Town of St. Michaels, their decision has potentially far-reaching impacts on water quality in the Chesapeake Bay due to existing and well recognized problems with the Region II Wastewater Treatment Plant, which discharges directly into the Miles River. The County Council wanted the Critical Area Commission to be fully advised of the Council's position on this matter should it come before the Critical Area Commission at some later time for consideration.

The proposed Midlands/Miles Point project, of which the Hunteman annexation is proposed to be a part, is comprised of two parcels: the 72-acre Perry Cabin Farm parcel and the 18-acre Hunteman property. The Perry Cabin Farm portion of the proposed development is mapped as "S-2" in the County's Comprehensive Water and Sewage Plan. The Hunteman property portion of the project is not mapped for sewer service at all.

The Miles Point developer intends to construct 320 dwelling units that would be built out within a period of approximately 8 years, thereby increasing St. Michaels' existing housing stock by almost 50%. Currently, the County is addressing inflow and infiltration of problems in the Region II Wastewater Collection System but those problems are far from being solved. In addition, the County Engineer has stated that the capacity of the Region II Wastewater Treatment Plant is fully allocated to existing lots of record within the "S-1" (immediate priority for service)

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areas, and additional capacity is needed for failing septic systems and commercial uses also within the existing "S-1" areas.

The existing capacity of the wastewater treatment plant is 500,000 gallons per day (GPD), with a projected increase in capacity to 660,000 GPD. There are substantial inflow and infiltration problems from surface waters in the existing collection system. The ultimate expense of correcting these inflow and infiltration problems is still under review and it is not known what the ultimate cost may be. The St. Michaels Commissioners have stated, "correcting the inflow and infiltration problem is not optional; it is a necessity." Until that happens, according to the Commissioners, the Town of St. Michaels "will continue to pump up to 2,000,000 GPD of wastewater into the Miles River during rain events."

Almost three years ago, in February 2001, the St. Michaels Commissioners advised the County Council that, "during extreme rain events, sewer manhole covers float and raw sewage flows into the streets." This problem has only gotten worse, with rainfall last winter resulting in more sewage in the streets, and the dumping of untreated wastewater into the Miles River necessitating an extended closure of shellfishing of beds by Maryland Department of the Environment. Further, that increased rainfall has caused the average daily flows at the plant to grow significantly during the past year.

Because of the significant impact of this proposed development on the ability of the Region II Wastewater Treatment Plant to properly process and treat sewage from existing properties and those already having an "S-1" designation for immediate service, the County Council requests that the Critical Area Commission not approve any award of growth allocation by the Commissioners of the Town of St. Michaels to the developer in connection with this project.

TALBOT COUNTY, MARYLAND

By: Thomas G. Duncan, President
County Council of Talbot County

cc: Robert T. Snyder, President
Commissioners of St. Michaels
P.O. Box 206
St. Michaels, MD 21663-0206

Commissioners of the Town of St. Michaels
R. Andrew Hollis, Talbot County Manager

The Commissioners of Saint Michaels
P.O. BOX 206
SAINT MICHAELS, MARYLAND 21663-0206

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CHESAPEAKE BAY
CRITICAL AREA COMMISSION

January 7, 2004

Hon. Martin G. Madden, Chairman
Critical Area Commission for the Chesapeake & Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, Maryland 21401

Re: Town response to Talbot County Council letter dated December 1, 2003

Town opposition to Talbot County Bill No. 933

Town request for Critical Area Commission treatment of Talbot County Bill No. 933 as a major program amendment

Town request for imposition by the Critical Area Commission of State laws, regulations and policies to stop County interference with administration of the Town Local Critical Area Program

Dear Senator Madden and Commission Members:

The County Council of Talbot County has contacted you by their letter dated December 1, 2003. That letter is, in effect, an attempted "pre-emptive strike" against the award of growth allocation relating to a proposed development known as "Miles Point". A history of the Miles Point projects follows in Section C. for your understanding of the significance of the timing and impact of Talbot County Bill No. 933 on St. Michaels.

Not content to merely disrupt and avoid participation in the Town's administrative proceedings for the award of growth allocation, the Talbot County Council on December 23, 2003 adopted County Bill No. 933, entitled "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)". This Bill, a copy of which is enclosed, would remove from the Town, and from all other towns in Talbot County, all growth allocation that is unallocated, or which has been allocated but which has not yet resulted in related construction. If allowed to stand, Bill No. 933 would void a recent annexation and growth allocation award (the Strausburg Annexation) by the Town of St. Michaels that has been approved by the Critical Area Commission. Bill No. 933 would incapacitate the system by which Talbot County's towns in general, and St. Michaels in

particular, can grow. Bill 933 would be especially devastating to St. Michaels because more than half of the Town is located within the Critical Area. Therefore, whereas the enactment of Bill 933 may be considered by some other towns as a theoretical abuse of power by the County Council, the proximity of St. Michaels to tidal water makes this a real impediment to effective land planning and zoning for the Town. The Town Commissioners addressed these concerns in a letter to the County Council dated December 16, 2003, a copy of which is enclosed.

A.
Town Objection To County Actions

Talbot County's December 1, 2003 letter to the Critical Area Commission and the enactment of Bill No. 933 are but two of several actions recently taken by the Talbot County Council in an effort to interfere with and manipulate the Town Local Critical Area Program, rather than to work within and according to the Town Local Program. The Commissioners of St. Michaels object to the manner in which the Talbot County Council has chosen to oppose the Miles Point application for a development that would be located totally within the Town of St. Michaels. Rather than participating in the process established by the Town's Local Critical Area Program for considering applications for the award of growth allocation, the County has chosen to frustrate and thwart the Miles Point application process established by the Town's Local Critical Area Program by taking the following actions without any consultation with or prior notice to the Town:

1. Declining to participate in the quasi-judicial processes by addressing the application based on its merits, or lack thereof, by presenting evidence and making arguments based thereon, and seeking solutions to issues of concern at a public quasi-judicial hearing conducted by the Town pursuant to its Local Critical Area Program;
2. Ignoring the evidence, pro and con, contained in the record of the public hearings conducted by the Town pursuant to its Local Critical Area Program;
3. Writing a letter to the Critical Area Commission dated December 1, 2003, in opposition the Miles Point II application before the Town Commissioners have rendered their decision on that application, obviously without considering the reasons given by the Town Commissioners for their decision and without considering the reasons given by the Town Planning Commission for its favorable recommendation of the project;
4. Despite the filing of repeated applications for growth allocation and development of the subject property since 1998, the County allowed the Town and the developer to incur extraordinary expense in processing and litigating those growth allocation applications without indicating that the County would refuse to relinquish zoning authority to the Town. On December 16, 2003, the County Council voted pursuant to Maryland Code, Article 23A, § 9 (c), to withhold from the Town, for a period of up to five years from the effective date of the annexation, the authority to reclassify the Miles Point Property as would be required to effect the proposed development plan;

5. On December 16, 2003 in exchange for more than $1,500,000 in County road and other off-site improvements promised to the County by a developer, the County Council voted to allot to the Town of Easton sufficient growth allocation acreage to permit the approval of a development within the Critical Area.[1]

6. On December 23, 2003, when the County Council concluded that the Town was on the verge of approving an application for growth allocation involving the subject land, the County Council voted to enact Talbot County Bill No. 933, by which the County has withdrawn from all Towns in Talbot County all unallocated growth allocation.

B. The County Actions Are Contrary To Maryland Laws, Regulations & Policies

Maryland Code, Natural Resources Article, § 8-1801(b)(2), states that one purpose of the state critical area laws is "[t]o implement the Resource Protection Program ***on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner*** subject to State criteria and oversight." As stated in *North v. Kent Island Ltd. Partnership*, 106 Md.App. 92, 103, 664 A.2d 34 (1995), "The role of the Critical Area Commission is to not act as a zoning body to act in contested cases, but as a quasi-legislative body, to adopt regulations and criteria as well as conduct hearings in connection with 'policies, proposed programs, and proposed regulations or amendments to regulations.'" Thus, the Critical Area Commission examines proposed program amendment to determine whether they are ***consistent with the criteria***. *North v. Kent Island Ltd. Partnership*, *supra* at 106 Md.App. 105-06. The Critical Area Commission is authorized to create and enforce regulations to guide localities in adopting ordinances that constitute their local critical area programs. *Belvoir Farms Homeowners Ass'n, Inc. v. North*, 355 Md. 259, 275, 734 A.2d 227 (1999). The standards set forth in § 8-1808(b)(1) through (b)(3) are the goals of the Critical Area Program, which includes "(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." [*Emphasis added.*] Further, COMAR 27.01.02.06.A (2) 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***." [*Emphasis added.*] The actions of the Talbot County Council, including the enactment of Bill No. 933, are: (1) contrary to these laws, regulations and policies; (2) have effectively dismantled the Town Local Critical Area Program; (3) are fundamentally unfair to all of the parties that have for the past five years been dealing with the question of how the subject land within the Town should be developed in an environmentally responsible manner; and (4) are destructive of public confidence and reliability of local critical area programs.

---

[1] St. Michaels had conserved its 269 acres of growth allocation allotted by the County until awarding 20 acres to the Strausburg property in 2003. However, even before the enactment of County Bill No. 933 Easton had exhausted the growth allocation that had been previously allotted to it by the County, and was therefore unable, without the assistance of the County, to award the necessary growth allocation for the Ratcliffe Farm project.

The timing and manner in which Talbot County has taken the above-described actions, in the face of the growth allocation applications to the Town which appeared to be nearing completion with the possibility of approval, reveals:

1. A sudden lack of cooperation by the County with the Town in regard to growth allocation;
2. A lack of uniformity of treatment of towns within the County;
3. An intolerance of the County growth that meets smart growth standards;
4. The complete destruction by the County of the existing and workable process to accommodate growth needs of the Town; and
5. Transformation by the County of the process to award growth allocation into an additional source of County revenue.

Moreover, because more than half of the Town is located within the Critical Area, Talbot County Bill No. 933 has the effect of transferring ultimate planning and zoning authority in a significant part of the Town from the Town to the County government. This is contrary to the grant of home rule powers to the Town by Maryland Constitution, Art. 11-E; the express powers granted to the Town by Maryland Code, Art. 23A, § 2; and the planning and zoning powers granted to the Town by Maryland Code, Art. 66B. Except for the initial five-year period after an annexation, as provided in Maryland Code, Art. 23A, § 9 (c), a county has no planning or zoning authority over land within a Maryland municipality. However, Bill No. 933 has the effect of taking from the Town the power to plan and zone the Perry Cabin Land, as well as other significant areas of the Town.

Further, Talbot County Bill No. 933 is a law involving a matter of general public concern (the Chesapeake Bay Critical Area), but having different effects on municipalities in the same class. In *Gordon v. Commissioners of St. Michaels*, 278 Md. 128, 359 A.2d 543 (1976), in finding invalid a law that allowed only municipalities within Talbot County to exercise planning and zoning powers within one mile outside of their territorial boundaries, the Court of Appeals said:

> "Since there is only one class of municipal corporations in Maryland, since Constitution Art. XI-E, § 1 specifies that the power of the General Assembly to act relative to the affairs of municipal corporations is 'only by general laws which shall in their terms and ***in their effect apply alike to all municipal corporations*** in one or more of the classes' for which provision is made, and since this act applies only to Talbot County municipalities, it follows that it is unconstitutional." [*Emphasis added.*]

In this instance, the County Council, a political body elected from throughout Talbot County, is attempting to dictate planning, zoning and growth decisions within the Town.

State law also encourages development within municipalities at a density of at least 3.5 units per acre. See Maryland Code, State Finance And Procurement Article, § 5-7B-02 (Priority funding area). The effect of such density is to make the construction and operation of infrastructure, such as public sewer collection and treatment facilities, economically feasible.

Surely, the effect on the Chesapeake Bay of a properly designed and operated public sewer collection and treatment system is better than private septic systems serving the same number of residences located within the same area. The actions of Talbot County are contrary to this State policy.

C.
Historical Background

The history leading to the current growth allocation application is required for the Critical Area Commission to fully understand the significance of the timing and detrimental impact of the County's actions on the Town.

1.
1980 Perry Cabin Farm Annexation Agreement

In 1980 the Town and the County were parties to an annexation agreement by which the Perry Cabin Farm was annexed to the Town. That annexation agreement contemplated a Town zoning classification that would permit residential development, and the agreement itself contemplated residential development. The agreed upon zoning classification was granted by the Town. Most of the Perry Cabin Farm, including 72 acres of the proposed Miles Point development, is located in the Critical Area.

2.
Perry Cabin, Phase I

In approximately 1984 the owner of the Perry Cabin Farm sought and obtained from the Town the permits to construct 50 townhouses that were to be the first phase of a multi-phased cluster type development. Those townhouses were constructed and sold.

3.
Adoption Of Critical Area Program And Allotment Of Growth Allocation To Towns

In the mid-1980s the Critical Area laws were enacted, and the local jurisdictions adopted their own local critical area programs. Talbot County sought and received from towns within the County maps and estimates of the quantity of growth allocation that each town would need. St. Michaels submitted such a map and requested 445 acres of growth allocation from the County. When the County enacted its local critical area program, it allotted acreage of growth allocation to towns located within the critical area. The County allotted 245 acres plus 24 acres of LDA to the area in and around the Town of St. Michaels. The Town also adopted its own Local Critical Area Program based on those allotments of growth allocation. Despite a provision in the County Local Program for periodic reviews, until November of 2003, Talbot County has never undertaken a review or revision of the growth allocation acreage initially allotted to the towns in Talbot County.

4.
Husbandry of Growth Allocation in Talbot County

Until 2003, St. Michaels did not use any of its allotted growth allocation. However, projects have been actively considered for the award of growth allocation in St. Michaels since 1998. A description of these efforts will follow in detail. To date, 20 acres of growth allocation have been awarded by St. Michaels, which award the County is attempting to negate.

In contrast, the Town of Easton has exhausted the growth allocation originally allotted to it by the County. In 2003 Easton has asked the County for additional growth allocation for a project on the Ratcliffe Farm known as Easton Village which request the County has granted in exchange for a promise from the developer, Elm Street Development for more than $1,500,000 in off-site improvements and contributions to the County.

5.
Miles Point I Application

In 1998 The Midland Companies first approached the Town and submitted an application for the award of growth allocation relating to a project known as Miles Point I, consisting of 375 units to be located on 72 acres of the Perry Cabin Farm plus 18 acres of land (owned by "Miles Point Property, LLC") located adjacent to the Perry Cabin Farm and proposed for annexation to the Town. The public hearing by the Planning Commission resulted in a negative recommendation to the Town Commissioners. Talbot County did not appear or participate in the quasi-judicial process for this application. Following denial by the Town of the Miles Point I application, the developer appealed that decision to the Circuit Court for Talbot County, and thereafter to the Court of Special Appeals. The Town's denial of the Miles Point I application was upheld. The County took no action related to this application or the litigation that followed.

6.
Perry Cabin, Phase II, Application

In 1999 The Midland Companies submitted a second application for growth allocation, known as "Perry Cabin, Phase II" intended to cover approximately 30 acres of the same area of the Perry Cabin Farm that was to be included in the Miles Point I project, and consisting of 90 townhouses and 57 single-family dwellings. The public hearing by the Planning Commission resulted in a negative recommendation to the Town Commissioners. Talbot County did not appear or participate in the quasi-judicial process for this application. The Perry Cabin, Phase II, application was denied by the Town, after which the developer appealed that decision to the Circuit Court for Talbot County, and thereafter to the Court of Special Appeals. The Town's denial of the Perry Cabin, Phase II application was upheld. The County took no action related to this application or the litigation that followed.

7.

Perry Cabin, Phase III, Application

The Midland Companies next submitted an application for growth allocation relating to a project known as "Perry Cabin, Phase III", which consisted of 118 single-family dwellings on another 30 acres of the Perry Cabin Farm. The public hearing by the Planning Commission resulted in a negative recommendation to the Town Commissioners. Talbot County did not appear or participate in the quasi-judicial process for this application. The Perry Cabin, Phase III, application was denied by the Town, after which the developer appealed that decision to the Circuit Court for Talbot County, and thereafter to the Court of Special Appeals. The case was remanded to the Town for reconsideration. The Town and the developer have agreed to stay this application pending the outcome of the Miles Point II application. The County took no action related to this application or the litigation that followed.

8.

Mediation And Workshop

In the summer of 2002, at the urging of the Attorney General's office and the Secretaries of Planning and Smart Growth, the Town hosted a three month long non-binding mediation process between the developer and citizen representatives. This effort was largely financed by Maryland Mediation and Conflict Resolution Office (MACRO) and resulted in the narrowing of the issues, including density and design. In April 2003, the Town Commissioners and the developer participated in a public workshop, which again further narrowed the differences at issue.

9.

The Strausburg Annexation

In an unrelated application, the Town received a request for annexation and growth allocation relating to the Strausburg property. These applications were received, processed to completion and granted by the Town in the later half of 2003. Talbot County did not appear or participate in the quasi-judicial process for this application. This involved the award of 20 acres of LDA growth allocation in exchange for a 75 acre perpetual conservation easement. No construction has occurred or was contemplated in the near future. Therefore, by the language of Talbot County Bill No. 933, the award of growth allocation by the Town for the Strausburg property would be negated and lost.

10.

Miles Point II at the Town Planning Commission

Following the workshop the developer submitted to the Town an application designated Miles Point II, proposed to be located on 90 acres, including 72 acres of the Perry Cabin Farm (annexed to the Town by 1980 annexation agreement) and 18 acres of waterfront property (the "Miles Point Property" proposed to be annexed to the Town). Miles Point II consisted of 320

units in a traditional neighborhood design. This plan would provide a public waterfront park on the Miles River in excess of eight acres. The plan would result in density of 3.55 units per acre, slightly over the 3.5 unit per acre minimum require for smart growth and priority funding status. On October 28, 2003, the Town Commissioners adopted an annexation resolution with respect to the Miles Point Property, which is located adjacent to the Perry Cabin Land. Because most of the Miles Point II project would have been located within the Critical Area, the developer submitted an application to the Town for the award of growth allocation. The public hearing by the Planning Commission consisted of four nights from September 25 to November 6, 2003. Talbot County did not appear or participate in the quasi-judicial process for this application. The Miles Point II plan included 1,800 lineal feet of non-structural shoreline stabilization, an advanced stormwater management system that would serve an area larger than the proposed development, and funding for a mass transit system that would have positive environmental effects. On November 24, 2003, the Planning Commission rendered written recommendation to the Town Commissioners, recommending approval of the Miles Point II application for growth allocation.

11.

Actions By Talbot County Council

On November 18, 2003, for the first time publicly, and without prior consultation with any of the Towns, the Talbot County Council introduced, and sent to the County Planning Commission for comment, County Bill No. 933. Bill No. 933 takes back from control, by the respective towns in Talbot County all unallocated growth allocation, including that awarded but for which there has been no substantial construction pursuant to such award as of the effective date of Bill 933. There was no consultation between the County and the towns as to what problem has lead to the legislation or whether there could be a cooperative effort that would solve the alleged problem in a less disruptive fashion.

On November 21, 2003 the County Council took the unusual step of publicly voting to recommend that the Town of St. Michaels deny the Miles Point II growth allocation application before the Town Commissioners had held its public hearing on the matter. Each County Council member stated that they opposed the project, even though none had attended a single hearing on the plan. The County Council urged the Town Commissioners who had been involved in hearings related to the development for years to "take their time and be sure".

On December 3, 2003, the Talbot County Planning Commission conducted its public hearing on Bill No. 933, at which the Towns of Oxford, St. Michaels and Trappe spoke in opposition to the Bill. The County Planning Commission recommended that Bill No. 933 is unnecessary because the current County Code already contains a provision for periodic reviews and adjustments.

On December 1, 2003, before the Town Commissioners started their public hearing or made any decision on the Miles Point II application, the County Council sent its letter to the Critical Area Commission, opposing the Miles Point II application for growth allocation. To the

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Town's knowledge the County Council has never had the benefit of a presentation of the Miles Point II application by anyone who was not opposed to it.

On December 16, 2003, the County Council conducted its public hearing on County Bill No. 933. The Towns of Oxford, St. Michaels and Trappe spoke in opposition to the Bill. The Miles Point II application dominated the subject of the comments by those persons speaking in favor of the Bill. The County Council announced that its vote on the Bill would occur on December 23, 2003.

On December 16, 2003, the County Council also voted, pursuant to Maryland Code, Art. 23a, § 9 (c), against relinquishing zoning reclassification authority over the 18 acre Miles Point Property that was recently annexed to the Town and was included as part of the 90 acre Miles Point II application.

On December 23, 2003, the County Council voted to enact Bill No. 933, which would have the effect of withdrawing from the Town its entire allotment of growth allocation, including the 20 acres awarded by the Town and approved by the Critical Area Commission for the Strausburg property. The Town respectfully requests to be promptly notified of any hearing by the Critical Area Commission on the County Bill No. 933 and any other proceedings involving Talbot County.

12.
Miles Point II at the Town Commissioners

On December 16, 2003, after receiving a favorable recommendation from the Planning Commission, the Town Commissioners started its public hearing on the Miles Point II application. Talbot County did not appear or participate in that quasi-judicial process. However, on December 18, 2003, as the result of the County Council's vote to retain zoning authority over the newly annexed 18 acres known as the Miles Point Property, the Town Commissioners determined that it would be impossible for the Town to zone or otherwise reclassify that newly annexed property for five years (or until the County otherwise sooner agreed), thus making it impossible to approve the entire Miles Point II plan. In order to avoid that effect of the County retaining zoning authority over that part of the Miles Point II plan that consisted of the newly annexed Miles Point Property, on December 18, 2003 the Town Commissioners granted permission to the applicant to: (1) withdraw the Miles Point II application; and (2) submit a new application (the "Miles Point III application") for only that portion of the Miles Point II plan that would be located on the Perry Cabin Farm which was annexed into the Town more than twenty years ago. Accordingly, the applicant has withdrawn the Miles Point II application before the Town Commissioners reached a decision on the merits of the application for growth allocation.

13.
Miles Point III

The Midland Companies has submitted a new request for growth allocation ("Miles Point III"), located on the 72-acres of the Perry Cabin Land that has for 20 years been within the Town and designated a growth area by the current Town and County Comprehensive Plans since that land was annexed to the Town with the County's concurrence and participation. The Miles Point III application will begin public hearings in front of the St. Michaels Planning Commission on January 8, 2004.

14.
Other Relevant History

There has been other litigation in addition to the judicial reviews and appeals described above. The Town of St. Michaels has initiated a declaratory judgment action to interpret the 1980 annexation agreement, and the Town has been the defendant in a suit for damages brought by the developer (which was dismissed). The Town has spent in excess of $1,200,000 in processing the Midland applications for growth allocation, enacting related legislation, and defending itself and its decisions in courts relating to the Midland applications. The Town has demonstrated its willingness to stand up for what it believes is correct. The Town has rendered its decisions based on the facts in the record and the applicable law. While the Town was denying the Midland applications, the County stood by in silence, leaving in place the growth allocation acreage originally allotted to the Town, and thereby requiring the Town to process the Midland applications at what has been a tremendous cost to the Town in money and other resources.

D.
Conclusions

For the past five years the County has observed from a safe distance while Midland and the Town have been locked in the crucible of multiple litigation to find the appropriate design and safeguards for development on the Perry Cabin Farm and the Miles Point Property. This process has caused the Town and Midland to re-examine plans and positions, to seek innovative ideas, and to make adjustments in plans that may be viewed as having significant positive environmental impacts. However, the County has not looked at those features or considered the alternatives. Taking actions outside of the processes established by the Town Local Program, the County has abruptly destroyed the process by which the Town might have awarded growth allocation after this expensive five-year process of struggle, adjustment, and refinement to arrive at a better development plan. The County's actions (1) are inconsistent with State laws, regulations and policies; (2) are manifestly unfair to the Town and its citizens, who have borne the cost and who are entitled to self-government by their own elected officials; (3) are unfair to the property owner and developer, for whom the rules are being arbitrarily changed by the County as it fears the award of growth allocation may be getting close; and (4) breed distrust in a system that would allow a municipality's authority to be snatched back by a county whenever the county disagrees with what it believes a municipality is about to do, or as a means to extract money from the developer.

The Town Commissioners strongly believe that the actions by the Talbot County Council in this regard are contrary to the principles expressed in the applicable State statutes, regulations and policies, cited above, and should be controlled by the Critical Area Commission.

E.
Request For Critical Area Commission Action

1.
Treat Talbot County Bill No. 933 As A Major Program Amendment

The effects of County Bill No. 933 are unprecedented, in that it would withdraw from town control all growth allocation previously allotted to all of the towns by the County when the County's Local Program was initially adopted. Further, the effects of the Bill would incapacitate the towns' local critical area programs. In addition, the Bill would make it impossible for towns that are nearly surrounded by tidal water, such as Oxford and St. Michaels, to grow because so much of the land available for growth is in the critical area. Finally, the timing of the enactment of County Bill No. 933, at the eleventh hour after a five year dispute between the developer and the Town, is unfair and an apparent attempt to use the growth location process as a revenue raising activity.

2.
Notify the Town of All Critical Area Commission Proceedings involving Bill No. 933

By this letter the Town asks to be notified when Bill 933 is scheduled for hearing by the Critical Area Commission. Based on its effects, the Bill is a major revision to the County's Critical Area Program which is not effective unless and until it has been reviewed and approved by the Critical Area Commission. We respectfully ask to be advised of the Critical Area Commission's position on hearing such an amendment. In addition, since we were not notified in a timely fashion by the County Council of any of its recent actions affecting the Town, we therefore ask to be notified of any submission on any topic submitted by Talbot County for the Commission's review and/or approval.

3.
Reject Bill No. 933 For Inconsistency With State Laws, Regulations And Policies

For all of the reasons stated above, Bill No. 933 would effectively take from the town, and transfer to the County, planning and zoning powers granted to the Town by Maryland Code, Article 66B, and would result in treatment of planning and zoning in the towns in Talbot County different from the treatment of such matters in all other municipalities in the State. Most significantly, the State statutes and regulations indicate that matters involving the critical area, including growth allocation, should be treated with consistency and uniformity. The Critical Area Commission is created by the Legislature as an oversight body to review local programs and measure them against the tests established by the statutes and regulations. Bill No. 933

should be rejected by the Critical Area Commission for its lack of consistency and uniformity with the statutory and regulatory purposes and standards, and for its destruction of a workable system that has accommodated growth in municipalities in Talbot County. Bill No. 933 is counter productive to the purposes of the Critical Area laws and to good government in its effect, in that it destroys an established and functioning system, and it breeds instability, distrust, and motivates a "use it or lose it" mentality wherever growth allocation is made available to the towns in this State.

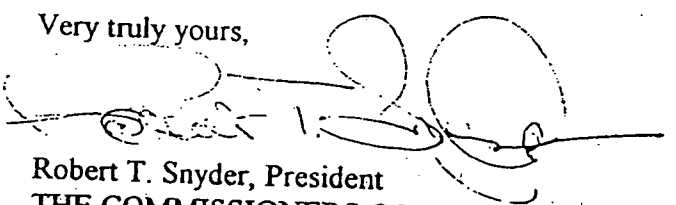
4.

Commission Review Of Miles Point III

Despite the attempts of the Talbot County Council to unfairly prejudice the Critical Area Commission in advance of any submission of a growth allocation amendment by the Town, we remain committed to and intend to follow the established process with the newest application. If the Town should award growth allocation to The Midland Companies on this fifth application, we would hope to have that award heard by the Commission prior to the Commission's consideration of County Bill 933. The hearing process on the Midland Companies latest application should be completed by January 23, 2004. The timing of the County's actions leaves little doubt as to their intent with regard to the Town and the Commissioners' ability to exercise home rule. The Town has not been allowed to have the opportunity to even discuss a compromise with the Talbot County Council on the matter of growth allocation and Bill 933.

Since we cannot rely on our own County Council to honor its commitments to us, we respectfully request that the Critical Area Commission protect our rights and our ability to determine our future in the manner proscribed by state law.

Very truly yours,



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

Enclosures:

Talbot County Bill No. 933
Letter dated December 16, 2003, from Commissioners of St. Michaels to the Talbot County Council, opposing Talbot County Bill No. 933
Memo of December 3, 2003 from the Talbot County Planning Officer to the Talbot County Planning Commission

CC: Senator Richard F. Colburn
James Senate Office Building, Room 315
110 College Avenue
Annapolis, MD 21401-1991

Delegate Jeannie Haddaway
32 S. Washington Street
Easton, MD 21601

Delegate Adelaide C. Eckhart
Lowe House Office Building, Room 308
84 College Avenue
Annapolis, MD 21401-1991

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

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

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

Hon. Philip C. Foster, President and Council Members
Talbot County Council
142 N. Washington Street
Easton, MD 21601

Mr. Ren Serey, Executive Director
Critical Area Commission for the Chesapeake & Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, Maryland 21401

Ms. Marianne Mason, Assistant Attorney General
Critical Area Commission for the Chesapeake & Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, Maryland 21401

Hon. Audrey E. Scott, Secretary
Maryland Department of Planning
301 W. Preston Street, Suite 1101
Baltimore, MD 21201-2305

Mr. Tom Rimrodt, Assistant Secretary
Maryland Department of Planning
301 W. Preston Street, Suite 1101
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Ms. Pat Goucher, Director of Local Planning
Maryland Department of Planning
301 W. Preston Street, Suite 1101
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Ms. Mary R. Owens, Chief, Program Implementation Division
Critical Area Commission for the Chesapeake & Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, Maryland 21401

Mr. Sam Bradner, Development Coordinator
Maryland Department of Planning
301 W. Preston Street, Suite 1101
Baltimore, MD 21201-2305

The St. Michaels Planning Commission
300 Mill Street
St. Michaels, MD 21663

MEETING OF THE PLANNING COMMISSION
OF
ST. MICHAELS, MARYLAND

PUBLIC HEARING
- Ordinance No. 290
- Ordinance No. 297

Date: Thursday, October 9, 2003
Time: 7:50 p.m.
Location: Steamboat Building
Chesapeake Maritime Museum
St. Michaels, Maryland

Reported by: David M. Schafer, AA, CCR

C-O-N-T-E-N-T-S

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A-P-P-E-A-R-A-N-C-E-S

COMMISSIONERS:
Rick Megahan, Chair
Arnold Smith
James Knepper
Sidney Trond

Cheril Thomas, Town Manager
Deborah Renshaw, Zoning Officer

On behalf of the Town of St. Michaels:
H. Michael Hickson, Esquire

On behalf of the Midland Companies, et al.:
Bruce Armistead, Esquire
Richard A. Detar, Esquire

P-R-O-C-E-E-D-I-N-G-S

COMMISSIONER MEGAHAN: All right. We'd like to reopen the public hearing on Ordinance No. 297. This is a continuation of a public hearing that was at the last meeting, September 25. This is an ordinance to amend Ordinance No. 109, regarding traditional neighborhood development zones.

At that time we had presentation from Mr. Hickson. And I suppose what we need now is just discussion or questions from the Commission and then public comment.

MR. HICKSON: Yeah.

COMMISSIONER MEGAHAN: Do we have any questions from the Commission for Mr. Hickson regarding Ordinance No. 297?

COMMMISSIONER KNEPPER: Let me just -- hold on one second.

COMMISSIONER MEGAHAN: I have question. I believe --

COMMMISSIONER KNEPPER: I have a question.

Ex. 16

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COMMISSIONER MEGAHAN: I have a quick one.
COMMMISSIONER KNEPPER: Okay.
COMMISSIONER MEGAHAN: This has to do with Page 5, I guess it would be Line 102. Steve Florkewicz brought up the last time the issue of the terminology of cluster type of development.
Did you find any odds -- find that at odds with the TND concept? To me, cluster development is not a TND.
MR. HICKSON: To me, a cluster type of development is sort of a generic term and a TND type of development is a more specific type of cluster development. But I defer to Mr. Redman, who is a planner, and I am not.
COMMISSIONER MEGAHAN: Would you give us the definition of "cluster"?
MR. REDMAN: I've heard 50 of them; a professional disease. A cluster development assumes that once development occurs upon a site certain areas will be areas of the site where units are

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grouped and a corresponding percentage of the site will remain in open space.
TND's also provide open space. But I'm not even sure -- this is not to differ with Michael on it -- but I'm not sure it's really a subset of cluster. Probably it's its own creature. A traditional neighborhood development is the kind of development we saw prior to 1940, prior to World War II, up until World War II. Both provide open space.
I don't have a copy of that right in front of me, but I suspect we could improve some of the language to better reflect.
COMMISSIONER MEGAHAN: I would think that particular term here would be unnecessary.
MR. REDMAN: I remember Florkewicz's comments. Well, where the term is used here is saying shall be according to a "a mixed use cluster type of development plan approved by the Town in conjunction with the approval of a traditional neighborhood development zone that includes the following features..." I think the features do

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define traditional neighborhood development, and do not, by the way, necessarily broadly apply to cluster development. So maybe the answer is to let A through E and it may continue on --
COMMISSIONER MEGAHAN: Right.
MR. REDMAN: -- be the definition and simplify the language here to say something on the order of development with a traditional neighborhood development zone shall be approved by the Town in conjunction with the approval of a TND that includes these features, and then name the features. That might be a recommendation.
COMMISSIONER MEGAHAN: Okay. Thank you. You had something, Jim?
COMMMISSIONER KNEPPER: Yes. I'd like to -- we are addressing what, 297 at this point?
COMMISSIONER MEGAHAN: Yes.
COMMMISSIONER KNEPPER: Ordinance 297. Since I'm the one who had made the motion at the last meeting to continue this and also to make sure that the public had the opportunity to read this

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ordinance, as well as 290, I must say that, first of all, I didn't realize, but the Town office already had these available to the public if somebody had been down there before, so the Town office staff was obviously prepared for this beforehand. Apparently people didn't take advantage of it.
But, at any rate, I asked that it be available following our last meeting for anyone who wanted to read these two ordinances to become familiar with with them. And I'm told as of today that less than 10, maybe less than 5 people out of 70 or so who were here last time came and availed them of this opportunity. So I'm pointing that out just to indicate that to you, that there is nothing secretive in these ordinances at all. But obviously there weren't 70 or a hundred people clamoring to get copies of this and read them before tonight's meeting.
I do have a question, however, on Line 296, which is on page -- my printer didn't get the page number -- Line 296. They are numbered down the

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the meat of this. The ordinance is a very broad based thing. You can't get into all the specifics here because they may be different in some other area, but you have to have -- you have to have a basic premise on which you can address all the other issues and the subdivision, the plans, the -- and I have a lot of questions, frankly, other questions about this development, too, and I'm closer to it than probably most people in this room and have been for a long time, not by choice but by the fact that the Town involved me in it. And I spent a lot of time with it. And there are other things I would like to discuss. They don't apply to this ordinance.

COMMISSIONER MEGAHAN: Right.

COMMMISSIONER KNEPPER: They do apply to the specifics, however, of this development or any other development, which have to come after this document is taken care of and then an application is put forth or whatever else takes place at this point.

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So we've heard a lot of good comments tonight. The issues have been raised about playgrounds. I think that's a point well taken. It doesn't belong in this ordinance, but it does belong in subsequent documents. I think the waterfront park issue does need to be addressed in this ordinance here, and I hope our solicitor has picked that up -- I think he has -- to correct the language that the gentleman back here raised, simply so that it can apply to other possible annexations in the future.

The affordable housing issue doesn't necessarily belong right here. Something I happen to be familiar with and been involved in Talbot County on my own, looking into affordable housing in Easton, the Ratcliff development, for instance, and over in Annapolis. And those are some things that are concerns of mine as well.

But, once again, those are issues that come up that are not a part of a general document like this. They are part of subsequent actions that must be taken and which will all be done in public.

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And so I think, you know, I'm personally, Mr. Chairman, I'm very happy with -- well, I'm not happy with everything, but I mean I feel very comfortable with this ordinance as its drafted, with the mechanical corrections that need to be made in this area and perhaps that some other members might have to the ordinance.

COMMISSIONER MEGAHAN: Right. We did hear a lot of comments. I think I sifted through in terms of what applies to 297 and what would be in the subdivision versus what might be in the growth allocation.

The two things that I would specify; again, in the application section, which is my Page 7, No. 5, I would propose that we insert this language: "designation of proposed location and types of commercial and other nonresidential uses within the proposed TND zone."

I'm not sure that the issue of types of government buildings need to be in this ordinance.

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Again, I would think that would pertain to a particular -- to a subdivision proposal.

MR. HICKSON: It seems to me the language you just proposed would cover it because it says commercial and other nonresidential uses.

COMMISSIONER MEGAHAN: Right. But, again, I said to insert the words "and types" --

MR. HICKSON: Yes, I have that.

COMMISSIONER MEGAHAN: -- after "location".

Sidney, you were going to say something about the waterfront park. Change that waterfront park to the required public park. That is on Page 17.

COMMISSIONER TROND: I think it should even say any portion of any required public park; therefore, if there is a required park, then it would be any required public park, not necessarily a waterfront park.

MR. HICKSON: May I suggest any required public open space?

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COMMISSIONER TROND: Right.
COMMISSIONER MEGAHAN: Right. So those two additions are what I think needs to be to improve this particular ordinance.
MR. HICKSON: And after "outside", I would suggest that we put "and immediately adjacent to".
COMMMISSIONER KNEPPER: Okay.
COMMISSIONER MEGAHAN: Do we have a motion on this?
COMMMISSIONER KNEPPER: Well, I would make a motion. We've been over this so many times and, despite the public hearings and everything else, we have been part of this for an awful long period of time in different segments.
I would make a motion that we adopt Ordinance No. 297 with the amendments as they are proposed, and let's move on to the next stage.
COMMISSIONER TROND: Second.
COMMISSIONER MEGAHAN: The motion has been made and seconded to adopt -- or to recommend

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Ordinance No. 297 to the Commissioners.
COMMMISSIONER KNEPPER: To recommend.
COMMISSIONER MEGAHAN: All in favor?
MR. HICKSON: Point of clarification.
COMMISSIONER MEGAHAN: Yes.
MR. HICKSON: When you said and the amendments as proposed, are those the amendments that the Commission just --
COMMISSIONER MEGAHAN: Yes.
COMMMISSIONER KNEPPER: Correct.
MR. HICKSON: -- made just now?
COMMISSIONER MEGAHAN: Yes.
A motion has been made and seconded on Ordinance 297 being recommended to the Commissioners.
All in favor of Ordinance 297?
(Vote take; motion carried, with Commissioner Smith voting nay.)
COMMISSIONER MEGAHAN: Thank you. I think we should take a 10-minute recess.
(Recess 9:30 to 9:45)

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COMMISSIONER MEGAHAN: The next order of business is to continue the public hearing on Ordinance 290. As some of you may have the heard me shout a few minutes ago, there were corrected copies of this ordinance available out front. Are there still some?
MS. RENSHAW: Yes.
COMMISSIONER MEGAHAN: Apparently the earlierly one, the first ones picked up, were missing a couple pages. If anyone needs the most up to date copy, go to the front table.
COMMISSIONER TROND: But it's the same one we had last week.
MS. THOMAS: It's the same.
COMMISSIONER MEGAHAN: It's just some new pages, not a rewrite.
I'd like to open the public hearing on 290, continue the public hearing on 290. I'd like Mr. Hickson to summarize again, at least for my benefit, the reasons behind this and to summarize the meaning of it.

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MR. HICKSON: Proposed Ordinance 290 is based on article 66b of the Maryland Code, section 13.01, for all of you dying to know. That legislation was passed about 1995 or '96, as a result of a joint effort by an organization of developers and another organization of municipalities.
The purpose, there was a two-fold purpose. Each side got something that they wanted or needed.
The developers wanted vested rights, vested zoning rights in land that they were going to develop. By that I mean they wanted a freeze on the applicable land use laws that applied to their particular property they were going to develop, particularly if it was going to take several years to develop that property, so that the land use laws didn't change relating to that development and so if the rules of the game changed in the middle of it and, as an example, if there was an amendment to the zoning ordinance, what was proposed and approved to

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be developed in the beginning may not be legal if such an amendment affected the law that their development was based on.

So this section of the Maryland law that I'm speaking of developed the concept of a development rights and responsibilities agreement. And if a developer proposed such an agreement to a municipality and the municipality agreed, what the developer got out of it was a freeze on the land use laws applicable to a specific development for a specific period of time, the time to be agreed on.

On the other side of it, as far as the municipalities are concerned, we have heard from the beginning of the Midland applications that the Town could make a development agreement with the developer and we could get the developer to pay us virtually anything we wanted that we could get him to agree to pay and that's really all that was required. Well, that's not true.

A body of case law developed in the Supreme Court, a couple cases in particular. One

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case is somebody versus Nolan and the other case is somebody versus Dolan. So we talk about Nolan and Dolan.

One of those cases requires that if you are going to extract something from the developer, what you extract from him has to be -- when I say you, I'm talking about a municipality -- what the municipality extracts from the developer must be directly related to the impacts that the development has on the Town. So that, as an example, if the development is going to generate traffic at its entrance to the main road, so to speak, such that a left turn lane and a traffic light are going to be required, under Nolan and Dolan you can require the developer to build the left lane and pay for it and install a traffic light.

But because what you extract from the developer must be directly related to the impact that the development causes, that doesn't mean you can make him pay for a traffic light across town.

The other case, whichever Nolan is and

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Dolan isn't, the other case requires that what you extract from the developer must be roughly proportional in value to the impact that he's causing on the Town. So that in order to stand a court test of what you are extracting from a developer, you should create a record whereby somebody who -- a bean counter or somebody goes through the process of figuring up what the value of the impact is on the Town versus what the value that you are extracting from the developer is. And they don't have to be exactly equal or, in the Court's terminology, they must be roughly proportional.

So what the municipalities were trying to get out of the other half of the equation of this development rights and responsibilities agreement is get away from the Nolan and Dolan analysis. In other words, don't tie our hands down to what we extract from the a developer being directly related to the impacts that the development is causing on the town and don't tie us down to what we extracted from the developer being roughly proportional to the

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impact; we want a little free wheeling and dealing here, you know, let's put a gun to the developer's head and have at it.

So the development rights and responsibilities agreement was an attempt to get away from the Nolan and Dolan analogy. And that's what Ordinance 290 is. It allows us to attempt to get the developer to do some things for the Town that don't directly relate to his development. And as we will see later on in this whole process, I believe that's what he's willing to do.

On top of all of that, Maryland courts, the Court of Appeals of Maryland has numerous times ruled against what's called contract zoning in every instance except in the instance of an annexation agreement.

Well, part of the proposal that Midland is making involves an annexation, but the larger part of the land does not involve an annexation. In my opinion, whatever we do with respect to that part of the land that doesn't involve an annexation, we'd

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granted or denied based upon the law and facts in the record. And none of those things involve how much the developer paid me on the --

MR. DOYLE: So to use a legal term, you are going to put a "Chinese wall" between the Commissioners and the Planning Commission.

MR. HICKSON: With respect to the developer.

MR. DOYLE: So the Commissioners will have no knowledge, theoretically --

MR. HICKSON: In theory.

MR. DOYLE: -- about what's going on?

MR. HICKSON: To answer your earlier question, the fact of the matter is there was a public workshop, which you may remember, in the spring of this year that the Town Commissioners conducted, and they thereafter came out with a written public statement --

MR. DOYLE: Right, yeah.

MR. HICKSON: -- and sent the Town manager and Town attorney off to have some

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discussions with the developer. And the Town attorney and Town manager have done that and they are going to -- actually the developer is going present what was discussed to the Planning Commission, and we will make ourselves available to the Planning Commission and the public to give you an idea of how hard we knocked heads to come up with what we came up with.

MR. DOYLE: Okay. But the Commissioners, when they take up the matter of all of this, meaning the growth allocation, zoning, everything, theoretically they are not supposed to have any knowledge of what this development rights --

MR. HICKSON: The fact is they are going to know it's there; it's just not going to be part of the record. It's not going to be part of the things that they consider to make their decision.

MR. DOYLE: All right. Okay. I understand.

MR. HICKSON: It's all legal mumbojumbo.

MR. McGOWAN: John McGowan, 400 Water

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Street, St. Michaels.

With regard to the authority of the Planning Commission and Town Commission and so forth that you're discussing right now, aren't the operative words in the third section of the Commissioners' authority "vote against the execution of the agreement"? That would suggest that they have a preemptive mode in which if they believe that the Planning Commissioners are going to vote for a an agreement that they don't want them to do, they'd preempt them. If they already voted for one, they could not rescind it.

MR. HICKSON: That's correct. That's correct.

MR. McGOWAN: I think the wording is awkward but it says it.

MR. HICKSON: It's the best I could do. I labored over how to make this work for some time.

COMMISSIONER MEGAHAN: Yes, sir.

MR. BEDFORD: Bruce Bedford, 300 Perry Cabin Drive. I think this is very good. But I have

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bought property and worked in some areas where developers were not of a high reputation and financial strength as we have here, and so frequently in a construction project surety bonds are put forth. The question I have is, what is the assurance that the Town has that we are going to get these goodies that have been negotiated for?

It seems to me I've seen a lot of property that has streets laid out and no houses and the last thing if I were a developer is I would put my money up front to give it to the Town or get it in the property, I want to keep whatever assets I have. It seems to me as part of this deal which extends it all to the developer for five, ten years, whatever it gets extended to, there needs to be some pro quid that says here's what we get.

I would suggest that there be a sizable up-front payment and then something that at worst is scheduled over five years or something like that to get the total goodies that we have. But I think if we don't put that in the agreement as a

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responsibility, then we could be spending all this time negotiating for these goodies and find out ten years down the road we never got the property, we never got the civic buildings, we never got the park places, we never got all these things we thought we were going to get. So I would strongly urge that that kind of language be put in here as one of the criteria.

MR. HICKSON: I don't have all of it in front of me, but a good part of it comes at significant times and a lot of it is not directly from the developer, it's from people that are going to own the land. There is an extra payment in addition to the regular building permit fee when a building permit is issued, there is a fee when an occupancy permit is issued, there is a fee from every lot for 20 years.

MR. BEDFORD: But it's a success oriented payment.

COMMISSIONER MEGAHAN: Again, doesn't the ordinance we are talking about just enable such a

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thing to happen, as opposed to address a specific deal?

MR. BEDFORD: I don't think it should express a specific deal, but it should say that we are going to get what we are negotiating for and not be hung out there with a half developed property.

MR. HICKSON: And the particular things that the Town manager and I have discussed with the developer, eventually you will see, I don't think a bond isn't required. The bottom line is whoever is going to own those lots is going to be obligated to make payments – it will be the developer, the builder, the ultimate occupant of the land – and it will be payments annually in addition to the regular property taxes. And if they don't pay the taxes we're going to have a house there to sell at their expense.

MR. BEDFORD: I'd just be wary of this if I were on the Planning Commission.

COMMISSIONER MEGAHAN: Any others on this? Do we have a motion to close this public

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hearing?

COMMISSIONER SMITH: I move we close the public hearing.

MR. HICKSON: May I suggest the wording for this particular passage that Mr. DeTar brought up – I didn't use your exact words. Try this out. After "thereto" – this is the last line, Line 229 – after "thereto," – this is on Page 7 – "or to void such an agreement previously executed by the Planning Commission,"

That doesn't limit it to vote. There isn't anything they can do for it.

MR. DETAR: Agreed.

COMMISSIONER SMITH: What did you say again?

MR. HICKSON: On Line 229, after the word "thereto," or to avoid such an agreement previously executed by the Planning Commission,.

COMMISSIONER MEGAHAN: I have a motion to close the public hearing on 290. Do we have a second?

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COMMISSIONER TROND: Second.

COMMISSIONER MEGAHAN: The motion has been made and seconded to close the public hearing. All in favor?

(Vote taken, motion carried)

COMMISSIONER MEGAHAN: Are you going to work a little more on this to address what Rad said?

MR. HICKSON: If you would – sometimes the Town Commissioners do this – if you wish to vote on it and you would simply give me the leeway to look at the language and if I can tighten it up better, allow me to do that.

COMMISSIONER MEGAHAN: Why don't we put the vote off to the next meeting on this. I would feel better about that.

MR. HICKSON: It's up to you.

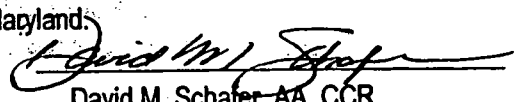
COMMISSIONER SMITH: Yeah. I think the agreement is well drafted and I think it's an important tool for the Town to have. I would highly recommend it.

COMMISSIONER MEGAHAN: But do we feel

comfortable voting before he's finished with it?
COMMISSIONER SMITH: I have no comfort problems at all.
COMMMISSIONER KNEPPER: I don't have any, as long as we would accept that amendment. I feel comfortable with the way it was drafted originally, other than the technical amendments or legal.
COMMISSIONER MEGAHAN: Do we have a motion?
COMMISSIONER SMITH: I move that we -- this is a recommendation -- that we recommend approval of Ordinance 290 as drafted.
COMMISSIONER MEGAHAN: A motion has been made to recommend Ordinance 290 as drafted.
COMMISSIONER SMITH: With the amendment.
MR. HICKSON: That I stated from the podium?
COMMISSIONER TROND: Yes.
COMMISSIONER SMITH: As stated by the Town attorney from the podium.
COMMISSIONER MEGAHAN: Do I have a

second?
COMMISSIONER TROND: I'll second.
COMMISSIONER MEGAHAN: All in favor?
(Vote taken, motion carried)

I, David M. Schafer, a Notary Public in and for the State of Maryland, County of Wicomico, do hereby certify the foregoing a true and accurate record of proceedings aforementioned.
As witness, my hand and Notarial Seal this 24th day of October 2003, at Salisbury, Maryland.



David M. Schafer, AA, CCR
My Commission expires August 2006

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").

IMP FD SURE $ 20.00
RECORD FEE 75.00
TOTAL 95.00
Rcpt # 75736
MAS 6400 Blk # 568
Feb 20 2004 03:44 PM

Section 1: RECITALS

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

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

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

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

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

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

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

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

Ex. 17

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 Hunteman 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 Hunteman Property (as hereinafter described). As a result of the Talbot County Council's decision not to relinquish zoning control to the Town over the Hunteman 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 Hunteman Property. Rather, this Agreement is immediately effective as to the Perry Cabin Land, and may become effective as to the Hunteman 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 Hunteman 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 Hunteman Property, the additional consideration described in this Agreement relating to the Hunteman 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 Hunteman Property to the definition herein of the "Subject Property" in exchange for the additional consideration provided herein relating to the Hunteman 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 Hunteman 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 Hunteman Property, and its successors in interest, all of the above-described benefits of the Qualified Vested Rights relating to the Hunteman Property and the Perry Cabin Land during the term of this Agreement; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2: Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.22.1 All that land described in the deed dated August 31, 2001, from Elsie W. Hunteman to Miles, and recorded among the Land Records of Talbot County, Maryland in Liber No. 1019, folio 96, et seq.;

2.22.2 Consisting of 17.156 acres, more or less and more particularly shown on a plat prepared by McCrone, Inc., titled "ANNEXATION PLAT OF THE LANDS OF ELSIE W. HUNTEMAN TO THE TOWN OF ST. MICHAELS SECOND ELECTION DISTRICT, TALBOT COUNTY, MARYLAND," dated March 1998, a copy of which plat is attached hereto as Exhibit 7; and

2.22.3 Consisting of two (2) tracts of land which are the subject of a petition for annexation to the Town and Town Commissioners Resolution No. 2003-06, adopted on October 28, 2003.

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

2.24 "Miles Point II" refers to the application for the award of growth allocation relating to a proposed project on the Perry Cabin Land and the Hunteman 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 Hunteman 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 Hunteman 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 Hunteman 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 Hunteman 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 Hunteman Property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.45 "State" means the State of Maryland.

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

2.47 "TND Inc." shall refer to "TND Development, Inc." a Maryland corporation, together with its successors and assigns to the extent permitted by this Agreement. When financing for the public facilities is in place and construction of the development is scheduled to commence it is intended that Miles will convey the Miles Point Property (consisting of the Perry Cabin Land and the Hunteman 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 Hunteman Property, designed by Duany Plater-Zyberk & Company, and dated December 23, 2003.
Exhibit 2 – Design Code for Miles Point, for the development of the Miles Point Property, prepared by Duany Plater-Zyberk & Company.

Exhibit 3 – Miles Point Annexation Agreement, between the Town and Miles, dated October 28, 2003.
Exhibit 4 – Public Facilities Agreement, between the Town and TND Inc., dated October 28, 2003.
Exhibit 5 – Perry Cabin Farm Annexation Agreement.
Exhibit 6 – Plat of Perry Cabin Land.
Exhibit 7 – Plat of Hunteman 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 Hunteman 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 pursuit of the terms and requirements of this Agreement; and

5.3.2 The Developer, for itself, its successor Developer Assigns, and its successors in interest as Owner of the Subject Property, hereby waives all

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

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

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

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

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

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

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

Section 6: Binding Effect, Assignment, Notice and Release

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

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

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

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

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

6.3 Transfer and Assignment of Rights and Interests.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7: Representations, Warranties and Covenants

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

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 Hunteman Property for sufficient time: (a) for the control by the County over the land-use classification of the Hunteman 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 Hunteman Property, to be considered and granted, along with the Amendment of this Agreement to include the Hunteman 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 Hunteman Property, are as follows:

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

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

Section 8: Development Rules and Restrictions.

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

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

Type of Units	To Be Located On The Perry Cabin Land (± 72.167 acres)	To Be Located On The Hunteman Property (± 17.156 acres)	Total (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 1st floor, commercial and/or residential use on the 2nd floor, and residential use on the 3rd floor, not to exceed a total of 15,000 sq. ft. of commercial interior space for all live/work Units	8	0	8
Inn Sleeping Rooms	24	0	30[1]

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

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

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

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

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

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

8.5 Timing of Development. The parties acknowledge that the most efficient and economic Development of the Subject Property depends upon numerous factors, some of which are not within the control of Developer, such as market orientation and demand, interest rates, competition, and similar factors, and that except as provided in Section 10.9.1 of this Agreement, the rate of development will be determined by the Developer, in its sole subjective business judgment and discretion. However, the Development Approvals shall remain effective for only the time periods specified therein and the rate of conveyance of lots or parcels within the Subject Property shall not exceed the rate set forth in Section 10.9.1of 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.

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").

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

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

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

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

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

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

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

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

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

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

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

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

10.3 Parks and Open Spaces.

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

10..3.2 Hunteman Property Non-Structural Shoreline Stabilization. The Developer shall install the Non-Structural Shoreline Stabilization on the Hunteman Property at the same time that the Non-Structural Shoreline Stabilization is installed on the Perry Cabin Land.

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

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

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

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

10.3.3.1.2 The "Shoreline" means, and is more particularly described, as follows: (1) beginning at a point at the southern boundary line between the Perry Cabin Land the land of the Foggs Cove Townhouses at its intersection with the Miles River at mean high tide; then (2) running from said beginning point in a generally northerly direction along the shoreline formed by the intersection of the Perry Cabin Land and the Miles River at mean high tide to the common boundary line between the Perry Cabin Land to the 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, re-construction, and/or replacement of the Non-Structural Shoreline Stabilization, pursuant to Section 10.3.3 of this Agreement, and for which assessment payment has not been timely paid in full to the Town or its collection agent, for the unpaid balance of such assessment together with late charges, interest, and all costs of collection. No property shall be sold pursuant to the Maryland Contract Lien Act unless such a bill (or a portion thereof), late charges relating thereto, interest thereon or collection costs relating thereto, have remained unpaid for a period of at least six (6) months after the due date for such assessment.

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

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

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

10.4 Duty To Pay Consideration To The Town.

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

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

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

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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:

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

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

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

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

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

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

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

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

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

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

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

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

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

10.6.1.4.10 Preservation of residential neighborhoods in the Town;

10.6.1.4.11 Promotion of affordable housing in the Town;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 12. Public Facilities

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

Section 13. Administration of Performance

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

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

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

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

13.4 Good Faith Compliance Review

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

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

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

Section 14: Default and Remedies.

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

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

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

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

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

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

Section 15: Mortgagee Protection; Certain Rights of Cure.

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

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

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

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

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

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

Section 16: Estoppel Certificates.

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

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

Section 17: Conflicts of Laws, Rules, Regulations

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

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

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

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

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

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

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

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

Section 18: Miscellaneous Provisions

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

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

18.3 Invalidity, Unenforceability, Severability, And Savings Clause.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WITNESS/ATTEST:

DEVELOPER:

THE MIDLAND COMPANIES, INC.

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

ST. MICHAELS POINT, L.L.C.

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

MILES POINT PROPERTY, LLC

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

TND DEVELOPMENT, INC.

By: _____ 2.16.04
George A. Valanos, President Date

TOWN:
THE COMMISSIONERS OF ST. MICHAELS

By: St. Michaels Planning Commission

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

_____
Cheril S. Thomas, Town Manager

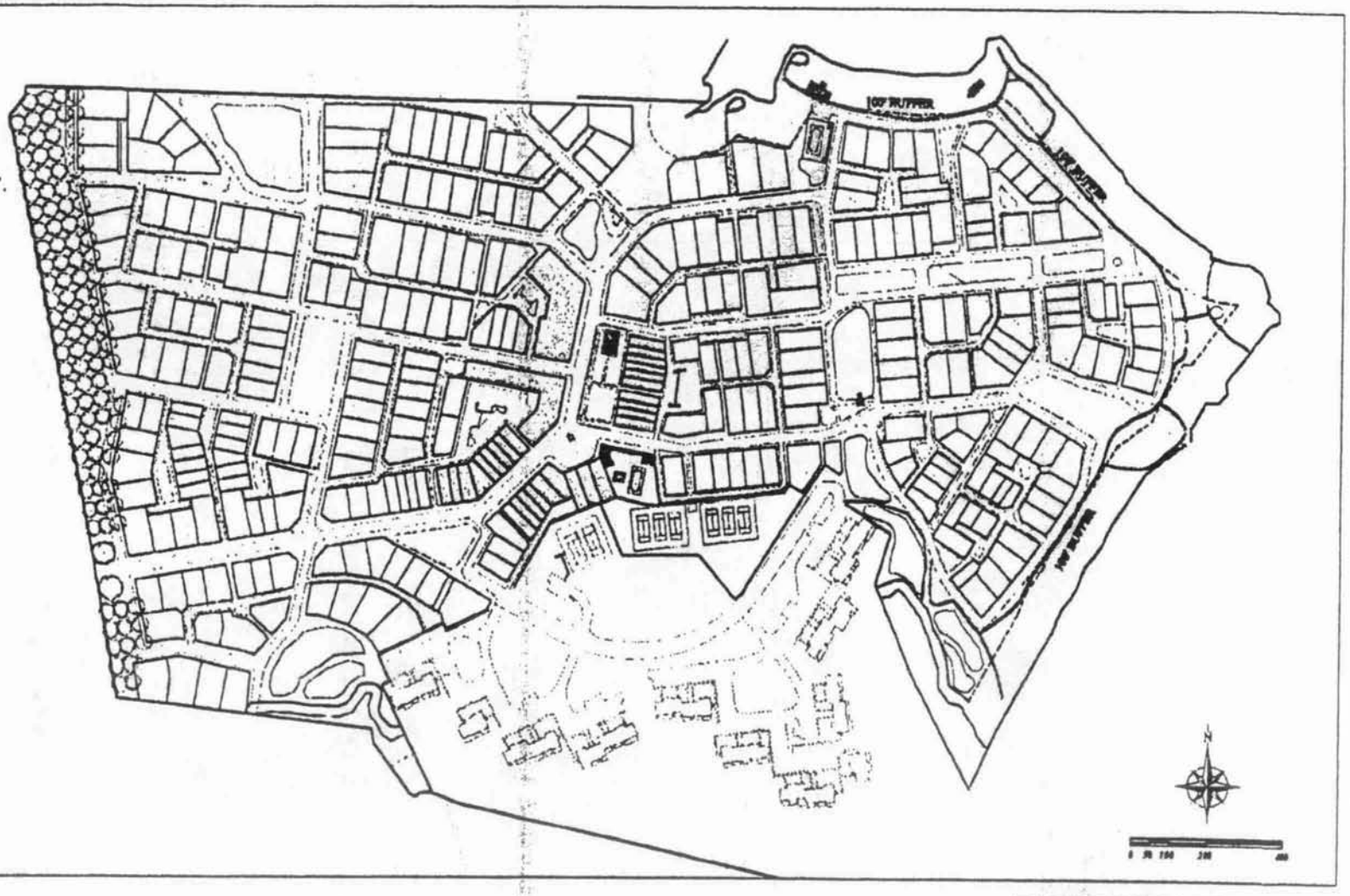
APPROVED AS TO FORM:

By: _____
H. Michael Hickson
Town Attorney

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

St. Michaels, Maryland

Miles Point
Concept Plan



LIBER 1225 FOLIO 467
E. 862

MILES POINT

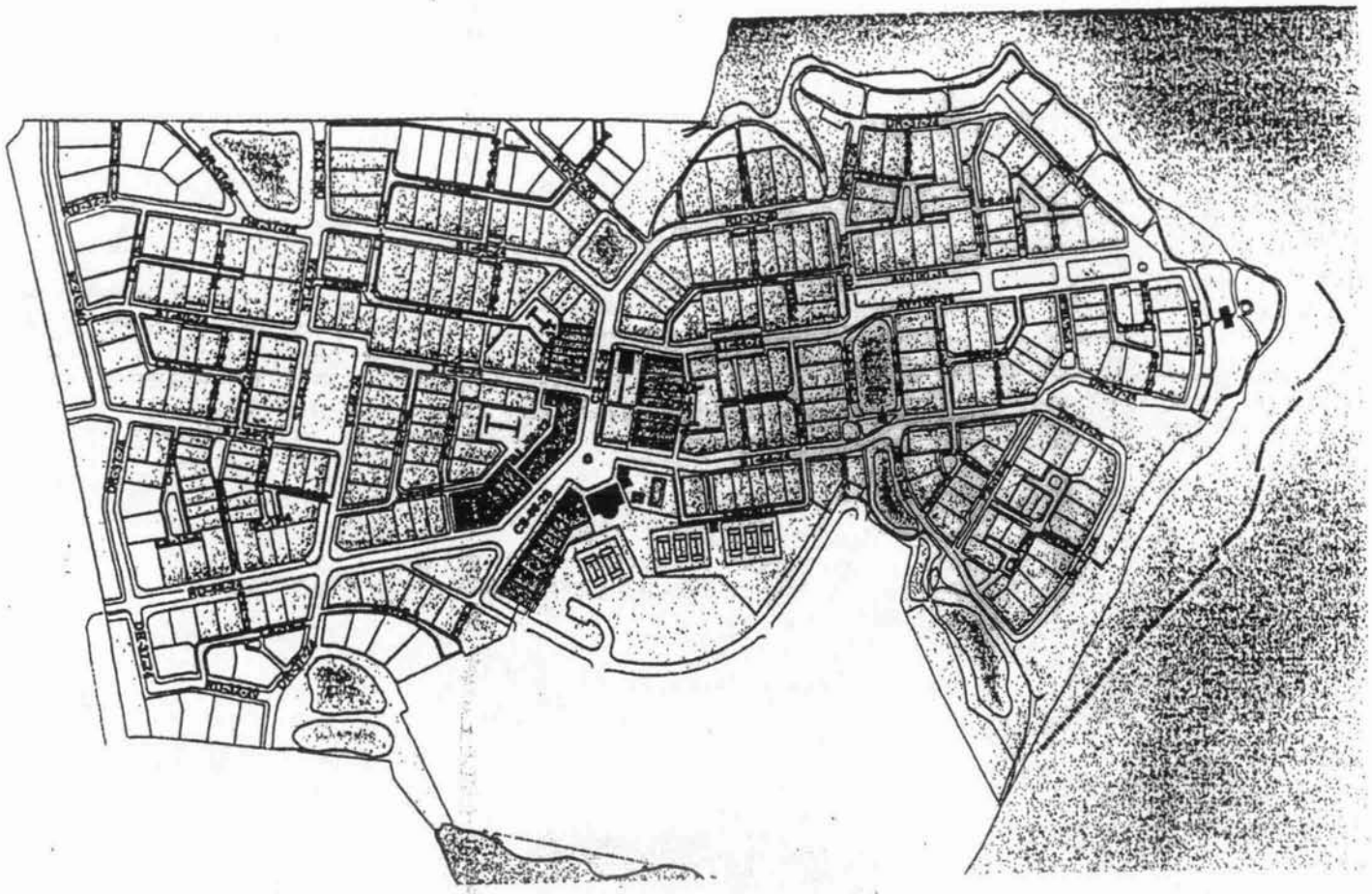
TOWN OF ST. MICHAELS, MD

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. 863
LIBER 1225 FOLIO 458



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E. 864

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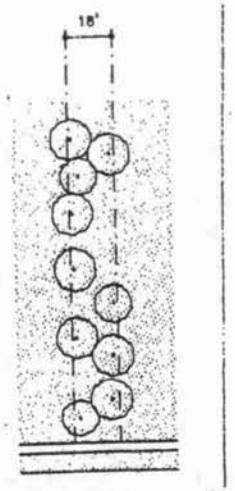

Passages are pedestrian connectors passing between buildings. Passages provide shortcuts through long blocks and connect rear parking areas with street frontages.

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

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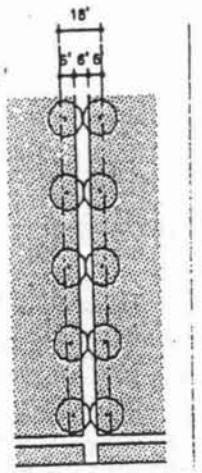
Revision Date: August 27, 1998

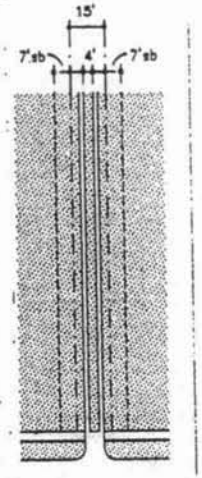


Passages are pedestrian connectors passing between buildings. Passages provide shortcuts through long blocks and connect rear parking areas with street frontages.

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

PS-18-6

Precedent	N/A
Type	Passage
Movement	Pedestrian only
Traffic Lanes	N/A
Parking Lanes	N/A
R.O.W. Width	18 ft.
Pavement Width	N/A
Curb Type	N/A
Curb Radius	6 ft.
Vehicular Design Speed	N/A
Pedestrian Crossing Time	N/A
Sidewalk Width	N/A
Planter Width	6 ft.
Planter Type	Continuous
Tree Pattern	Alles, 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

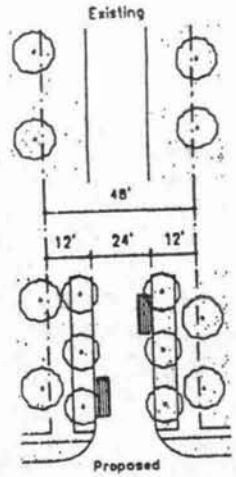
Precedent	Harrison Alley
Type	Rear lane
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	No parking
R.O.W. Width	15 ft.
Pavement Width	2 gravel ruts at 2 ft. each
Curb Type	Open
Curb Radius	5 ft.
Vehicular Design Speed	5 m.p.h.
Pedestrian Crossing Time	2.7 seconds
Sidewalk Width	N/A
Planter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

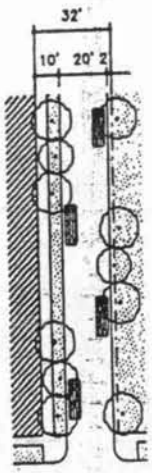
E. 865
LIBER 12225 FOLIO 471



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

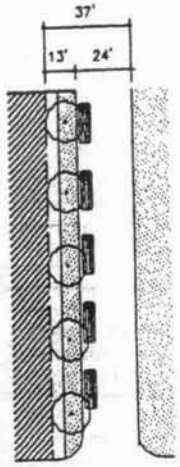
Precedent	Perry Cabin Drive
Type	Road
Movement	Free movement
Traffic Lanes	Two way
Parking Lanes	No parking
R.O.W. Width	48 ft.
Pavement Width	24 ft.
Curb Type	Header Curb
Curb Radius	15 ft.
Vehicular Design Speed	30 m.p.h.
Pedestrian Crossing Time	8.8 seconds
Sidewalk Width	6 ft.
Planter Width	6 ft. 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

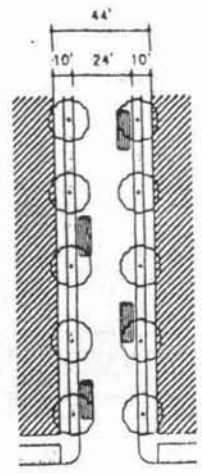
Precedent	Grace Street
Type	Small road
Movement	Yield movement
Traffic Lanes	Two way
Parking Lanes	Both sides
R.O.W. Width	32 ft.
Pavement Width	20 ft.
Curb Type	Open
Curb Radius	5 ft.
Vehicular Design Speed	15 m.p.h.
Pedestrian Crossing Time	3.9 seconds
Sidewalk Width	5 ft.
Planter Width	5 ft.
Planter 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	N/A
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

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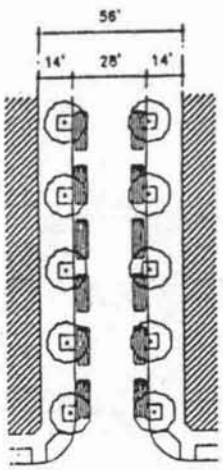
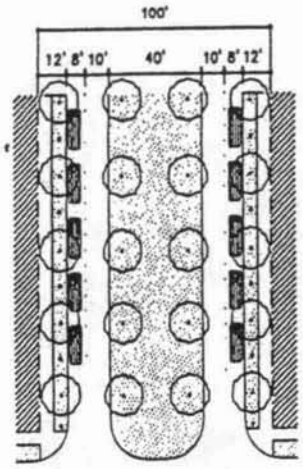
E. 866

LIBER 12215 FOLIO 147





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.

Avenues 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	56 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	
Type	Avenue
Movement	Speed movement
Traffic Lanes	Two ways
Parking Lanes	One sides
R.O.W. Width	100 ft.
Pavement Width	18 ft. + 18ft.
Curb Type	4" Header curb
Curb Radius	15 ft.
Vehicular Design Speed	25 m.p.h.
Pedestrian Crossing Time	10 seconds
Sidewalk Width	6 ft.
Planter Width	6 ft.
Planter Type	Continuous center, Individual sides
Tree Pattern	Allee, 30 ft. on center
Tree Species	London Plane
Ground Cover	Lawn

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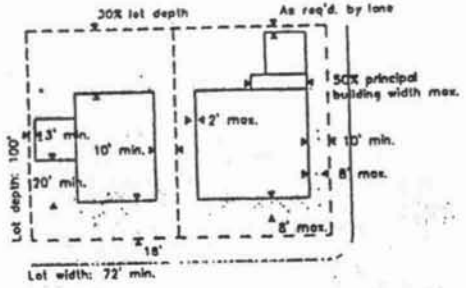
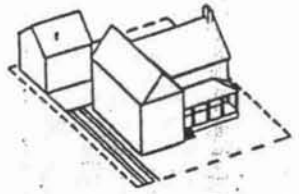
LIBER I 225 FOLIO 473

E. 867

NEIGHBORHOOD EDGE - LARGE HOUSE

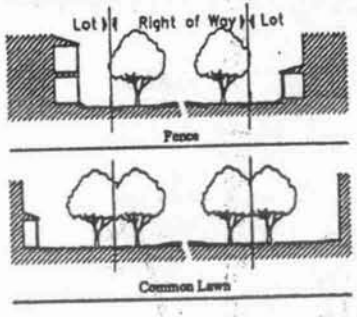




rge House is a single-family residence on its own large lot. Within the Neighborhood Edge this type occupies lots that are a minimum of 72 feet in width by approximately 100 feet in depth. The setbacks to the principal building measured from the lot lines are 18 feet from the front, a minimum of 10 feet 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.
Setbacks	
at building frontage	18 ft.
at building side	10 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
ilding frontage at setback	50% of lot width min.
Encroachments	
at building frontage	8 ft. max.
at building side	2 ft. max.
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types



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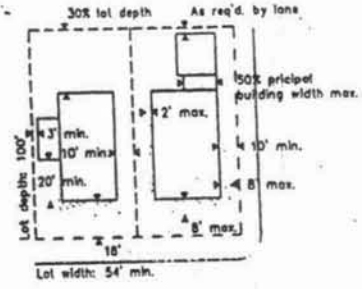
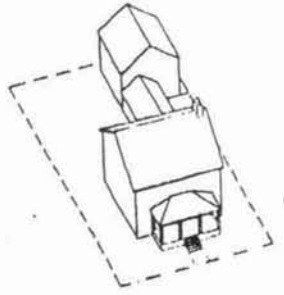
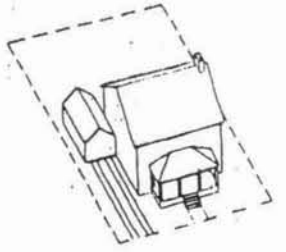
NEIGHBORHOOD EDGE - HOUSE



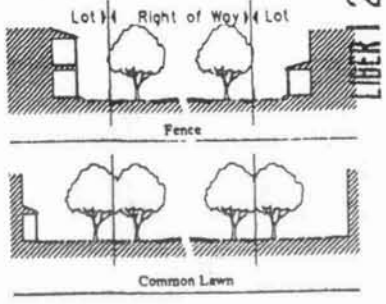




A House is a single-family residence on its own lot. Within the Neighborhood Edge this type occupies lots that are a minimum of 54 feet in width by approximately 100 feet in depth. The setbacks to the principal building measured from the lot lines are 18 feet from the front, a minimum of 10 feet from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

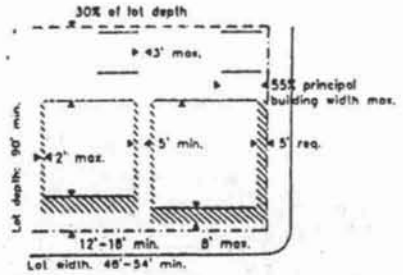
Lot size	54 ft.min. x 100 ft.
Lot coverage by roofs	50 % max.
Setbacks	
at building frontage	18 ft.
at building side	10 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	30% of lot width min.
Encroachments	
at building frontage	8 ft. max.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

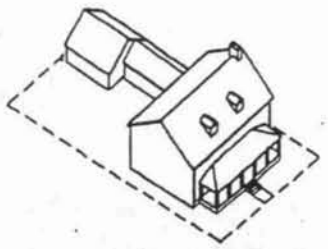
Frontage Types

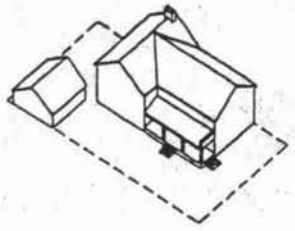


E. 868
LIBER 1225 FOLIO 474

NEIGHBORHOOD GENERAL - HOUSE



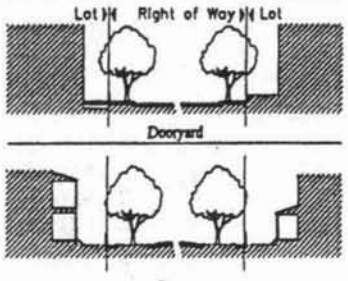




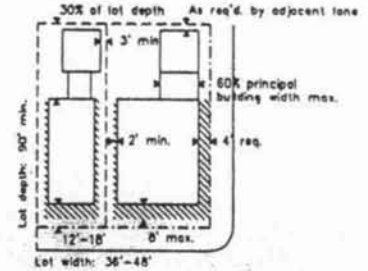
A House is a single-family residence on its own lot. Within the Neighborhood General this type occupies lots that are 48 - 54 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 - 18 feet from the front, a minimum of 6 feet from each 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.

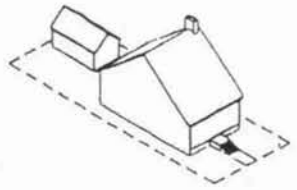
Lot size	48 - 54 ft. min. x 90 ft.
Lot coverage by roofs	60 % max.
Setbacks	
at building frontage	12 - 18 ft.
at building side	5 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
Building frontage at setback	30% of lot width min.
Encroachments	
at building frontage	8 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.

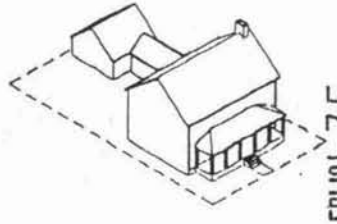
Frontage Types



NEIGHBORHOOD GENERAL - COTTAGE



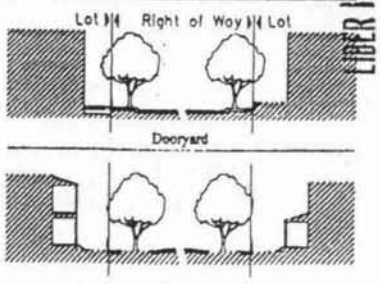




A Cottage is a single-family residence on its own lot. Within the Neighborhood General this type occupies lots that are 30 - 48 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 - 18 feet from the front, a minimum of 6 feet from 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.
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.

Frontage Types



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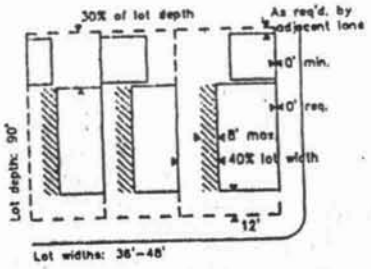
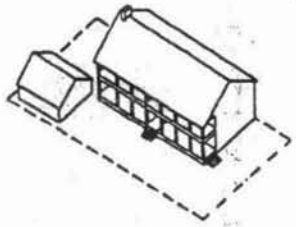
LIBER 11225 FOLIO 475

E. 869

NEIGHBORHOOD GENERAL - SIDE YARD HOUSE

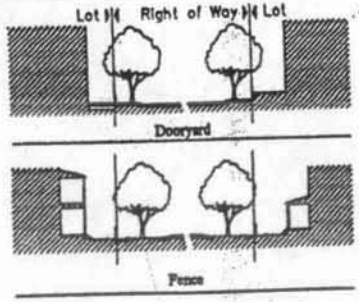




Side yard House is a single-family residence on its own lot. Within a Neighborhood General this type occupies lots that are 36 - 48 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 12 feet from the front, 0 feet from the North or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

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

Frontage Types



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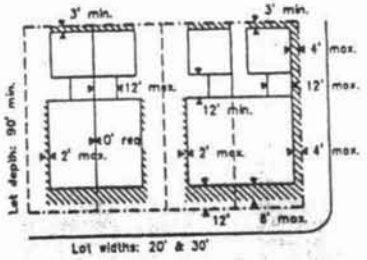
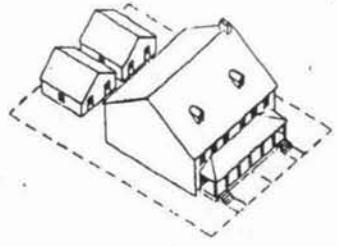
NEIGHBORHOOD GENERAL - DUPLEX HOUSE

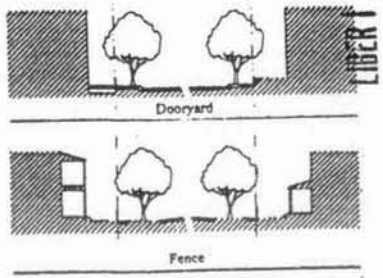




A Duplex House is two units sharing a lot, each with its yard. At corner locations, each duplex can have its own entry. Vehicular access is provided from a rear lane. Within the Neighborhood General this type occupies lots that are a minimum of 20 feet in width by approximately 90 feet in depth. The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

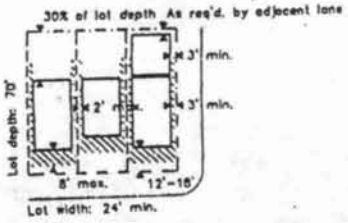
Lot size	20 ft. min. x 90 ft.
Lot coverage by roofs	60 % max.
Setbacks	
at building frontage	12 ft.
at building side	0 ft. & 0 ft. or 4 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	0 ft. min.
Building frontage at setback	70% of lot width min.
Encroachments	
at building frontage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

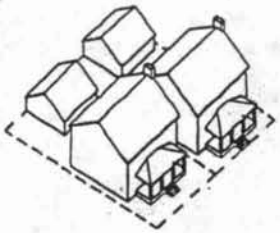
Frontage Types



E. 870
LIBER 225 FOLIO 476

NEIGHBORHOOD GENERAL - ROSEWALK COTTAGE

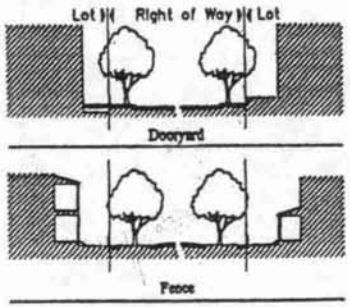




Rosewalk Cottage is a single-family residence on its own lot, with stage on a passage. Vehicular access is provided from a rear lane. Within the Neighborhood General this type occupies lots that are a minimum of 24 feet in width by approximately 70 feet in depth. The setbacks to the principal building 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 roofs	60 % max.
Setbacks	
at building frontage	6 -12 ft.
at building side	3 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	3 ft. min.
sliding frontage at setback	70% of lot width min.
Encroachments	
at building frontage	8 ft. max.
at building side	2 ft. max., 3 ft. max. at corner lots
Height	
of principal building	2.5 stories max.
of first floor above grade	3 ft. max.
of back building and outbuilding	2 stories max.

Frontage Types



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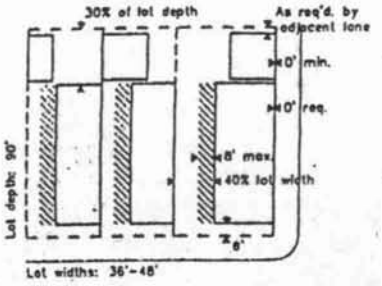
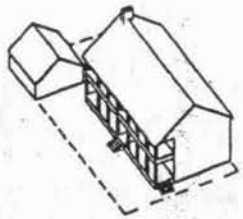
E. 871

LIBER 1225 FOLIO 477

NEIGHBORHOOD CENTER - SIDE YARD HOUSE

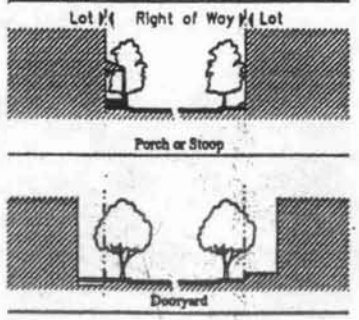




Side yard House is a single-family residence on its own lot. Within the Neighborhood Center this type occupies lots that are 36 - 48 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 6 feet from the front, 0 feet from the North or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

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

Frontage Types



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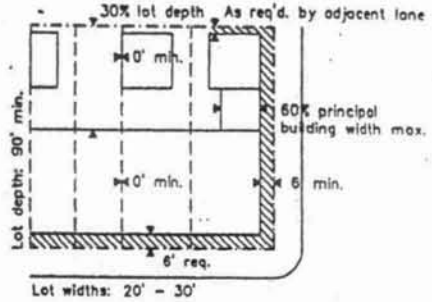
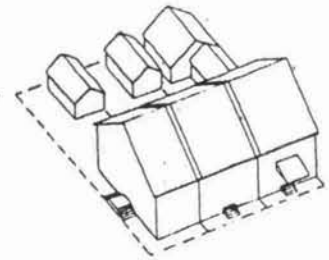
NEIGHBORHOOD CENTER - ROW HOUSE

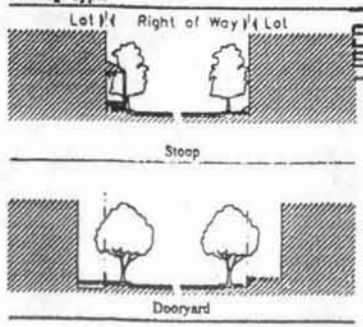




A **Row House** is a single-family attached residence on its own lot. Within the Neighborhood Center this type occupies lots that are a minimum of 20 feet in width by approximately 90 feet in depth. The setbacks to the principal building measured from the lot lines are 6 feet from the front, 0 feet from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

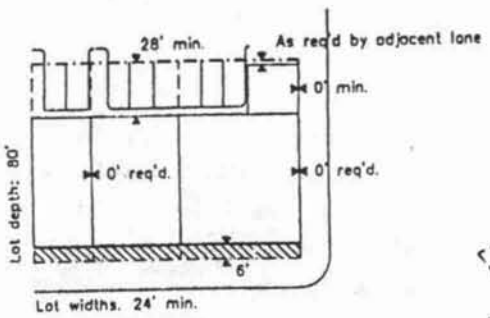
Lot size	20 ft. min. x 90 ft.
Lot coverage by roofs	70 % max.
Setbacks	
at building frontage	6 ft.
at building side	0 ft. & 0 ft. or 6 ft. min.
at building rear	30% of the lot depth min.
at outbuilding side	0 ft. min.
Building frontage at setback	70% of lot width min.
Encroachments	
at building frontage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

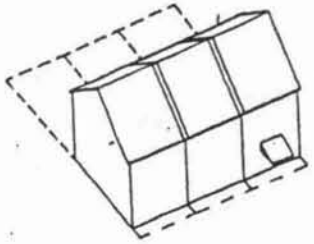
Frontage Types



E. 872
LIBER 1225 FOLIO 478

NEIGHBORHOOD CENTER - SHOP/HOUSE

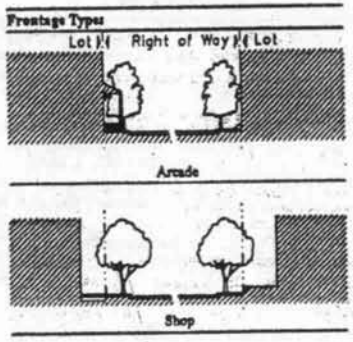




'hop/ House is a single building which may be residential and/or ...mmercial, and may be attached to others, on its own lot. Within the Neighborhood Center this type occupies lots that are a minimum of 24 feet in width by approximately 80 feet in depth. The setbacks to the principal building measured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

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

Frontage Types



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E. 873

LIBER I 225 FOLIO 479

WALLS

Materials

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

Foundation walls shall be brick, stucco or parged block.

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

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

Piers shall be brick or stucco.

Retaining walls shall be brick.

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

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

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

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

Panelized materials are not permitted.

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

Configuration

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

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

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

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

Lightweight concrete siding shall emulate lapped or beaded siding, 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 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.

Intercolumniation 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 terne 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.

E. 874

LIBER 1225 FOLIO 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 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.

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E. 875

LIBER 1225 FOLIO 481

TREES

The Front Yard

The summer landscape will be enhanced with the extended bloom time of improved varieties of crapemyrtles introduced by the National Arboretum. 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
Daylillies
Iris
Trumpet Honeysuckle
Climbing Hydrangea
Trumpet Vine
Climbing Rose Species
Clematis

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LIBER I 225 FOLIO 482

E. 876

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

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

RECEIVED
MAY 19 2004

May 14, 2004

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

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

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

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

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

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

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

Ex. 18
EXHIBIT
3

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

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

Sincerely,

Mary R. Owens

Mary R. Owens, Chief
Program Implementation Division

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

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/

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:

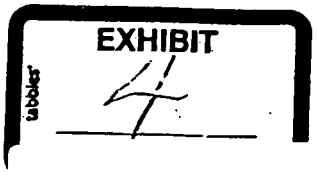
1. Prior to recordation of the subdivision plat for the Strausburg property, the Town Planning Commission shall approve a Buffer Management Plan for the property. Implementation of the plan shall take place prior to issuance of any building permits.

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 aces 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.

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



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

Judge John C. North, II
Chairman

FRONT OFFICE

Ren Serey
Executive Director

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338

RECEIVED
SEP 25 2002
TALBOT COUNTY COUNCIL

September 23, 2002

Honorable Levin F. Harrison, President
Talbot County Council
Courthouse
11 N. Washington Street
Easton, Maryland 21601

RE: Notice of Action pursuant to Maryland Annotated Code, Natural Resources Article §8-1809

Dear Councilman Harrison:

This letter serves as notice of action taken by the Critical Area Commission ("Commission") at its regular meeting on September 4, 2002, pursuant to Maryland Annotated Code, Natural Resources Article ("NR") §8-1809 (l). The Commission voted to declare four provisions of Talbot County's Critical Area Program ("County Program") to be in conflict with the Commission's Criteria.

At its September 4, 2002 meeting, the Commission discussed concerns regarding the Talbot County Critical Area Program with Mr. Dan Cowee and Commission staff. The Commission focused on the following four issues:

1. Afforestation, forest clearing and reforestation
2. Clearing in the 100-foot Buffer
3. Guest Houses - RC only
4. Nonconforming Structures - all zones

The Commission compared these elements of the Talbot County Program with the requirements of the State Critical Area law and COMAR 27.01 et seq. The Commission performed this comparison pursuant to its responsibility under Section 8-1809 of the Natural Resources Article, Maryland Annotated Code. After the discussion, the Commission voted on a Motion:

Ex. 19

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

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

To invoke Annotated Code, Natural Resources Section 8-1809(l)(1); and

To determine that the Talbot County Critical Area Program contains clear mistakes, omissions and conflicts with the Commission's criteria; and

To notify the County of the deficiencies; and

To direct the County to submit a proposed program amendment(s) or refinement(s) to correct the deficiencies.

The Motion passed by a vote of 25 in favor, 2 opposed. The specific provisions of the Talbot County Program affected by this action of the Commission are:

1. **Section 19.2 Definitions:** The Commission voted to direct the County to remove the definition of "tree - CA" and the definition of "maintenance, normal – CA."

   The draft proposed Talbot County Critical Area Planting and Mitigation Manual contains the following definition of "natural vegetation."

   > Natural Vegetation – Canopy trees, understory trees, shrubs, and herbaceous plants that are typically found in the Critical Area. Areas of natural vegetation that are planted to satisfy mitigation requirements shall mimic the structure and species composition of natural forests.

   Although not required by the Commission's action pursuant to Section 8-1809 (l) of the Critical Area Act or this letter, we recommend that the County insert the above definition into the Definitions section of the Ordinance. Implementing this definition along with approved Buffer Management Plans would enable the County to protect existing Buffers and to establish Buffers on newly approved lots.

2. **Section 19.4 Land Use Regulations by Zoning Districts:** The Commission voted to direct the County to amend the General Table of Land Use Regulations to assure that all Guest Residences approved in the RC zone are counted as dwelling units for the purpose of calculating permitted Critical Area residential density in the RC zone.

3. **Section 19.12 (b)(5)(iii)[c] Site Plan Review:** The Commission voted to direct the County to amend the section as follows, deleting the language appearing in strikeout format:

[c] New development activities, including structures, roads, parking areas and other impervious surfaces, mining and related facilities, or septic systems are not permitted in the Buffer. The only exception to this limit are structures and roads so closely associated with water dependent activities that they can not be located outside the buffer. Clearing existing natural vegetation in the Buffer is not allowed. ~~except for normal maintenance. Such maintenance shall be consistent with the forest activities in the Buffer not requiring approval from the Maryland Forest, Park and Wildlife Service as described in Section 19.11(a) (2) (i) [f], and may include the mowing of ground cover. Additional vegetation should be planted where necessary to protect, stabilize, or enhance the shore~~line.

Alternatively, if the County wishes to permit certain cutting or clearing activities in the Buffer, we recommend amending section 19.12 (b) (5) (iii) [c] as follows, deleting the language appearing in strikeout format and adding the language appearing in capital letters:

[c] New development activities, including structures, roads, parking areas and other impervious surfaces, mining and related facilities, or septic systems are not permitted in the Buffer. The only exception to this limit are structures and roads so closely associated with water dependent activities that they can not be located outside the buffer. Clearing existing natural vegetation in the Buffer is not allowed ~~except for normal maintenance. Such maintenance shall be consistent with the forest activities in the Buffer not requiring approval from the Maryland Forest, Park and Wildlife Service as described in Section 19.11 (a) (2) (i) [f], and may include the mowing of ground cover. Additional vegetation should be planted where necessary to protect, stabilize, or enhance the shoreline.~~ UNLESS PERMITTED BY A BUFFER MANAGEMENT PLAN, WHICH WILL BE SUBJECT TO THE PERMITTED CLEARING ACTIVITIES DESCRIBED IN SECTION 19.11(A) (2) (I) [F]. ALL CLEARING ACTIVITIES PERMITTED UNDER A BUFFER MANAGEMENT PLAN SHALL REQUIRE REPLANTING IN THE BUFFER.

Amending the section by adding the language set out immediately above will enable the County to permit certain activities in the Critical Area Buffer while protecting the overall Buffer functions and recognizing the grandfathered status of certain situations such as grass lawns.

4. **Section 19.13(d)(2)(i) Nonconforming Uses, Lots, Parcel and Structures:** The Commission voted to direct the County to remove this section in its entirety.

The Commission takes this action pursuant to Natural Resources Article §8-1809(l). As a result of this vote, the County shall submit to the Commission as a program amendment or program refinement, any changes to the County Program necessary to correct the identified deficiencies. This submission shall be made within 90 days of the date of this letter. The corrections may be submitted as one package or as separate submissions. The Commission also notifies you that, as a result of this vote by the Commission, from the date of this letter, any local project approval granted under a part of the local program that the Commission has determined to be deficient shall be null and void.

For your information, I will send two items by separate mailing. These are 1) for use as an example, provisions from the Charles County Critical Area Program, amended in 2001 to add language for Buffer Management Plans on individual properties; and 2) a model form for Buffer Management Plans that you can adapt specifically for Talbot County.

If you have questions or need additional information, please contact me or Mr. Ren Serey, the Commission's Executive Director.

Very truly yours,

John C. North II

John C. North, II
Chairman

Judge John C. North, II
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

VIA FAX

March 10, 2003

Honorable Thomas G. Duncan, President
County Council of Talbot County
Talbot County Government Building
142 N. Harrison Street
Easton, Maryland 21601

Dear Councilman Duncan:

I am writing in response to your letter of February 5, 2003 concerning the Talbot County Critical Area Program. The Critical Area Commission considered the letter and the information you provided at its meeting on that date. The Commission also appreciated discussing with Council Member Hilary Spence the progress of changes to the local Critical Area Program. Ms. Spence presented the County's requests outlined in your letter including the specific request that the Commission rescind its previous decision regarding guest houses in the Resource Conservation Area. The Commission decided to take the various matters under advisement.

At its regularly scheduled meeting on March 5, 2003 the Commission again discussed the Talbot County Program. I reported that I understood the County to be making significant progress in regard to the issues of forest mitigation, Buffer management and the permitting of certain new development in the Buffer. I suggested that the County likely would need an additional period of time to finalize these measures for submittal to the Commission as changes to the local Critical Area Program. After further discussion, the Commission voted unanimously to notify the County of the following:

1) The time period for submitting changes to the Talbot County Critical Area Program set out in the Commission's letter of September 23, 2002, and subsequently extended to March 24, 2003, is extended an additional 90 days to June 23, 2003.

2) The Critical Area Commission will work with the Maryland General Assembly's Joint Legislative Oversight Committee on the Critical Area regarding legislation to clarify the definition of *dwelling unit* relative to guest

houses, accessory apartments, domestic quarters or other accessory residences.

3) The Critical Area Commission hopes to work with Talbot County regarding interim measures that could allow the provisions of the Commission's letter of September 23, 2002 concerning guest houses to be lifted until the General Assembly addresses the issue.

If you or the other members of the County Council have questions or need additional information, please contact me at (410) 260-3462 or by email at rserey@dnr.state.md.us. I am available to meet at your convenience and look forward to working with you and the County staff.

Sincerely,

Ren Serey
Executive Director

cc: Talbot County Council
Critical Area Commission
Marianne D. Mason, Assistant Attorney General
Michael Pullen, Talbot County Attorney

Martin G. Madden
Chairman

STATE OF MARYLAND
CRITICAL AREA COMMISSION
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www.dnr.state.md.us/criticalarea/

Ren Serey
Executive Director

July 14, 2003

Honorable Thomas G. Duncan, Council President
Talbot County Council
142 N. Harrison Street
Easton, Maryland 21601

Re: Talbot County Council Bills: Critical Area

Dear Councilman Duncan:

At its meeting on July 2, 2003, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays unanimously approved an extension of the deadline for submitting legislation subject to the actions taken by the Commission pursuant to Natural Resources Article §8-1809(l). The deadline was extended to August 5, 2003.

As you may recall, the deadline for submission of approved legislation by the County Council was June 23, 2003. While Commission staff received a copy of the draft legislation, this did not fulfill the requirements of Natural Resources Article §8-1809(l)(2). This section of the law requires a local jurisdiction to submit to the Commission any proposed changes as program amendments or refinements (i.e. the legislation is approved at the local level).

In order to avoid any confusion, the Commission granted the County an extension to August 5, 2003. The Commission is aware that the proposed bills are being redrafted and that the likely schedule for their adoption may extend beyond August 5; however, the Commission's vote anticipated receipt of the following information from the County Council by August 5:

1) Copies of the re-drafted legislation;
2) Confirmation the legislation has been introduced;
3) The schedule for public hearing and adoption by the County Council.

Commission staff informed the Commission of the good faith efforts on the part of the County Council to resolve these issues. The Commission acted to provide this extension to maintain a reasonable schedule for completion.

The Commission looks forward to receiving this legislation and continuing to maintain a good working relationship with the County and the County Council. If I can provide you with assistance, please do not hesitate to contact me at (410) 260-3462.

Sincerely,

Ren Serey
Executive Director

cc: Andrew Hollis, County Administrator
Daniel Cowee, Planning Officer
Marianne Mason, Assistant Attorney General

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

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

October 2, 2003

Mr. Wes Johnson, Assistant Secretary
Capital Grants and Loans
Tawes State Office Building, C-4
580 Taylor Avenue
Annapolis, Maryland 21401

Re: Black Walnut Point Lease Area
Replacement and Addition of Rental Cottages

Dear Mr. Johnson:

At its meeting on October 1, 2003, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays unanimously approved the replacement of three cottages in the 100-foot Buffer, and to place four additional cottages and one addition to an existing office outside the 100-foot Buffer. The approval was subject to the following conditions:

1. The tenant shall provide mitigation at a 3:1 ratio for all disturbances to the 100-foot Buffer and 1:1 mitigation for clearing outside the Buffer.

2. If the tenant fails to provide the proposed mitigation for unforeseen reasons, the Department of Natural Resources agrees to fulfill the mitigation obligation on this site.

3. The final site plan will be reviewed and approved by the Critical Area Commission staff and any substantial changes to the concept plan will require approval by the Commission.

It is the Commission's understanding that the tenants will remove two existing cottages, the summer kitchen and a portion of an existing garage which totals 2,774 square feet. The three replacement structures will total 1,692 square feet of impervious area and will provide the same number of accommodations as the existing structures. Overall, there will be a net reduction in impervious area of 1,082 square feet in the Buffer.

TTY For the Deaf

I have enclosed a Plantings Agreement Form, which should be returned to this office within 30 days. The Commission determined the total mitigation required would equate to 5,076 square feet of plantings based on the new impervious area in the Buffer at a 3:1 ratio (1692 x 3 = 5,076). A description of plantings is on the reverse side of the Plantings Agreement Form.

Thank you and your staff for your cooperation. If I can assist you with any questions, please telephone me at (410) 260-3478.

Sincerely,

Lisa A. Hoerger

Lisa A. Hoerger
Natural Resources Planner

cc: Mr. Chip Price
Mr. John Wilson
Mr. Frank Dawson
Mr. & Mrs. Ward

The Commissioners of St. Michaels

P.O. BOX 206
ST. MICHAELS, MARYLAND 21663-0206

SETTLED 1670-80
INCORPORATED 1804

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

December 1, 2003

Chairman Richard Hutchinson
Talbot County Planning Commission
108 Maryland Avenue, Suite 102
Easton, Maryland 21601

Re: Proposed County Bill No. 933

Dear Chairman Hutchinson and Members:

On November 18, 2003, without any prior communication with the Town of St. Michaels, the Talbot County Council introduced legislation in the form of County Bill 933 that would remove from the Town's control all growth allocation acreage previously allotted to the St. Michaels area, whether unallocated, *already allocated*, or *currently under consideration* for allocation to a specific parcel of land. In essence, Bill 933 would deprive the Town of its ability to award growth allocation, even on land within its own municipal boundaries. Because more than half of the Town is within the Chesapeake Bay Critical Area, Bill No. 933 would effectively take critical land planning and zoning functions from the Town and give it to Talbot County. We believe the enactment of such legislation by the County would be contrary to the intent and purpose of State law.

On November 21, 2003, without benefit of having attended a single hearing on the Miles Point Property, LLC annexation or the St. Michaels Planning Commission's four evenings of public hearings on the Midland Companies' application for growth allocation, the County Council took an elective public vote, and thus a public stand, on both issues. The County Council took this action despite two written requests from the Town asking them to delay until the Commissioners were in position to give the County our opinions and reasonings for our actions without the potential for legal complications. The County Council appears to have made decisions regarding the sovereignty of St. Michaels without attending a single public hearing on the issues facing the Town. Conversely, we, the elected officials of St. Michaels, have read thousands of pages of material on every aspect of the past, present and proposed future of these lands, and have sat through countless hours of hearings.

As the Planning Commission is aware, the Town has recently granted growth allocation in connection with the Strausburg annexation. This project received the approval of the County Planning Commission and the State Critical Area Commission. With Bill 933 the County Council would reverse this and negate a 75-acre permanent conservation area that the

Ex. 20

Commissioners of St. Michaels have secured for the citizens of the Town and the County at no government cost. This annexation is the Town's only guarantee that the north entrance to the Town of St. Michaels will be preserved in its current environmentally friendly state.

The County Council most surely is aware of the five-year struggle we have endured in attempting to settle the issue of development on the Perry Cabin Farm and the Hunteman property. During that time we have had to defend our decisions in court, and spend over $1,000,000 of the taxpayers' money - approximately $1,600 per taxable property. Now that there appears to be a real possibility that the Town could reach a conclusion to that issue in a way that is agreeable to a majority of the Town citizens, and now that we have paid a tremendous price in dollars and diversion of Town energies and resources, it appears that our own County Council desires to step in and remove our ability to settle the terms of our own future. If we should determine that the current application for growth allocation from the Midland Companies warrants approval and the County is successful with Bill 933, the County Council will be responsible for preventing the Town from settling a long struggle in a manner that would have been determined by us to be beneficial to all our citizens.

The Commissioners of St. Michaels take full responsibility for our decisions and we state categorically that those decisions were made in the best interest of the Town and adhered to the spirit as well as the intent of the law. We will continue to do what we believe is appropriate for the Town as a whole, according to the circumstances and within the law.

The Commissioners of St. Michaels respectfully ask the Talbot County Planning Commission to continue its public hearing on Bill 933 until its January meeting to allow us more time to study this complicated document and determine its full potential impact on the Towns of Talbot County. A change of this magnitude in the County's law deserves careful study by not only the County, but those who are directly impacted. This cannot be done in the few days we have been allotted since the introduction of this bill.

Thank you for your consideration of our requests.

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

RTS/ct

CC: Mayor Robert C. Willey
President John Ford
Easton Town Council
P.O. Box 520
Easton, Maryland 21601

President Sidney S. Campen, Jr.
The Commissioners of Oxford
P.O. Box 399
Oxford, MD 21654

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

The St. Michaels Planning Commission
300 Mill Street
St. Michaels, MD 21663

Denise Riley, Executive Editor
Star Democrat
P.O. Box 600
Easton, MD 21601

As introduced

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

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

Bill No. 933

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 IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 190, TALBOT COUNTY CODE, "ZONING" § 190-109 D. (11).

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 Meeting Room, Talbot County Government Building, 142 North Harrison Street, Easton, Maryland 21601.

By Order Susan W. McCrae
Secretary

Ex. 21

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).

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

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

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

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

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

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

WHEREAS, the Town of Easton has requested 156 acres of supplemental growth allocation and has enacted Ordinance No. 461 to approve a Planned Unit Development. Part of that planned development requires the County to grant the Town's application for 58.80 acres of growth allocation for reclassification from Resource Conservation Area (RCA) to Limited Development Area (LDA) and 97.20 acres of growth allocation for reclassification from RCA to Intensely Developed Area (IDA); and

WHEREAS, the County currently has a total of 316.229 acres of growth allocation available to rezone from RCA to LDA. The Town of Easton is requesting 58.80 acres, which, if granted, would reduce the County's remaining growth allocation under the current ordinance in this category to 257.429 acres; and,

WHEREAS, the total amount of IDA growth allocation available for the entire county is 128 acres. The 1989 projection reserved 24 acres for the Town of Easton and 36 acres for the County, totaling less than the 97.20 acres of IDA growth allocation requested by the Town in their current application. Therefore, to grant the Town of Easton's pending request for an award of supplemental growth allocation requires the County to withdraw IDA growth allocation from other towns and reallocate growth allocation under § 190-109 D 10 (b). In light of that, and because of the foregoing, the lack of any continuing usefulness, or validity, of the 1989 maps and projections, for any purpose, is now evident.

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

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
~~Strikethrough~~	*Deleted from existing law by original bill*
* * *	*Existing law unaffected.*

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

* * *

§ 190-109 D (9)

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

* * *

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

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

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

§ 190-109 D (11)

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

* * *

§ 190-109 D (14)

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

§ 190-109 D (15)

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

§ 190-109 D (16)

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

SECTION 2. Effective Date and Severability; legislative intent.

1. Vested Rights: Effective Date of Zoning Text Amendments

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

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

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

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

2. Severability.

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

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

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. _____ having been published, a public hearing was held on _____.

BY THE COUNCIL

Read the third time.

ENACTED _____

By Order _____
Secretary

Duncan - _____
Harrington - _____
Foster - _____
Spence - _____
Carroll - _____

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

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 1st 1/2, once this is used, the second 1,213 can be requested. It is not correct that 128 acres is the only growth allocation acreage that can go to IDA.

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

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

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

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

Ex. 22

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

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

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

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

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

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

- Steve Florkewicz, East Morango Street, St. Michaels

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

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

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

- Barry Gillman, St. Michaels Town Commissioner

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

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

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

- Michael Hickson

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

- Mr. Robert Amdur, Bozman

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Sewell seconded.

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

Motion passed 3-1

The Commissioners of St. Michaels

SETTLED 1670-80
INCORPORATED 1804

P.O. BOX 206
ST. MICHAELS, MARYLAND 21663-0206

(410) 745-953
FAX (410) 745-346
TDD/TTY RELAY 1-800-735-225

December 16, 2003

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

Re: Opposition to proposed Talbot County Bill No. 933

Dear President Foster Council Members:

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

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

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

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

Ex. 23

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

1. We think that this drastic step is unnecessary to manage available growth allocation among the towns and the County in a way that will achieve the stated purpose of the Bill, and to qualify the County for an additional allotment of growth allocation for use as IDAs. We believe that the current provisions of the County Code and a cooperative effort among the affected jurisdictions could accomplish the necessary results.

2. Maryland laws indicate that the Town is intended by the State to have home rule powers, and to have planning, zoning, and subdivision powers over all land within the Town, to the same extent as all other municipalities in this State. The Bill would create a situation in which the municipalities in Talbot County would effectively have less planning and zoning powers within their boundaries than other municipalities in this State, in violation of Maryland Constitution, Article XI-E (Municipal Corporations), Section 1.

3. The Code of Maryland Regulations ("COMAR"), § 27.01.02.06, relating to growth allocation, requires "a process to accommodate the growth needs of the" Town. We can find nothing about either the Bill, or the manner in which the Bill has come about, to indicate that it will create or facilitate such a process. As drafted, the Bill would have the effect of dismantling the right and ability of St. Michaels to self-determination regarding growth and development in the Critical Area within the Town.

4. For 20 years the Towns have exercised careful stewardship of their growth allocation. This fact is evidenced by the amount of allocation acreage remaining, and indicates that Bill 933 is unnecessary.

5. The County is a party to at least two contracts, of which we are aware, that could be either impaired or breached by the Bill and/or by acts taken pursuant to the Bill. Those contracts are as follows:
   a. The agreement for the assumption for the Town's sewer system by County Sewer District No. 2, which we believe has been subsequently assumed by the County; and
   b. The Annexation Agreement relating to Perry Cabin Farm.

   Rather than engage in counter-productive rhetoric, we enclose a copy of those documents herewith for your review. In addition to the Town, property owners may have rights pursuant to those contracts.

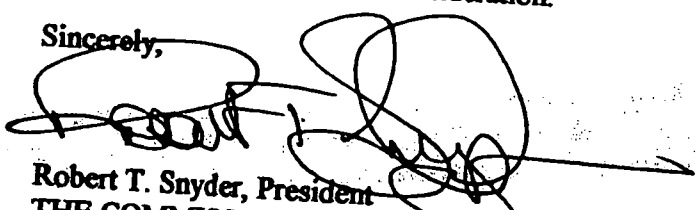
We urge the County Council to review the facts contained in the enclosed Position Paper and to carefully consider whether adoption of Bill 933 today is the best interest of all Citizens of Talbot County. As far as we are aware, there is no deadline facing the County that would preclude a careful study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

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

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

Thank you for your consideration.

Sincerely,



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

RTS/ct
Enclosure

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

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

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

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

The Commissioners of St. Michaels

SETTLED 1670-80
INCORPORATED 1804

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Position Paper

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

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

1.
Bill No. 933 Is Unnecessary

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

a. The current County Code, Chapter 190 (Zoning) Section 190-109 (Administration), Subsection D (Growth allocation district boundary amendments in the Critical Area), Part (11), provides for periodic reviews "for possible reallocation" of growth allocation. We believe that this existing process could be used to meet and solve the stated problem in a way that would be mutually agreeable and within the applicable State laws.

b. We understand that the Critical Area Commission frequently does not require full compliance with Maryland Code, Natural Resources Article, Section 8-1808.1 (Growth allocation), Subsection (c), Part (5). Therefore, this avenue should be explored.

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

2.
Bill No. 933 Is Not Consistent With State Law

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

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

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

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

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

3.
<u>The Bill Is Contrary To State A Regulation</u>

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

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

(1) . . . .;

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

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

4.

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

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

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

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

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

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

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

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

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

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

RTS/ct

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

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

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

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

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

ORIGINAL

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

000220 Ex. 24

EXHIBIT
4

Reported by. David M. Schafer, AA, CCR

E. 913

MEMBERS OF THE PANEL:

Dave Blazer, Chair

William Giese

Joseph Jackson

Gary Setzer

Edwin Richards

Marianne Mason, Assistant Attorney General

Schafer Reporting Company, P.O. Box 1140, Salisbury, Maryland 21802 - voice: 410-742-1440 fax: 410-742-0117

MR. HICKSON: Thank you. My name is Michael Hickson. I'm attorney for the Town of St. Michaels, and I would like to respond.

First of all, the Town would oppose Bill 933.

Mr. Pullen, the County attorney, took you 600 miles down Route 95 to Charleston. I would like to take you, instead, a couple of hundred years back, to 1804, when the village people of St. Michaels decided that their interests were not exactly the same as those of the county as a whole and they decided to incorporate.

And I think there is the crux of the problem. Some people like to live with lots of land around them and they have one perspective. Other people like to live with lots of people around them and they have a different perspective.

The interests of the County and the interest of the Town are not the same.

E. 915

The difficulty that the Town has with 933 is that it takes back all of the growth allocation

000222

that was previously reserved for the counties and puts it completely in the control of the county; that's to say, the county has the last word.

St. Michaels would not mind if the growth allocation were taken back and put in a common pool. But the difficulty here is not just the taking back of the reserve, but the fact that it then throws the process -- it throws the current process for the awarding of growth allocation out which has been totally within the control of the town, subject to all the criteria of its laws and its local program which was approved by the Critical Area Commission, and instead sets up a different process for what the County calls supplemental growth allocation, in which the County, in effect, carries on a dual process.

It may be carried on in the same rooms with the members of the St. Michaels town bodies, but in effect it's an entirely separate decision making process. While on the one hand the Town officials look at the Town's laws, the Town's

Comprehensive Plan, the Town's local program, if you look at the County program, the County officials are looking at things that are completely different. They are looking at the County's Comprehensive Plan, which does not control the Town under State law. And they are looking at other things that are not a part of the Town's decision-making process and the Town's concerns.

Judge North took a considerable amount of time reading letters about one particular COMAR provision. And I was thinking to myself, why all these letters about the same thing; he doeth protest too much.

I would commend the panel and the Commission to a careful reading of COMAR 27.01.02.06A2, and I'll quote. "When planning future expansion of intensely developed and Limited Development Areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the affected municipalities.

000224

All we are talking about here is creating a process. We are not talking about sitting in on the judgment.

And, secondly, we are talking about creating a process in coordination with the town; that is, the process of establishing the procedures should be done in coordination with the town.

And, thirdly, it says that it should be done to accommodate the Town's needs.

Now, I've prepared a memorandum and supplied a copy of it to your counsel and other counsel, and I'll submit an original tonight with copies, and I've also prepared written testimony that I'll submit tonight that goes into some of the details, but I want to hit some of the high points. Some of it is legalese and legal oriented. I want to hit the high points of the important facts and I want to focus on this section. That was my intent from the beginning.

E. 918

Coordination, cooperation, and accommodation. I don't see any of these things in

here which, in effect, throws out the current process and throws the towns into a joint decision-making process in which the counties do what the State law, in my opinion, does not permit and what the village people in 1804 wanted to avoid.

The process of the arriving at Bill 933 goes something like this. In 1997 the Town of St. Michaels had never received an application for growth allocation at all. In that year for the first time it received an application from Midland, a developer that wanted to do a substantial development in Talbot -- in the Town. During that process Midland submitted successive Applications which the Town successively denied, which were successively litigated. There were in all six Circuit Court cases, two of which went to the Court of Appeals. All of this was very highly publicized in the local newspaper.

E. 919

Three of those Applications were completed, the three cases litigated; all the while the Town is denying growth allocation applications

and all the while the County does absolutely nothing but let the Town swing in the breeze and spend more than a million dollars in legal fees, consultants' Fees, time, conducting procedures, participating in litigation to defend its position.

Seeing that nothing was going to happen, the Town took ahold of reality and initiated a nonbinding mediation process with a professional mediator who is, in fact, the head of the department in land use at the University of Virginia. And Doctor Collins mediated between a group of citizen representatives and the developer all during the summer of, I believe it was 2002, to come up with a rough consensus. Not everybody was in agreement, but they came up with some general principles, one of which was a traditional neighborhood development plan would be preferable to a cookie cutter, old style development, it would fit better with the Town. And there were some environmental discussions, be assured.

E. 920

After that mediation process, the Town

then conducted a public workshop with the developer. And at the close of the public workshop the Town announced some principles of what it would want to see in a development, including traditional neighborhood development, taking care of the shoreline and some other things, open spaces. And a as a result of that the developer submitted his forth application.

(Change audiotape)

This was in the fall of 2003. At that time the application process commenced. The Town Planning Commission received the Application and commenced its public hearing in September of 2003. Those public hearings were heavily participated in by citizens and noncitizens alike; those public hearings ended, I believe, on November 6, 2003, and a written fifty-some page decision was issued, I believe on November 24 of 2003.

E. 921

Now, what the Town didn't know at that time and, in fact, didn't know until today, that on October 29, 2003, the County representatives had

contacted the staff at the Critical Area Commission and, in fact, it advised them of the existence of County Bill 933, predicted when it would be introduced, when a hearing would be conducted on it, when it would be adopted and when it would be ready for the State Critical Area Commission.

No contact, no consultation, no request for input, no advice even that there was a problem from the County to any of the towns in this county.

Subsequent to that there were additional contacts by County representatives with the State Critical Area Commission, and they are in my legal memo and my prepared testimony. Those contacts started, as I said, October 29, 2003, and go into November and December, all relating to either Bill 933 or the Easton and Midland projects.

Now, I submit to you that 933 has its very existence based upon the County's opposition to the Midland Application and the project known as Miles Point, because none of this even started until it appeared that the Town was going to consider,

seriously consider granting growth allocation.

As you may know -- let me back up. The fourth Application, which is known as Miles Point II, included 72 acres that was annexed to the Town in 1980 pursuant to an Annexation Agreement, but it also included 18 acres outside of the town that was annexed in the fall of 2003. So, according to State law, the Town cannot change the zoning of land that is newly annexed for five years without the Town's express permission. That's contained in Article 23A, Section 9C of the Maryland Code.

The Town requested that the County relinquish the zoning control so that this 18 acres could be zoned to fit in with the proposed Miles Point II project. And on December 16, I believe it was, the County refused that request.

The County also -- I should back up. There was a Planning Commission hearing on 933, I believe it was on Octob -- November 2. I testified for the Town. I said at that time that there had been no input, no dialogue. And I asked that there

simply be dialogue, that we step back, let us know what the problem is and see if we can't find a better solution.

The Planning Commission of Talbot County opined to the County commissioners that 933 was not necessary.

But the Bill went forward and there was a public hearing on, I believe it was December 16. I testified at that hearing on behalf of the Town. At that time, on that very day, during that very hearing, a new version of 933 was brought out. Now, we were told at that time that there were no substantive changes, and the County Council voted to that effect. But at very least there was a whole new set of whereas clauses.

Again I asked that we step back, that we have a dialogue, let us know what the problem is, we'll be happy to sit down, talk about it, try to work it out. What the County Council did on that date was -- and I'm certain now that it was the 16 of December, because they voted to postpone the vote

on that particular legislation for a week. And, in fact, they did postpone it. On December 23 they voted and passed that bill. Again, no dialog, no contact, no nothing.

But as a result of the County refusing to relinquish it's five-year control over that 18 acres that was newly annexed, the developer withdrew it's fourth application known as Miles Point II, redrew it, left out the 18 acres that was annexed, scaled it down to only the 72 acres that had been in town since 1980 pursuant to an Annexation Agreement that described R1 zoning and, in fact, that's what the Town -- that's what was agreed to in that Agreement, R1 zoning. So it's not like anybody thought this land wasn't going to be developed. But, anyway, they scaled down the development. It's now called Miles Point III, it's 72 acres, it's a TND, and it's submitted to the Town in late December or early January of this year.

It's very similar to the previous project, except it's smaller, that's all; less

units, same features, same environmental stuff, good stuff, really. I mean, we beat each other to death and came out with a pretty good plan.

It's processed, the Planning Commission holds it's hearings and so forth. I mean, we are really up to date. As far as 933, that's the end of it; no consultation, no requests, no accommodation into establishing a new process, and that's what that -- I really commend you to read it. It's not talking about participating down the road in future decisions on applications, it's talking about process.

And I want to talk about the process that 933 throws us into. One of your members asked about it, and I couldn't see which one from the back, but they were good questions, because this supplemental growth allocation process is not the same as what we have been dealing with, what we've been going through all this time when the County let us goes through at our expense and then yanks it away from us.

000233

It's two separate processes, as I said, that occur at the same time in the same room with different people looking at different laws.

In the end, in my opinion, if the County Council doesn't agree to grant growth allocation, it doesn't happen. If either side -- if the County says no, there is no growth allocation; if the Town says no, there is no growth allocation.

But the interesting thing in here is that the County in this process, in the County plan it says that the County Council has complete discretion. In other words, they can ignore all the rules and say no.

PANEL MEMBER BLAZER: We're going to have to kind of wind it up.

MR. HICKSON: Okay, I'll try to do that.

Counsel for the County pointed to Easton Village. That's what was happening in Easton Village. I've attached the Easton Village decision to my memorandum of law. It shows that there's a

dual process, it shows they can ignore it each other. In the end the developer for Easton Village to make it happen went to the County and said what do you want. And what the County wanted was improvements on Glebe Road, which I'm told exceed a million dollars. Glebe Road is at least a mile and a half from the subject project and, in my opinion, has nothing to do with it.

That's how -- that's the definition of cooperation, that's the definition of coordination, is the way I've explained to you, totally ignoring us, going to the Critical Area Commission behind our back, yank -- making us twist in the wind when they could have rescued us at that time, and now the yanking away from us when we want to go through with it. That's not my definition of cooperation. And if they can't see it then, how are they going to cooperate in the future? We don't have the same interest.

And State law, in Article 66B, gives us control in planning and zoning. The County does not

have control in incorporated municipalities, and that's what this is all about. Thank you.

PANEL MEMBER BLAZER: Thank you.

MR. HICKSON: I will submit by material.

PANEL MEMBER BLAZER: Okay.

MR. HICKSON: I will also submit a letter that I have from Senator Coulburn.

PANEL MEMBER BLAZER: Okay.

MR. HICKSON: And a schedule showing that 84 percent of our town, 84 percent of the undeveloped land in our town is in the Critical Area; 68 percent of the town as a whole is in the Critical Area.

PANEL MEMBER BLAZER: I think we have some questions from the panel members.

MR. HICKSON: Yes, absolutely.

PANEL MEMBER RICHARDS: With your re-reading of the COMAR regulation, I take it that you challenge Judge North's reading of that particular section.

MR. HICKSON: I disagree with his

interpretation. And I commend you to read it.

PANEL MEMBER RICHARDS: What do you think of his statements that the County abrogated its responsibility by making the allocation in 1989?

MR. HICKSON: I don't agree with that. Every award of growth allocation by a local jurisdiction goes to the State Critical Area Commission. The purpose is not to re-decide the case, but oversight to make sure that the local jurisdictions are applying the criteria, not necessarily that you agree with them on the fact that they are applying the law.

I think there is already a dual process here. It's not the same process, but it's a dual process. We don't need three processes.

PANEL MEMBER RICHARDS: Also, Judge North read the letter from Governor Hughes. And if I heard correctly, Governor Hughes' letter said that Governor Hughes felt that the County has the right to withdraw the allocation. Do you agree with that statement?

MR. HICKSON: I think that's a confused area of the law. I think that while the Critical Area laws have been in effect for well over a decade, getting toward two decades, there is a lot of it that is confusing. I will be frank to admit that I had a great deal of time figuring it all out when I had to deal with this because in my town we are dealing with the Zoning Ordinance, a separate local program, the Subdivision Ordinance, the State regs, the State law, and you are trying to figure out what all that means. And sometimes, frankly, it just -- it's not always consistent.

I don't necessarily -- I don't know what the answer to that question is, frankly. But if they get it back, if you will, I think it then becomes a common pool that every jurisdiction in this County can draw on by granting growth allocation. I don't think anybody owns it.

I think that the -- the determination of how much growth allocation in Talbot County as a whole is, is obviously based on 5 percent of the

Critical Area in the County. But it would be inconsistent with not only the critical area laws but some other laws in this state if most of the growth allocation were not granted and used in and around the municipalities. Otherwise, we would be perpetuating sprawl, we would have long, long sewer and water lines, and that's the opposite of what Smart Growth and another initiative that was signed by our current governor in this past October, and it's quoted in my brief but I don't remember what he's calling it, Priority Places or something like that, those two programs, the same thing with different names, attempt to get most development in and around municipalities for environmental reasons and for economic reasons, in my opinion.

So they may take it back. But if they take it back, it becomes part of a common pool, in my opinion.

PANEL MEMBER RICHARDS: Thank you.

PANEL MEMBER BLAZER: Any other questions? Great. Thank you Mr. Hickson.

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 5th day of April 2004, at Delmar, Maryland.

David M. Schafer

My Commission expires August 08, 2008

DAVID M. SCHAFER NOTARY PUBLIC WICOMICO COUNTY, MD MY COMMISSION EXPIRES AUG. 2008

E. 933

000240

The Commissioners of St. Michaels
P.O. BOX 206
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APR 07 2004
TALBOT COUNTY COUNCIL

April 5, 2004

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

Re: A proposed alternative to Talbot County Bill No. 933

Dear President Foster Council Members:

The Commissioners of St. Michaels were concerned that there would be insufficient time allotted for presentation of all of its comments and concerns at the panel hearing on Talbot County Bill No. 933 conducted by the Critical Area Commission on March 24, 2004. Therefore, our Town representative who presented at that hearing, Mr. Hickson, in addition to his oral comments, submitted written testimony at that hearing.

Included in that testimony, which Mr. Hickson did not have time to adequately present in his oral comments at that hearing, is a proposal which we offer without prejudice, as an alternative to Talbot County Bill No. 933. A copy of that portion of the prepared testimony containing the proposal is enclosed herewith. This proposal has the unanimous support of the Commissioners of St. Michaels.

We believe that this proposal, if implemented by the County, would eliminate the possibility, in theory or in practice, that a town in Talbot County would be able to "hoard" growth allocation in such a manner that would prevent Talbot County from reaching the required percentage of used growth allocation necessary to apply for authorization to begin using the second half of the total amount of growth allocation allowed by law. Therefore, we believe the implementation of this proposal would eliminate the stated major reason for the County's enactment of Bill No. 933. Moreover, this proposal would allow the towns, particularly Oxford and St. Michaels, to exercise the planning and zoning powers granted to them by Article 66B of the Maryland Code.

While we are not authorized to speak for the other municipalities in Talbot County, we believe this proposal would satisfy their objections to Bill No. 933 if the proposals were enacted so as to take effect at the same time as the provisions of Bill 933.

E. 25

This offer is made without prejudice. We hope that you will give this proposal your serious consideration, and advise us of your position in that regard. If you agree that this is a viable proposal, then we request that you withdraw Bill 933 from consideration by the Critical Area Commission so that we can gain the support of all of the Talbot municipalities for this proposal, and we can then all work together in earnest to draft the legislation and implement this proposal. This offer will expire and be automatically withdrawn by a decision of the Critical Area Commission regarding Bill No. 933, unless that decision is a denial of the Bill with a recommendation that the County adopt this proposal. Thank you for your consideration.

Very truly yours,

Robert T. Snyder

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

RTS/ct
Enclosure

cc: Michael L. Pullen, Esquire w/encl.
Mayor and Council of the Town of Easton w/encl.
Christopher B. Kehoe, Esquire w/encl.
Commissioners of Oxford w/encl.
Trappe Town Council w/encl.
David R. Thompson, Esquire w/encl.

VI.
A Proposed Solution

The Commissioners Of St. Michaels fully recognize that this may not be the arena to propose a solution to a problem that is not the Commission's duty or the Town's duty to cure.

However, in an effort to save the local jurisdictions from what may be a continuing dispute, the Town offers the following proposal, including the condition that by accepting this solution no party thereto is waiving or acknowledging any interpretation or rights as far as the power to control growth allocation is concerned.

The towns would raise no objection to Talbot County "taking back" into a common pool the unused remainder of the growth allocation acreage originally reserved for the towns in the County Local Program, provided that the County Program is amended by legislation which provides as follows:

a. The unused remainder of the reserved growth allocation acreage is held in a common pool that would be available to all towns, and after the County's other growth allocation acreage is exhausted, the common pool growth allocation acreage would also be available to the County;

b. Except during the five-year regarding an annexation during which the County does not otherwise relinquish the zoning control provided by Article 23A, Section 9 (c), the decision of whether to grant growth allocation within the town, or regarding land which is the subject of a petition for annexation to the Town, will be made as it has been, solely by the towns but subject to approval by the Critical Area Commission, without any participation in the decision-making process by the County; and

c. The requirement of substantial construction for vesting be eliminated from the determination of when growth allocation acreage is used. In the alternative, include in the definition a reasonable amount of time period within which the applicant must either start construction of the project or to sign a development rights and responsibilities agreement with the town. This would need worded so that the Strausburgs have a reasonable time to preserve their growth allocation.

The Town believes that this proposal would meet the County's legitimate concerns and preserve the towns' rights.

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April 5, 2004

RECEIVED
APR
CHESAPEAKE
CRITICAL AREA COMMISSION

FOR HAND DELIVERY TO:
Critical Area Commission
For The Chesapeake And Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, Maryland 21401

FOR INCLUSION IN THE RECORD OF THE PANEL HEARING ON:
TALBOT COUNTY BILL NO. 933
Conducted on March 24, 2004

Dear Chairman Blazer, Panel Members and Staff:

Thank you again for your time and effort in the above-referenced matter. I am writing this letter on behalf of The Commissioners Of St. Michaels (hereinafter the "Town") in opposition to Talbot County Bill No. 933 (hereinafter the "Bill"). This letter is intended to be included in the record of the above-captioned matter before the record is closed on April 5, 2004, and to address and integrate some of the testimony that was presented after I testified, and to cover some of the matters that I did not have sufficient time to address at the hearing. Therefore, on behalf of the Town, in my capacity as Town Attorney, I enclose and submit herewith for the record the following documents and comments:

1. Pages 15 and 16 of my prepared testimony, submitted for the record at the March 24, 2004 hearing, in which a proposal to resolve this issue is described. **(See Exhibit 1, enclosed herewith.)**

2. Letter of this date from the Town Commissioners to the County Council, reiterating the proposal made in my written testimony of March 24, 2004. **(See Exhibit 2, enclosed herewith.)**

3. Bill 933 states that by failing to use the growth allocation acreage allotted to them by the County, the Towns of St. Michaels and Oxford could prevent the County from applying for and receiving permission to begin using the second half of the total growth allocation permitted by State law. Although the Town is not authorized to speak for all of the incorporated municipalities located within the County (the "Talbot Towns"), the Town has reason to believe that the other Talbot Towns

would accept the proposal contained in my testimony (paragraph 1 hereof) and the Commissioners' letter (paragraph 2 hereof). The implementation of that proposal would eliminate the possibility that the County would be "held hostage" at sometime in the future because one or more of the Talbot Towns is "hoarding" its allotted acres of growth allocation, thereby preventing the County from applying for and receiving permission to begin using the second half of the total growth allocation permitted by State law. This proposal would seem to be an easy solution to the "hoarding" or "veto" posed by the County as a reason for the Bill. For the record, I will note again that prior to the introduction of Bill 933 no County official or employee has ever raised any of the issues used by the County to justify the Bill with any official of the Town. Further, no County official or employee has ever sought any solution to any of those issues from the Town.

4. As you are well aware, and as referenced in my testimony and that of Mr. Duket on behalf of the Maryland Department of Planning, among other things, the Bill must be evaluated by you in terms of whether it complies with the requirements of COMAR 27.01.02.06 A (2), which states:

> Location and Extent of Future Intensely Developed and Limited Development Areas.
>
> A. Intensely developed and limited development areas may be increased subject to these guidelines:
>
> (1) The area of expansion of intensely developed or limited development areas, or both, may not exceed an area equal to ***5 percent of the county's portion*** of the resource conservation area lands that are not tidal wetlands or federally owned;
>
> (2) When planning future expansion of intensely developed and limited development areas, ***counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities***. [***Emphasis added.***]

5. Transcript of testimony at the public hearing by Mr. Larry Ducket, given at the March 24, 2004 hearing (see **Exhibit 3, enclosed herewith,** hereinafter referred to as the "Duket Transcript") on behalf of the Maryland Department of Planning. The testimony of Mr. Duket makes the following noteworthy points which lead to the conclusion that the approval of County Bill No. 933 would result in the establishment of a growth allocation process which ***does not accommodate the growth needs of the affected municipalities***, and which ***would result in a process that is contrary to the State growth strategy as implemented by numerous State laws, including*** the Economic Growth, Resource Protection, and Planning Act of 1992 (Chapter 437, Laws of Maryland, 1992); the Forest Conservation Act (codified as Subtitle 16 of Title 5 of the Natural Resources ("NR") Article); the Rural Legacy Program (codified as Subtitle 9A of Title 5 of the NR Article); and the "Smart Growth legislation" (Chapter 759, Laws of Maryland 1997, most of which was codified as Subtitle 7B of Title 5 of the State Finance and Procurement Article ("SFP") of the Annotated Code of Maryland), including Priority Funding Areas (codified

as part of Subtitle 7B of Title 5 of the SFP Article):

5.1. Mr. Duket is appearing on behalf of the Maryland Department of Planning. (Duket Transcript, page 3/lines 19 - 21.) Mr. Duket and the Maryland Department of Planning have no interest in the outcome of this matter except to see that County growth allocation laws are consistent with the State growth strategy.

5.2 Mr. Duket is knowledgeable and experienced in State growth strategy, having been involved in State growth planning for nearly 30 years. (Duket Transcript, 3/10 - 11.) Further, Mr. Duket is a former member of the Critical Area Commission, so that he is experienced in looking at these types of issues from several perspectives.

5.3 Maryland's growth, environmental protection, and funding laws work together to form a growth strategy. Since the adoption of the Critical Area law many new State laws have been enacted; the 1992 Planning Act, which applies to all State agencies and promotes eight different visions or goals for growth in the State; Forest Conservation Act, Priority Funding Areas, Rural Legacy, Smart Codes, on and on it goes. If you look at the details of each of these laws you will find that they favor growth directed to county-designated growth areas and incorporated municipalities. Indeed, these new laws reflect the same spirit as the Critical Area's growth allocation rule. Growth within municipalities that plan and zone for it should be accommodated. (Duket Transcript, 11/18 - 12/10.) (Duket Transcript, 3/13 - 15. The State growth strategy, implemented by various laws, regulations and programs, work together to direct growth towards both county designated growth areas and incorporated municipalities, which the State calls county and municipal Smart Growth and Priority Funding Areas. (Duket Transcript, 4/8 - 14.)

5.4 The Resource Conservation Area ("RCA") category limits development to only one dwelling unit per 20 acres. From a land-use planning perspective, it is unusual and economically inefficient to have land within municipalities relegated to a one dwelling unit per 20 acres standard. The Critical Area laws had the unusual, economically inefficient and apparently irreconcilable effect of applying the RCA standard (one dwelling unit per 20 acres) to all farm and forest lands located within or adjacent to municipalities. (Duket Transcript, 5/5 - 15.

5.5 When the Critical Area law was being drafted there was a lot of legitimate concern that was voiced by municipalities over the application of the RCA category to farm and forest land that was either within municipal boundaries or at its edges where growth and expansion were planned. (Duket Transcript, 10/5 - 10.) The growth allocation process was principally created to allow county and municipal governments to reconcile their comprehensive planning, zoning and capital programs with the RCA rules of the Critical Area law. (Duket Transcript, page 4/21 - 5/4.) The concerns of municipalities in particular were addressed by the rule that the counties shall have a process to accommodate the growth allocation needs of municipalities. (Duket Transcript, 10/16 - 19.)

5.6 Bill 933 would create a significant change in the manner in which Talbot County addresses the growth allocation needs of incorporated municipalities. (Duket Transcript, 4/1 - 4.) The State Department of Planning is participating in this debate because the Bill would affect growth in a way that is contrary to the State growth strategy. (Duket Transcript, 4/16 - 20.) Therefore, the Bill is of significant interest the State Department of Planning. (Duket Transcript, 4/6 - 7.)

5.7 The concern of the State Planning Department is that Bill 933, by striking reserve amounts of allocation to each town, places the County as the final decision maker for all municipal requests for growth allocation. (Duket Transcript, 7/6 - 9.) Under Council Bill 933, specific amounts of growth allocation reserved for towns would be deleted from the Talbot County Critical Area program. (Duket Transcript, 5/20 - 6/1.) As the result of Council Bill 933, the County would have approval authority over all future growth allocation requests in town. This would occur through the supplemental growth allocation process that is now part of the County's program. (Duket Transcript, 6/2 - 6/6.)

5.8 Council Bill 933 effectively makes the supplemental growth allocation process the primary and only process. (Duket Transcript, 7/17 - 19.) The supplemental growth allocation process was originally created for narrower purposes than is now contemplated by Council Bill 933. Through Council Bill 762, the supplemental growth allocation process was created, and was approved as a refinement by the Commission. It seems unlikely that the Commission would have treated such a significant change to the growth allocation process as a mere refinement were it not for the retention at that time of specific language giving growth allocation allotments to the towns. As the result of Council Bill 933, the County and a town with every applicant seeking growth allocation would use the supplemental growth allocation process was created by Council Bill 762 in a joint hearing process between the County and the town. (Duket Transcript, 6/7 - 20.) Now, in hindsight the issue of County control over municipal growth allocation should have been raised in the context of Council Bill 762; however, given that 762 retains specific allocations for each town, perhaps the issue was not as well defined as now presented in the context of Council Bill 933. We also recognize the many approved programs in other counties with similar practice. We think these programs need to be revisited. (Duket Transcript, 10/20 - 11/8.)

5.9 Contrary to COMAR 27.01.02.06 A (2), Council Bill 933 contains no decision-making criteria or standards that must be applied by the County to account for or ***accommodate municipal growth needs.*** Not even the municipal Comprehensive Plan or the municipal zoning map, nor a municipal Critical Area Program, nor a growth allocation map prepared by the town is relevant under the terms of Council Bill 933. Council Bill 933 can result in the denial of a specific bona fide, good-faith

request for growth allocation which meets the accounting and locational criteria of the Critical Area law. It appears that the Commission's growth allocation policy is consistent with Town planning and zoning laws and the Critical Area programs. ***It's difficult, if a denial should occur in such a situation, to see how that process accommodates the growth allocation needs of the towns.*** (Duket Transcript, 7/19 - 8/14.) [NOTE: See COMAR 27.01.02.06 A (2), in paragraph 4, above.]

5.10 The General Assembly has been careful to address county-municipal relationships in writing Maryland's planning, growth and environmental laws and, in doing so, ***uniformly the legislature has both preserved the sanctity of municipal land-use decisions and created laws that embody preferences for continued growth in municipalities that plan and zone for growth.*** (Duket Transcript, 9/10 - 17.) [NOTE: Maryland Code, Article 66B, grants to municipalities planning and zoning powers that are independent of the counties.]

5.11 Mr. Duket concluded by offering the assistance of the Maryland Department of Planning to the County, several towns and the Critical Area Commission to work to resolve issues that show that municipal needs for growth allocation are accommodated. (Duket Transcript, 12/11 - 15.)

6. It is undisputed in the testimony at the panel hearing that there was literally no ***coordination*** by the County ***with affected municipalities*** with regard to the establishment of the process that would be created by Bill 933. **(See Exhibit 3, enclosed herewith,** transcript of Hickson testimony.)

6.1 On October 29, 2003, the County Manager contacted the Critical Area Commission for the purpose of advising the Commission of when Bill 933 would be enacted by the County Council and would be ready for a public hearing by the Critical Commission.

6.2 Before the title (without the content) of Bill 933 appeared on the County website on Friday, November 14, 2003, the Talbot municipalities were given no indication by the County of the existence of Bill 933, or that the County perceived a problem that required the enactment of Bill 933.

6.3 Before Bill 933 was voted by the County Council to be introduced as a piece of County legislation on November 18, 2003, the Talbot municipalities were given no indication by the County of any perceived problem giving rise to Bill 933, and were not asked to participate in formulating any solution, process or legislation relating to those perceived problems.

6.4 On November 18, 2003, after the County Council voted to introduce Bill 933, despite being requested by the Town Manager of St. Michaels, a copy of Bill 933 was not made available by the County to St. Michaels. Indeed, the first time that a draft copy

of Bill 933 was made available to St. Michaels, despite persistent efforts by the Town to obtain a copy thereof, was on November 19, 2003.

6.5 On November 21, 2003, with only one day of notice, the County Council held a public meeting in which the members of the County Council chided the Commissioners of St. Michaels for even entertaining the Miles Point application for growth allocation. Without any receiving input from the Town Commissioners, and without having attended any of the previous public hearings on the application, the County Council voted unanimously at that meeting to urge the Town Commissioners to deny the Miles Point Application.

6.6 On December 1, 2003, the Talbot County Council wrote a letter to Senator Madden in his capacity as chairman of the Critical Area Commission, urging the Critical Area Commission to deny any award of growth allocation the Town of St. Michaels might make to the Midland Companies relating to the Miles Point project, citing lack of sewer capacity. The County did not mention in that letter that the County had voted to expand the treatment volume capacity and to upgrade the treatment quality of the wastewater treatment plant that serves the St. Michaels vicinity, including the area where the Miles Point project would be located.

6.7 Despite the fact that representatives of the municipalities of Oxford, St. Michaels, and Trappe appeared at the public hearings on Bill 933, conducted by the Talbot County Planning Commission (on December 2, 2003) and by the Talbot County Council (on December 16, 2003) in the legislative process, at which those municipalities requested the opportunity for a dialog with the County to learn of the perceived problems and to participate in the solutions, no such meeting or dialog was permitted by the County. The Talbot County Planning Commission recommended to the County Council that the Bill was not needed.

6.8 On December 16, 2003, at the public hearing held by the Talbot County Council, a new version of Bill 933 appeared. Changes to the Bill included the removal of three "Whereas" clauses, the addition of 11 new "Whereas" clauses, a change in the title, and other new language. Despite the fact that changes in the original justification for the Bill were publicly announced for the first time on December 16, 2003, the Council voted unanimously that the changes were "not substantial," and proceeded with the public hearing without sending the new bill back through the Planning Commission process.

The undisputed evidence is that there was no coordination by the County with the affected municipalities in establishing the process by which growth allocation would be awarded in those municipalities after the effective date, and as the result of, Bill 933. This is contrary to the requirement of COMAR § 27.01.02.06 A (2), which requires coordination with the affected municipalities in establishing a process for the awarding of growth allocation that would allow the expansion of IDA and/or LDA. Moreover, these are not the actions of a governing body that has an open mind toward the Miles Point project or has any intention of cooperating or coordinating with

the towns on these matters in the future.

7. Bill 933 is written based on the premise that unless Talbot County agrees to the contrary, a municipality in Talbot County may receive no more growth allocation than an area that is equal to five percent of the area of that town that is located within the critical area. That basic premise is erroneous, in that it is inconsistent with the established State growth strategy described by Mr. Duket in his testimony, and the many State laws that favor growth in and around exiting municipalities, cited above.

8. Bill 933 also states: "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..." This clause can only refer to the annexation and award of growth allocation relating to the Strausburg Property by the Town of St. Michaels in September of 2004. The following Town documents relating thereto (not enclosed), contain extensive findings of fact, sound reasoning, and valid land-use planning principles by the Town for its actions in annexing and awarding growth allocation relating to the Strausburg Property:

8.1 Findings Of Fact (11 pages), adopted in connection with the annexation of the Strausburg property by the Commissioners Of St. Michaels by a vote of 4 - 0 on October 14, 2003;

8.2 Findings Of Fact And Recommendations Of the St. Michaels Planning Commission To The Commissioners Of St. Michaels (37 pages), unanimously adopted by a vote of the St. Michaels Planning Commission on August 19, 2003, in connection with the award of growth allocation to the Strausburg property; and

8.3 Findings Of Fact And Decision of the Commissioners of St. Michaels (23 pages), adopted in connection with the award of growth allocation to the Strausburg property by a 4 - 0 vote of the Commissioners of St. Michaels on September 10, 2003.

The Town's planning consultant, Anthony Redman, has endorsed the Strausburg annexation , involving a 75-acre perpetual conservation easement for the Town, as being consistent with valid land-use planning principles. Mr. Redman has worked at the State level with Judge Liss and Sara Taylor Rogers in the formulating critical area criteria for development, and has served as chairman of the Planning Subcommittee of the Maryland Economic Growth Resource Protection And Planning Commission. The language directed toward the Strausburg property in Bill 933, and the vesting provisions contained in that Bill, can only be aimed at defeating the Strausburg annexation and the award of growth allocation relating thereto. Again, the formulation, drafting and enactment Bill 933 was done by the County without any consultation, dialog or request for information by the County relating to the award of growth allocation, and serves as another example of the insensitivity of the County to the requirements for coordination with the towns and the County's lack of accommodation

of the growth needs of the affected towns.

9. At the March 24, 2004 public hearing, panel member Jackson asked County Attorney Michael Pullen what would happen if there were findings of the County and the Town that were not concurrent in a growth allocation award. Mr. Pullen was asked "Who has the tie-breaker in that?" Mr. Pullen responded by admitting that Bill 933 does not address that situation and that he "hoped" the process wouldn't create a dilemma for the developer, but that it was possible that it would. However, the supplemental growth allocation process, created by County Bill 762 and made immediately applicable to all applications for growth allocation in towns by Bill 933, clearly gives the County unfettered discretion to deny an application that has been approved by a town.

10. It is apparent from the written decision of the County in approving growth allocation for the Easton Village project, under the supplemental growth allocation process, that no attention is paid by the County to any Town Of Easton criteria. It is equally clear that according to Talbot Country Code, § 190-109D(9)(d), the use of the word "may" in the opening paragraph is intended to make the award of supplemental growth allocation by the County discretionary even when all criteria are met. Part [3] of that section provides that the County Council shall evaluate the application in accordance with County Code § 190-109D(4). Nowhere in section 190-109D(9)(d) or in section 190-109D(4) is there any reference to any town criteria, town comprehensive plan, or any town land-use law or regulation. Further, section 190-109D(4) (c) says, "The fact that an application for a growth allocation district boundary amendment complies with all the specific requirements and purposes set forth in this chapter . . . is not, in itself, sufficient to require approval." Thus, the award of supplemental growth allocation, according to the County Code, is without consideration of municipal needs, criteria, and is totally discretionary. Therefore, if Bill 933 were approved, the County would be the final word with respect to award of growth allocation. In municipalities such as St. Michaels and Oxford, where a majority of their territory is within the critical area, this amounts to absolute control by the County over planning and zoning in those areas of the towns, in violation of Maryland Code, Article 66B.

11. In the final analysis, it appears that the real motivating reason for the adoption of Bill 933 by the County Council is to obtain discretionary control, and the final say, in whether growth allocation is granted within municipalities so it can defeat the award by the Town of growth allocation to the Miles Point project. That project complies with all State and Town critical area criteria, which makes good sense from a land planning perspective, and is consistent with the State's growth strategy.

12. The Town believes that Bill 933 will take from the municipalities in Talbot County their ability to grow, through infill development and through annexation, which will perpetuate the

sprawl that has been allowed by the County around St. Michaels, as shown in the attached color map titled "Area Of St. Michaels". **(See Exhibit 5, enclosed herewith.)** The type of growth shown in that map is contrary to the State growth strategy discussed by Mr. Duket.

For all of the above reasons The Commissioners Of St. Michaels respectfully urge the Critical Area Commission to reject Talbot County Bill No. 933, and send it back to Talbot County with the instruction that if the County wishes to eliminate the growth allocation specifically allotted to the municipalities, then it must do so in conjunction with the adoption of a procedure, in coordination with the affected municipalities, that accommodates the growth needs of those municipalities. Again. Thank you for your consideration of this matter.

Respectfully submitted,

H. Michael Hickson
St. Michaels Town Attorney

HMH/pjh
Enclosures

cc: Michael L. Pullen, Esquire w/encl.
Mayor and Council of the Town of Easton w/encl.
Christopher B. Kehoe, Esquire w/encl.
Commissioners of Oxford w/encl.
Trappe Town Council w/encl.
David R. Thompson, Esquire w/encl.

MEMORANDUM

TO: Council Members

FROM: Jessica Morris

DATE: April 23, 2004

RE: Letter to St. Michaels

Please be advised the attached letter was sent by Mr. Foster to Mr. Snyder on Mr. Foster's personal stationery, and not on behalf of the Talbot County Council.

/jkm
Attachment

Ex. 27

County Council of Talbot County

COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601-3178
Telephone: 410-770-8010
Telefax: 410-770-8007
TTY: 410-822-8735

PHILIP CAREY FOSTER
Council Member

E-MAIL ADDRESS
pfoster@talbgov.org

April 23, 2004

The Honorable Robert T. Snyder, President
The Commissioners of St. Michaels
P.O. Box 206
St. Michaels, Maryland 21663

Dear President Snyder:

Thank you for your letter of April 5, 2004, containing a proposal for resolving the dispute over Talbot County Bill No. 933.

As you know, Bill No. 933 passed the Council by a vote of 4 – 1. My dissenting vote was cast because of my disagreement with the wisdom of the legislation rather than from any disagreement with the authority of the Council to enact it.

All members of the County Council have reviewed your proposal and none have indicated a desire to draft legislation along the lines you suggest.

There are some practical matters associated with implementation of any proposal. The time to reconsider or veto Bill No. 933 has expired and it takes effect under the Talbot County Charter even though its enforceability may be in question until the Critical Area Commission makes a final determination.

As the member who did not agree with Bill No. 933, I am not uncomfortable with paragraph "a" of your proposal. I do, however, have concerns about some of the provisions of paragraphs "b" and "c".

It would, therefore, seem an exercise in futility to put forward a part of your proposal without knowing how many of the towns would be satisfied by doing so and without any reason to expect the concurrence of other members of the County Council.

While I appreciate the effort you have made at a compromise, I would not expect that the specific terms of your proposal will accomplish that objective.

I look forward to meeting with you on Tuesday to discuss other matters.

Very truly yours,

Philip Carey Foster
Member of Council

PCF/swm

COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND

TALBOT COUNTY GOVERNMENT BUILDING
142 N. HARRISON STREET
EASTON, MARYLAND 21601
PHONE: 410-770-8001
FAX: 410-770-8007
TTY: 410-822-8735
www.talbgov.org

PHILIP CAREY FOSTER, President
HOPE R. HARRINGTON, Vice President

PETER A. CARROLL
THOMAS G. DUNCAN
HILARY B. SPENCE

February 26, 2004

The Honorable John R. North
P.O. Box 479
Easton, Maryland 21601

RE: Bill 933

Dear Judge North:

I am enclosing herewith copies of correspondence relating to Bill 933 for your information.

Although I did not support this legislation as a matter of public policy, I believe that it is important to advocate for the ability of the Talbot County Council to make its own policy.

If you have any thoughts on the matter, I would be delighted to hear them.

Sincerely,

Philip Carey Foster
President

PCF/jkm
Enclosure

Ex. 28

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

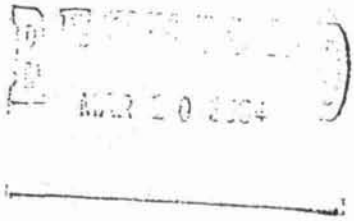
Maryland Department of Planning

Audrey E. Scott
Secretary

Florence E. Burian
Deputy Secretary

March 5, 2004

Mr. George G. Kinney
Planning Officer,
Talbot County Planning and Zoning
11 North Washington Street
Easton, MD 21601



Dear Mr. Kinney:

I appreciate the interest expressed by representatives of Talbot County in the Maryland Department of Planning's perspective on County Bill 933. I would like to reiterate the Department's willingness to meet with you, Councilman Carroll, Mr. Pullen and others to discuss the County's perspective on this Bill at your request.

The Department has met with representatives from certain municipalities in the County and learned of their position on Bill 933. We extend the offer to meet with the County as well before the Department finalizes its position.

If you decide you would like to meet with the Department, please contact me at 410. 767.0901 or Pat Goucher at 410 767.4620 and we will arrange to have the appropriate staff present. Also, for security and parking reasons we will need to have the names of all County representatives expected to participate in the meeting in advance.

Again, thank you for your interest.

Sincerely,

Tom Rimrodt
Assistant Secretary

E. 951

301 West Preston Street · Suite 1101 · Baltimore, Maryland 21201-2305
Tel: 410.767.4500 · Fax 410.767.4480 · Toll Free: 1.800.767.6272 · TTY Users: Maryland Relay
Internet: www.mdp.state.md.us

Ex. 29 075

COPY

MAR 24 20

REQUEST OF THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND	*	BEFORE THE CRITICAL AREA COMMISSION
FOR APPROVAL OF TALBOT COUNTY BILL NO. 933	*	FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS

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

TESTIMONY OF MICHAEL HICKSON
ON BEHALF OF THE COMMISSIONERS OF ST. MICHAELS

Good evening. My name is H. Michael Hickson. I am the Town Attorney for The Commissioners Of St. Michaels, a municipal corporation which is located entirely within Talbot County. I am filing with this testimony a document titled "MEMORANDUM OF LAW IN OPPOSITION TO COUNTY BILL NO. 933," and I am furnishing a copy of that document to counsel for the governmental entities represented here tonight.

I am here on behalf of The Commissioners Of St. Michaels (the "Town") to oppose Talbot County Bill No. 933 (the "Bill"), and to request that the Critical Area Commission For The Chesapeake And Atlantic Coastal Bays (hereinafter the "Commission") to reject and disapprove the Bill.

I.
The Bill Is An Amendment That Fails To Meet Statutory Requirements For Approval

The Memorandum Of Law submitted tonight on behalf of the Town cites and quotes from the critical area laws and regulations, which state that in order for you to approve an amendment to a County Critical Area Program, you first must find that the County has **cooperated and coordinated with the affected municipalities to establish a process to accommodate the growth needs of the municipalities.** Chairman Madden has correctly determined that Talbot County Bill No. 933 is an amendment to the Talbot County Critical Area Program,. Therefore, before you can consider this Bill on any other issues, you first must find evidence of the fact that it was produced as the result of cooperation and coordination with the

affected municipalities to establish a process to accommodate the growth needs of the municipalities. For that reason, I will review some of the history of the County and the towns relating to growth allocation leading up to, and including, the processing of Bill 933.

The Town is a Maryland municipal corporation whose corporate boundaries are located solely within Talbot County, Maryland. Since 1972 the Town has independently exercised the planning and zoning powers granted to it by Maryland Code, Article 66B (Land Use). Those powers exercised by the Town have resulted in the adoption and amendment of comprehensive plans, and in the enactment, administration and enforcement of zoning and subdivision laws, applied solely to land within the Town. The County has consistently exercised planning and zoning powers over land surrounding the Town that has not been subject to the Town planning and zoning powers. Thus, historically there has been a well-defined division of planning and zoning powers exercised by the Town and the County, separated by their political boundaries.

Pursuant to the legislative mandate of Section 8-1808 (a) (1), within a timely fashion thereafter, the County and the Talbot towns conferred to identify potential growth areas and to determine a quantity of growth allocation needed in the foreseeable future by each Talbot town. Thereafter, the County and each Talbot town, independently of each other, formulated and submitted its local Program to this Commission for review and approval. According to the County Program, quantities of growth allocation were reserved for each Talbot town, including 245 acres of growth allocation reserved for the Town. After this Commission approved the local critical area program for the Town (the "Town Program") it was enacted by the Town by amendments to the Town Comprehensive Plan, to the Town Zoning Ordinance, and to the Town Subdivision Ordinance. Since the establishment of the Town Program it has been implemented solely by the Town, without interference by the County, but subject to the requisite approvals by this Commission. At all times the Town Program has been intended by the Town to function independently of the County, and the county has not interfered.

The immediate effect of Bill No. 933 is to withdraw all unused growth allocation previously reserved to the towns in the County Program. The longer term effects of the Bill are

more far-reaching. The Bill has been determined by the Chairman of the Commission to be an amendment, rather than a refinement, to the County Program. *See* Nat. Res. Art., § 8-1809 (Adopting programs; periodic reviews; amendment), Subsection (n). Therefore, the proposed amendment to the County Program is subject to review by the Commission pursuant to Nat. Res. Art., § 8-1809, Subsection (i).

A.

There Has Been No Cooperation Or Coordination By The County In Amending The County Program As It Affects The Towns

One of the requirements for approval of Bill 933 is that the County cooperate and coordinate with the towns in amending the County Program as it affects the towns. The authority for this requirement is cited in the Town's Memorandum Of Law. I will address that subject.

No application for the award of growth allocation was submitted to the Town until 1997. At that time The Midland Companies ("Midland") submitted to the Town the first of its five (5) such applications for the award of growth allocation, all involving some or all of the same land in or adjacent to the Town. Seventy-two acres of that land was within the Town and the subject of a 1980 annexation agreement in which specific zoning was agreed to and granted, and certain development was contemplated. Therefore, while the Town had the duty to apply the applicable critical area criteria to any application for growth allocation relating to that land, because of the 1980 annexation agreement the Town had less than the normal discretion to deny growth allocation for that land if all criteria were satisfied. Shortly thereafter the Chesapeake Bay Maritime Museum submitted to the Town an application for the award of growth allocation, but that application was ultimately withdrawn. During the period from 1997 through the spring of 2002, three of the five Midland applications for the award of growth allocation were submitted to the Town, processed, and denied by the Town. Each of those denials was appealed by Midland through the judicial system, and the Town defended each of its decisions through the judicial process. Further, at the conclusion of that litigation, at the urging of Maryland Conflict Resolution Office ("MACRO"), a branch of the Maryland Attorney General's office, the Town promoted non-binding arbitration between Town citizen representatives and Midland. MACRO

funded that arbitration, which resulted in some common ground being reached by the participants. In the spring of 2003, the Town Commissioners conducted a public workshop with Midland, in which a more specific group of common goals was identified and publicly announced. The entire Midland process cost the Town well in excess of $1 million, and was highly publicized by frequent news accounts appearing in the local daily newspaper. The point is, that at no during the five years of the Town's expensive and all-consuming disputes with Midland, did the County take any action, publicly or otherwise, to indicate to the Town that County was going to do anything that would relieve the Town of the ability to grant the growth allocation sought by Midland. To the contrary, in March of 2000 the County informed the Town that recent changes to the County's Program did not impact the Town, and that the Town continued to have the sole power, under the County Program, to award the 245 acres of reserved growth allocation. Based on that information, the Town ultimately concluded that it should set about the task of working with Midland toward a formulation of a development plan that was the most satisfactory to the Town, including issues of density, design, and critical area criteria. As long as it appeared to the County that St. Michaels was not going to grant growth allocation to midland, the county was content to let the Town fight the fight and spend its taxpayers' money on expensive processing and litigation.

In the meantime, in the late spring of 2003 a third applicant, the Strausburgs, submitted their application for the award of growth allocation to the Town, in conjunction with a petition for annexation. The Strausburg development plan involves use of the annexed land substantially the same as specified in the County comprehensive plan. Late in 2003 approximately 20 acres of growth allocation was awarded to the Strausburgs. The Strausburg application and the Town decision relating thereto were forwarded to this Commission, where the award of growth allocation, including a 75 acre perpetual forest conservation easement donated to the Town by the applicant, was reviewed and approved. Since then, all conditions of the Strausburg annexation have been waived, so that the annexation of the Strausburg property to the Town is complete.

While the Strausburg application and annexation were being processed, the Midland matter was also making progress. The fourth Midland application for growth allocation, involving a proposed project referred to as "Miles Point II", was submitted to the Town in September of 2003. The Miles Point II application included approximately 70 acres of the land that was annexed to the Town in 1980, and 18 acres of land located immediately outside of, but proposed to be annexed into, the Town. The public hearing process for the Miles Point II application by the Town Planning Commission lasted from late September through early November of 2003. It was apparent from comments of some members of the Town Planning Commission during that process that the Miles Point II application was likely to receive a favorable recommendation to the Town Commissioners. On November 24, 2003, the Town Planning Commission issued a written recommendation to the Town Commissioners in favor of awarding growth allocation for the Miles Point II.

During the late stages of the Miles Point II proceedings at the Town Planning Commission, after it was apparent that the Miles Point II application for growth allocation was receiving far more favorable comments and reaction than previous applications, Bill 933 publicly appeared for the first time on Friday, November 14, 2003, only as a title in a County website. Upon inquiry by the Town to the County, copies of the Bill were not available, and no details on its content were provided. At a public meeting of the County council on November 18, with the Bill still unavailable to the public, the County Council introduced the Bill and referred it to the County Planning Commission for a public hearing. At that time it was stated that Bill 933 was necessary for the County to have enough growth allocation to award supplemental allocation to the Town Easton. Three days later, the County Council held a hastily convened workshop in which the members of the County Council chided the Commissioners of St. Michaels for entertaining the Midland Growth Allocation request and voted unanimously to urge the Commissioners to deny the Midland application.

Although the towns knew nothing about it until the last week, records of the Critical Area Commission staff document the following contacts have occurred from Talbot County, indicating that the County produced a Bill in the nature of what we are reviewing tonight, or at

least had thought enough about it enough to know there was going to be such a Bill, without any contact or participation by the towns. Those records indicate the following contacts:

October 29, 2003 The County Manager called this Commission's Executive Director and informed him that the Bill would be introduced on November 18 or 25, that there would be a public hearing on December 16 or 23, that the Bill would be voted on in late December or early January, and that the bill would be to this Commission in January.

November 19, 2003 County councilman Carroll called this Commission's Executive Director about growth allocation regarding Midlands and Easton, and suggested a conference with the County Attorney.

November 24, 2003 There was a conference call with the County Manager.

November 24, 2003 There was a meeting about growth allocation between several Commission staff members and County Councilman Carroll, the County Manager, the County Attorney, and the County Planner. They discussed taking all growth allocation from the towns.

On December 1, 2003, a letter was sent from the Talbot County Council to Senator Madden, urging the Commission to deny any award of growth allocation the Town of St. Michaels might make to Midland, citing lack of sewer capacity. The County letter does not mention the scheduled sewer plant expansion and upgrade, but cites the outdated plants statistics relating to the current sewer treatment plant.

On December 2, 2003, the County Planning Commission conducted a public hearing on the Bill. At that hearing representatives of three of the towns appeared and testified against the Bill, urging that before any such legislation should be introduced that there should be some dialog between the County and the towns, in which the perceived problem and possible solutions are revealed and discussed, to get input from the towns. The Talbot County Planning Commission recommended to the County Council that Bill 933 be withdrawn, as it is unnecessary, and urged the Council to talk to the towns about a compromise in the distribution of Growth Allocation acreage. The County Planning Commission also noted that the language of

the Bill was incorrect, and that the County does have sufficient acreage to award supplemental growth allocation to Easton without taking it from the other towns.

On December 16, 2003, the County Council conducted a public hearing on a revised version of the Bill. The revised version, revealed to the public for the first time at that hearing, had a different name, different rationale and numerous changes to the text compared to the version reviewed by the County Planning Commission. The County Council voted to declare that the revised version did not contain any substantive changes from the version previously introduced by the County Council and heard by the County Planning Commission. At that hearing town representatives appeared and requested a dialogue with the County Council and Planning Commission to discuss the problem and find a better solution. At that same meeting the County Council voted to deny the Town's request that the County expressly relinquish County's five-year zoning control, pursuant to Maryland Code, Article 23A, Section 9 (c), over the 18 acres recently annexed to the Town, and which was part of the Miles Point II application for growth allocation. The fact that the Miles Point II application included 18 acres newly annexed to the Town made the Miles Point II application subject to the condition that the land be rezoned to a classification that is inconsistent with the existing County comprehensive plan with the County's express consent. The fact that the County council refused to give that consent made it legally impossible for the Town to rezone that newly annexed land for five years. Therefore, Midland withdrew the Miles Point II application.

On December 23, 2003, the County Council voted to enact the Bill, to take effect 60 days after its enactment; that is, February 22, 2004. After the enactment of Bill 933 by the County Midland promptly submitted its fifth application to the Town for the award of growth allocation. The fifth application ("Miles Point III") included only acreage from the Miles Point II application that was annexed to the Town in 1980. Thus, all of the land that was the subject of the Miles Point III application had been within the Town for 24 years, and was the subject of the 1980 annexation agreement. The Miles Point III application has since been the subject of a public hearing by the Town Planning Commission, resulting in a favorable recommendation to

the Town Commissioners. The Town Commissioners issued their approval of the Miles Point III application by written decision dated February 19, 2003.

Except for the public hearings conducted by the County Planning Commission and by the County Council that are required by law to enact any County laws of this nature, no officer, appointee or employee of the County has made any contact with the Talbot towns to inform the towns that the County Council perceived a problem with the County Program, to inform the towns of the nature of the perceived problem, to inform the towns as to how the County proposed to address the perceived problem, or to solicit suggestions from the towns for a solution to the perceived problem. **No meeting or discussion between any County representative and any of the towns relating to Bill 933, or any of the proposed changes in the County Program, has ever been suggested or participated in by any County representative before these Bills were enacted by the County.**

It appears from these events that when the County determined that a Midland application for growth allocation might be approved by St. Michaels, then the County quickly produced this legislation to take control of the growth allocation so that St. Michaels could not grant growth allocation without the County's consent.

All of the above actions of the County regarding growth allocation and the proposed amendment of the County Program can only be characterized as the antithesis of the coordination and cooperation required by the critical area laws and regulations in the amendment of a county program.

B.

Bill 933 Does Not Accommodate Growth Needs Of The Affected Municipalities

Another requirement for approval is that Bill 933 accommodate growth needs of the affected municipalities. The authority for this requirement is cited in the Town's Memorandum Of Law. I will address that subject.

Several years ago the Talbot County Code was amended to provide that when a town has exhausted the amount of growth allocation originally reserved to that town according to the Talbot County critical area program (the "County Program") as originally enacted and approved by the Commission, that town must thereafter seek supplemental growth allocation from the Talbot County Council (the "County Council") for any additional growth allocation that is to be awarded by that town. Instead of making a common pool of growth allocation available to all the towns and the County, for each jurisdiction to use by independently judging the applications that come to that jurisdiction, according to Bill 933 the County Council will sit as an independent judge of all applications for growth allocation within the towns, and effectively have the veto power if a town votes to award growth allocation. According to the County Program, the County Council is required to apply the County Comprehensive Plan and County criteria, and has the complete discretion to deny an application for growth allocation relating to land within a town even if all criteria are met. If the County Council participates in the judgment of whether growth allocation is granted within a town, there is no requirement that the County consider the town's comprehensive plan, laws or criteria for the award of the growth, and the County Council has the power to deny growth allocation despite the decision by the town government. Therefore, based on the significant area of St. Michaels and Oxford located within the critical area, and to a lesser extent in other towns, the County would effectively exercise planning and zoning control over land within the municipalities.

Bill No. 933, which repeals a number of current provisions in the County Code that constitute a part of the County Program, has the practical effect of withdrawing, or taking back, from the Talbot towns all of the unused growth allocation that was previously reserved to them by the County Program. Therefore, according to the Bill, all future applications for growth allocation involving land within a town would follow the procedures established for the award of supplemental growth allocation. Under the County Program, when seeking supplemental growth allocation from the Talbot County (the "County"), both the town governing body and the County Council sit in judgment of the application for growth allocation, with each body making its decision independently of the other. The County Council would apply some criteria contained in the County Program that is not contained in the town criteria, such as compatibility with the

County comprehensive plan. According to the County Program, if either governmental body fails to approve an application for supplemental growth allocation, then that application is considered denied.

In St. Michaels, over 68 percent of the land currently within the Town is located in the critical area, and over 84 percent of the undeveloped land within the Town is located in the critical area. The Town estimates that well more than one-half of the land within the Town of Oxford is located within the critical area. Therefore, in St. Michaels and in Oxford the withdrawal of all unused growth allocation from those towns would have the effect of immediately transferring ultimate planning and zoning authority over a significant part of those towns from the respective town governments to the County government.

According to the County Program, the process for the awarding of supplemental growth allocation by the County Council is discretionary even when all criteria are met. Therefore, the supplemental growth allocation process gives the County Council a "seat at the table" to negotiate with any applicant for supplemental growth allocation within a town for benefits to the County in exchange for the award by the County of supplemental growth allocation. This could cause the County, and the town in which supplemental growth allocation is being sought, to have conflicting or competing interests, which would affect on whether an application receives approval.

Further, according to revised language of Bill 933, unused growth allocation would include that growth allocation previously awarded by the towns in cases where the recipient has not obtained "vested rights" in the growth allocation by actually commencing substantial construction of improvements on the land pursuant to the development plan that was the subject of the application for growth allocation. The requirement of vested rights is obviously aimed at the growth allocation awarded to the Strausburg property, being mentioned in the Bill and being the only case in which growth allocation was awarded but unused at that time.

Based on the above facts, it cannot reasonably be said that the intent of the County or the effects of Bill 933 will be to accommodate growth needs of the affected municipalities based on: (1) the lack of communication by the County with the towns in drafting and processing Bill 933; (2) the manner in with the County has both (a) withheld assistance to St. Michaels in its time of need with Midland, and (b) worked behind the scene against the direction in which St. Michaels is now moving with growth allocation for Midland; (3) the total withdrawal of all reserved growth allocation from the towns, which requires the towns to seek supplemental growth allocation from the County on a case-by-case basis; (4) the failure of the supplemental growth allocation procedures of the County Program to require that the County Council address town criteria and needs; (5) the purely discretionary power given to the County Council in the supplemental growth allocation procedures of the County Program; and (6) the ultimate control over planning and zoning within the towns given to the County Council in the supplemental growth allocation procedures of the County Program. Therefore, Bill No. 933 lacks a second essential requirement for approval by this commission under the State critical area laws and regulations.

II.
The Bill Illegally Takes Planning And Zoning Powers From The Towns

The County is apparently relying on State critical area law as its authority or excuse to take from the towns, and to exercise, planning and zoning power within the towns. Article 66B, Section7.05 simply means that if there is a conflict between Article 66B and the critical areas law, either directly in the language or as the result of the way the critical area law is being applied, that Article 66B prevails over the critical area law.

By its language Bill 933 indicates that it is intended as a vehicle for the County to take planning and zoning powers from the towns. The second from the last "whereas" clause of the Bill states:

> WHEREAS, growth in and around the towns affects not only the particular town, but also the County as a whole, and the County should, therefore, have some ability to protect the County's legitimate interests as they are affected by development in the critical area, as contemplated by State law when it gave this

control to the counties under the Chesapeake Bay Critical Area Protection Program, § 8-1801, *et seq.*, Md. Ann. Code. . . .

There is nothing in the Chesapeake Bay Critical Area Protection Program of the Natural Resources Article to indicate that growth allocation was intended by the Legislature to shift the power of planning and zoning within the municipalities of the State from those municipalities to the counties. Even if that was the stated intent in the critical area law, that law is pre-empted by Article 66B.

Under State law, the zoning authority within municipal is granted exclusively to municipalities by Maryland Code, Article 66B. Any State or local law contrary to the proposition that planning and zoning powers within a municipality are within the exclusive control of such municipality is addressed in Article 66B, Section 7.05, which states as follows:

> Except as otherwise provided in this article, ***any law or ordinance that is inconsistent with or contrary to the provisions of this article is repealed to the extent of the inconsistency.*** [***Emphasis added.***]

Therefore, to the extent that Bill 933, or any of the County Program, is used to take planning and zoning powers from the towns within their own territory, Bill 933 and the County Program are illegal and unenforceable. Therefore, you should not approve Bill 933.

III.
Bill No. 933 Makes The Award Of Growth Allocation Within Towns More Difficult Than The Award Of Growth Allocation Outside Of Towns

In addition the critical area laws and regulations that indicate that growth should occur in and around municipalities, other Maryland laws and State policies promote growth and development within and around municipalities. Article 66B indicates that in rural areas, such as Talbot County, growth should be directed to municipalities. In that regard Maryland Code, Article 66B, Section 1.01 (***Visions***), states, in part:

> In addition to the requirements of § 3.05(c) of this article, ***a commission shall implement the following visions*** through the [comprehensive] plan described in § 3.05 of this article:
>
> (3) ***In rural areas, growth is directed to existing population centers*** and resource areas are protected.

[*Emphasis added.*]

The Smart Growth initiatives, adopted by the previous State administration, promoted the idea that growth and development should occur in and around municipalities and villages to make the construction and operation of infrastructure more economical and to preserve agricultural and natural resources. The Talbot County Council adopted the Smart Growth concepts in its recent decision approving supplementary growth allocation for the Easton Village project. (See copy of the Talbot County Council's Easton Village decision attached to the Town Memorandum Of Law.)

The policy that growth and development should occur within or around established municipalities and villages, on October 8, 2003, Governor Ehrlich issued Executive Order 2003.33, announcing the Maryland Priority Places Strategy, which Order states, in part:

> A. Established. There shall be a ***Maryland Priority Places Strategy***. The Strategy shall be developed and ***implemented by the Maryland Department of Planning***.
>
> B. Purpose. The Strategy shall be to identify specific State actions that will be undertaken and definitive procedures that will be instituted ***to accomplish the following objectives:***
>
> (1) ***Achieve the established goals of State planning policy and local comprehensive plans for development, economic growth, community revitalization, and resource conservation;***
>
> (2) Accomplish these diverse goals through mutually supportive means; and
>
> (3) ***Promote fiscal responsibility of State government to achieve the best "public return" on State investments in these goals.***
>
> C. The Maryland Priority Places Strategy shall be ***based on:***
>
> (1) ***The eight statewide visions*** [contained in Art. 66B, § 1.01 (Visions)] ***of State Planning Policy for Economic Growth, Resource Protection and Planning established in the Economic Growth, Resource Protection and Planning Act of 1992;***
>
> (2) ***The Priority Funding Areas Act of 1997*** [codified in the Maryland Code, State Finance And Procurement Art., Division I (State Finance), Title 5 (State Planning), Subtitle 7b (Priority Funding Areas)]; ***and***
>
> (3) Existing State and ***local planning requirements, comprehensive plans, regulations, powers,*** and processes.
>
> D. ***The Maryland Department of Planning shall implement the Maryland Priority Places Strategy by developing initiatives to accomplish the following:***

(1) Ensure that State programs, regulations and procedures, and funds are used strategically to achieve the goals of local comprehensive plans and State planning policy and ***provide for the infrastructure necessary to support planned growth***;

(2) Better enforce existing laws, regulations and procedures that are designed to ensure mutually supportive public investments and actions;

(3) ***Streamline State regulations and procedures to make quality, well designed growth easier to build inside Priority Funding Areas***;

(4) Identify key plans and functions of State government that affect growth and development and make appropriate changes to those plans and functions to better support the goals of the Maryland Priority Places Strategy;

(5) ***Encourage resource protection and production outside of the Priority Funding Areas*** for environmental protection, recreation, tourism, forestry, and agricultural purposes; and

(6) Enhance existing brownfield cleanup and redevelopment, transit oriented development, and community revitalization efforts.

[***Emphasis added.***]

County Bill No. 933 and the County Program are contrary to the above-referenced State laws and policies because they immediately require weighing of evidence, interpretation of criteria, and approval by two governmental bodies, making complication and/or denial more likely.

In short, the effects of Bill 933 are neither necessary nor appropriate to accommodate growth within the Talbot towns. Moreover the Bill frustrates other Maryland laws and policies.

IV.
Bill No. 933 Was Enacted For Purposes Unrelated To The Critical Area Laws

As a condition of the award of growth allocation for Easton Village the County Council exacted from the developer an "offer" to pay $1± million, or to perform work worth an equivalent amount, for off-site improvements to Glebe Road. That exaction may lack the essential nexus to the impacts of the Easton Village project upon the County, and/or that may lack the roughly proportionality thereto, required by the United State Supreme Court in cases on that subject. In any event, that exaction has no relationship to the criteria for the award of growth allocation. Given the fact that Bill No. 933 reserves for the County Council the

discretion to deny any request for the award of supplementary growth allocation despite the fact that all criteria therefore are met, Bill No. 933 lacks the reasonable necessity for the protection of the public health, welfare and safety. Such unbridled discretion in the County Program leads to the possibility that Bill No. 933 is intended as a vehicle for the County to make more exactions similar to that in the case of Easton Village, which are unrelated to the purposes of the State critical area laws.

V.
There Is No Demonstrated Need For Bill No. 933 To Be Operative Prior To Commission Approval Or To Require Exercising The Award

Bill 933 is worded such that it is intended to take effect 60 days after its passage by the County council, and to negate any award of growth allocation awarded by a town and approved by this Commission if no construction has begun pursuant to such award and approval of growth allocation before the effective date of Bill No. 933. The Town urges that the award of growth allocation by the Town for the Strausburg property is a valuable asset for the Town, and should not hinge on the start of construction at any time other than as provided in the decision of the town awarding growth allocation. Therefore, even if the Commission determines to approve Bill No. 933, other than to control the Town's prior annexation, planning and zoning decisions relating to the Strausburg annexation and award of growth allocation, there is no demonstrated need for it to take effect before it is approved by the Commission, or to in effect negate prior awards of growth allocation. Further, the requirement of substantial construction to vest rights in an award of growth allocation will only promote immediate construction when that may not necessarily be desirable in each case. Moreover, the County has ignored the power of municipalities to contractually grant vested rights by means of a development rights and responsibilities agreement pursuant to the power granted by Maryland Code, Art. 66B, § 13.01.

VI.
A Proposed Solution

The Commissioner Of St. Michaels fully recognize that this may not be the arena to propose a solution to a problem that is not the Commission's duty or the Town's duty to cure. However, in an effort to save the local jurisdictions from what may be a continuing dispute, the

Town offers the following proposal, including the condition that by accepting this solution no party thereto is waiving or acknowledging any interpretation or rights as far as the power to control growth allocation is concerned.

The towns would raise no objection to Talbot County "taking back" into a common pool the unused remainder of the growth allocation acreage originally reserved for the towns in the County Local Program, provided that the County Program is amended by legislation which provides as follows:

a. The unused remainder of the reserved growth allocation acreage is held in a common pool that would be available to all towns, and after the County's other growth allocation acreage is exhausted, the common pool growth allocation acreage would also be available to the County;

b. Except during the five-year regarding an annexation during which the County does not otherwise relinquish the zoning control provided by Article 23A, Section 9 (c), the decision of whether to grant growth allocation within the town, or regarding land which is the subject of a petition for annexation to the Town, will be made as it has been, solely by the towns but subject to approval by the Critical Area Commission, without any participation in the decision-making process by the County; and

c. The requirement of substantial construction for vesting be eliminated from the determination of when growth allocation acreage is used. In the alternative, include in the definition a reasonable amount of time period within which the applicant must either start construction of the project or to sign a development rights and responsibilities agreement with the town. This would need worded so that the Strausburgs have a reasonable time to preserve their growth allocation.

The Town believes that this proposal would meet the County's legitimate concerns and preserve the towns' rights.

CONCLUSION

For each of the reasons stated above, any one of which would be legally and factually sufficient to do so, The Commissioners Of St. Michaels urge that the Critical Area Commission For The Chesapeake And Atlantic Coastal Bays DISAPPROVE of Talbot County Bill No. 933 in its entirety. Failing that, the Town urges that the effect of the amendments not be applied retrospectively or requiring substantial construction to vest rights in the award of growth allocation.

Respectfully submitted,

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

TOWN OF ST. MICHAELS
PERCENT OF TOWN LAND, SUBDIVIDABLE LAND, IN THE CRITICAL AREA
1/13/04

000019

E. 969

Description of Land Area	Total Town Acreage (includes river bottoms) (in acres)	Town Acreage (exclusive of river bottom) (in acres)	Town Land in Critical Area (in acres)	Town Land in Critical Area (by %)	Total Undeveloped Subdividable Land In Town (in acres)	Undeveloped Subdividable Land In Critical Area (in acres)	Undeveloped Subdividable Land In Critical Area (by %)
Town as of 2001	529.000	529.000	351.907	66.52%	85.4	83.2	97.4%
Strausburg Property (exclusive of Broad Creek Bottom annexed and Route 33)	136.391	136.391	100.988	74%	136.391	100.988	74%
Md. Route 33 annexed w/Strausburg land	8.395	8.395	0	0	N/A	N/A	N/A
State owned wetlands annexed w/Strauburg	0.823	0.823	0.823	100%	N/A	N/A	N/A
Bed of Broad Creek annexed with Strausburg	13.275		0	0	N/A	N/A	N/A
Hunteman Property (exclusive of Miles River Bottom annexed)	17.156	17.156	17.156	100%	17.156	17.156	100%
Bed of Miles River annexed with Hunteman	24.910		0	0	N/A	N/A	N/A
TOTAL	729.905	691.765	470.874	**68.068%**	238.9	201.35	**84.3%**

CRITICAL Area Commission

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

MEMBERS OF THE PANEL:

Gary Setzer, Chair

Judith Evans

Joseph Jackson

Dave Blazer

Edwin Richards

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

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

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

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

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

About that time the Town ran out of steam, the Town ran out of money, the Town ran out

7

of determination.

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

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

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

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

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be made about it.

So we are in a situation now where the

former representatives to the Critical Area Commission -- the three are Bill Corkran, Doctor -- come on head -- Doctor Shepard Krech and Paul Jones, Esquire, all had authorized me to say that they would vote against granting growth allocation in this instance.

Thank you very much.

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

Critical Area Commission

PANEL REPORT
May 5, 2004

APPLICANT:	Talbot County
PROPOSAL:	County Council Bill 933 Review and Reallocation of Growth Allocation for the Towns
COMMISSION ACTION:	Vote
COMMISSION PANEL:	Dave Blazer (Chairman), Bill Giese, Joe Jackson, Ed Richards and Gary Setzer
PANEL RECOMMENDATION:	Pending Panel Discussion
STAFF:	Ren Serey
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article §8-1809 (h)

DISCUSSION:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- The applicable sections of the Critical Area Law and Criteria governing growth allocation.

- The effect of Bill 933 on other approved Critical Area Programs, program amendments, or program refinements.

- The interpretation of the growth allocation provisions of COMAR 27.01.02.06.A, particularly the provision that states, "When planning future expansion of intensely

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

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

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

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

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

1. To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

2. To conserve fish, wildlife, and plant habitat; and

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

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

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

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

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

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

Critical Area Commission

SUPPLEMENT TO PANEL REPORT
May 5, 2004

APPLICANT:	Talbot County
PROPOSAL:	Comprehensive Review of Local Program, County Council Bill 933
COMMISSION ACTION:	Vote
PANEL MEMBERS:	Dave Blazer (Chairman), Gary Setzer, Bill Giese, Joe Jackson and Ed Richards
PANEL RECOMMENDATION:	Deny
STAFF:	Ren Serey
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article §8-1809 (j)

DISCUSSION:

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

The basis for the motion is as follows:

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

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

Critical Area Commission

SUPPLEMENT TO PANEL REPORT
May 5, 2004

APPLICANT:	Town of St. Michaels
PROPOSAL:	Miles Point III Growth Allocation Request
COMMISSION ACTION:	Vote
PANEL MEMBERS:	Gary Setzer (Chairman), Dave Blazer, Judith Evans, Joe Jackson and Ed Richards
PANEL RECOMMENDATION:	Pending Panel Discussion
STAFF:	Mary Owens, Lisa Hoerger
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article §8-1809 (j)

DISCUSSION:

The Panel has discussed the Miles Point III Growth Allocation Request in regard to the consistency of the request with the goals of the Critical Area Act and the Commission's Criteria as required by NR Article 8-1809 (j).

The Panel recommends approval of 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 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 Town and the Commission and their respective staffs. The Stormwater Management Plan shall be reviewed and approved by the Commission.

TALBOT COUNTY OFFICE OF PLANNING & ZONING

COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601

PHONE: 410-770-8030

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

Bill 933

December 3, 2003

MEMORANDUM

TO: Members of the Talbot County Planning Commission

FROM: George Kinney, Planning Officer

SUBJECT: Review and recommendation to County Council
Zoning Ordinance Text Amendment

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" §190-109D(11).

{This Bill was introduced by Council on November 18, 2003 and is currently scheduled for public hearing}

Nature of the Request

Consistent with §190-109D(11), the attached Bill serves to review and reallocate the number of reserved growth allocation acres originally afforded to the Towns of Oxford, Easton and St. Michaels. The Bill was prepared by the County Attorney and introduced by County Council on November 18, 2003. Consistent with §190-109A, the Planning Commission must review the legislation and provide a recommendation to Council.

Staff Comments

In 1989, the County was originally awarded 1,213 acres from the Critical Area Commission for growth allocation. From that acreage, 155 acres were awarded to the Town of Easton, 195 acres to the Town of Oxford and 245 acres to the Town of St. Michaels. The remaining 618 acres remained with the County. As currently written and upon adoption, this Bill would recapture remaining acreage from the Towns and require them to approach the County in the event growth allocation is necessary for a specified Town project. This change would afford the County the opportunity to involve itself in the development process and further help to achieve the 90% threshold necessary to request additional allocation acreage from the Critical Area Commission.

Ex. 33

Additional considerations and/or modifications are still being developed with respect to this legislation and it is not clear at this time whether Town projects will retain the growth allocation necessary to support existing project proposals. As such, the attached Bill may not be identical to the one Council will consider for public hearing. Staff recognizes that it will be difficult for the Planning Commission to thoroughly review this proposal and suggests that the Commission may wish to discuss the matter further and/or pursue a joint meeting with the Towns should the opportunity presents itself.

RAFT

TALBOT COUNTY OFFICE OF PLANNING & ZONING

COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601

PHONE: 410-770-8030

FAX: 410-770-8043
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Bill 933

December 3, 2003

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FROM: George Kinney, Planning Officer

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COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2003 Legislative Session

Date of Introduction: _____

Bill No. 933

Expiration Date: _____

Introduced by: _____

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).

By the Council _____

Introduced, read first time, ordered posted, and public hearing scheduled on _____ at _____ p.m. at the County Council Chambers, 142 North Harrison Street, Easton, Maryland 21601.

By Order _____
Secretary

A BILL TO REVIEW AND REALLOCATE THE NUMBER OF RESERVED ACRES OF GROWTH ALLOCATION ALLOCATED AMONG THE TOWNS FOR REZONING IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 190, TALBOT COUNTY CODE, "ZONING" § 190-109 D. (11).

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

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

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

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

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

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

WHEREAS, the Town of Easton has requested 156 acres of supplemental growth allocation and has enacted Ordinance No. 461 to approve a Planned Unit Development. Part of that planned development requires the County to grant the Town's application for 58.80 acres of growth allocation for reclassification from Resource Conservation Area (RCA) to Limited Development Area (LDA) and 97.20 acres of growth allocation for reclassification from RCA to Intensely Developed Area (IDA); and

WHEREAS, the County currently has a total of 316.229 acres of growth allocation available to rezone from RCA to LDA. The Town of Easton is requesting 58.80 acres, which, if granted, would reduce the County's remaining growth allocation under the current ordinance in this category to 257.429 acres; and,

WHEREAS, the total amount of IDA growth allocation available for the entire county is 128 acres. The 1989 projection reserved 24 acres for the Town of Easton and 36 acres for the County, totaling less than the 97.20 acres of IDA growth allocation requested by the Town in their current application. Therefore, to grant the Town of Easton's pending request for an award of supplemental growth allocation requires the County to withdraw IDA growth allocation from other towns and reallocate growth allocation under § 190-109 D 10 (b). In light of that, and because of the foregoing, the lack of any continuing usefulness, or validity, of the 1989 maps and projections, for any purpose, is now evident.

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

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
~~Strikethrough~~	*Deleted from existing law by original bill*
* * *	*Existing law unaffected.*

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

* * *

§ 190-109 D (9)

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

* * *

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

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

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

§ 190-109 D (11)

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

* * *

§ 190-109 D (14)

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

§ 190-109 D (15)

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

§ 190-109 D (16)

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

SECTION 2. Effective Date and Severability; legislative intent.

1. Vested Rights: Effective Date of Zoning Text Amendments

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

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

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

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

2. Severability.

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

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

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. _____ having been published, a public hearing was held on _____.

BY THE COUNCIL

Read the third time.

ENACTED _____

By Order _____
Secretary

Duncan - _____
Harrington - _____
Foster - _____
Spence - _____
Carroll - _____

TOWN GROWTH ALLOCATION REQUESTS

PROJECT NAME	JURISDICTION	MAP NO.	PARCEL NO.	ACREAGE
Papermill Crossing	Easton	34	218	6.620
Londonderry	Easton	34	93	21.722
Easton Club	Easton	34	122	119.000
Bachelor's Point C96	Oxford	53	86	13.223
Bachelor's Point	Oxford	53	86	2.000
Cookes Hope, Phases 4&5	Easton	42	56&242	36.42
Broad Reach Farm, Strausburg	St.Michaels	23	46	20.1
				219.085
				198.985

Town of Easton
MARYLAND

RECEIVED
MAR 24 2004
CHESAPEAKE BAY
CRITICAL AREA COMMISSION

March 24, 2004

The Honorable Martin G. Madden, Chairman
Critical Area Commission For the Chesapeake and Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, Maryland 21401

Re: Talbot County Bill Number 933

Dear Senator Madden:

The purpose of this letter is to express the views of the Town of Easton regarding the pending proposal of Talbot County to amend its Critical Area zoning regulations to abrogate the allotment of Growth Allocation acreage to municipalities within the County. The issue before the Commission at this point is whether or not the Commission should approve Bill 933 as an amendment to the County's Critical Area zoning regulations. We are aware that a number of entities, most prominently, the Towns of Oxford and Saint Michaels, and the Department of State Planning have expressed, or intend to express, their views regarding Bill 933. Our comments will focus on two areas: first, the advantages and disadvantages of the current growth allocation procedure which Easton and the County currently utilize to award growth allocation within Easton and, second, some of the implications of Bill 933, if approved by the Commission.

As the County has pointed out to the Commission[1], in 2000, the County Council amended the Talbot County Zoning Ordinance to provide for a procedure by which Talbot

[1] Letter from Philip Carey Foster, President of the Talbot County Council, to the Honorable Martin G. Madden dated February 4, 2004.

County could award growth allocation to projects in Easton on a case-by- case basis. The legislation (Talbot County Bill 762) is now codified as Section 190-109.D. (9)(d). As Mr. Foster indicated in his letter, the Talbot County Zoning Ordinance now provides for a system of joint hearings by the County and Town Planning and Zoning Commissions and the County and Town Councils. Mr. Foster goes on to state that "Easton and the County have used this joint review repeatedly, effectively and cooperatively, with excellent results."

The joint growth allocation award process has been used twice on significant projects. The first was Phases 4 and 5 of "Cooke's Hope Village" in Easton. This matter, which involved 36.42 acres, was approved by the Town of Easton and the County Council after a joint hearing process. (The Town's records do not reflect that the award of growth allocation ever received approval from the Commission.) The second time the joint review process was used was for the "Easton Village" project referred to in Mr. Foster's letter. This project was reviewed and approved by the two jurisdictions in 2002 and 2003.

While the process worked for Easton Village in the sense that the project eventually obtained approval from both the Town and the County Councils, the process did not reflect close cooperation between the Town and the County on either a procedural or a substantive basis. While the County Council participated in the joint hearing with the Town Council, the County Council also held a subsequent, separate public hearing on the application before granting the allocation. Thus the applicant was subject to an additional two months delay. The County Council also held separate negotiations with the developer of the project as a result of which the developer agreed to pay $1,000,000 to the County for road improvements as a condition to the grant of growth allocation.

From the Town's perspective, the Easton Village process had a "successful" outcome because the Town will obtain the benefits of an extremely well-planned and environmentally sensitive residential development and the County will receive $1,000,000 towards road improvements. It is important to bear in mind that this "success" occurred because, and only because, the developer was willing to agree to a substantial monetary exaction in order to gain approval of the project. The fact that a particular developer is unusually compliant does not demonstrate the efficacy of the joint review process.

In summary, while the joint review process outlined in the County's Zoning Ordinance *permits* joint consultation and cooperation between the County Council and a municipality, it certainly doesn't *require* it, as the Easton Village application itself demonstrates.

However, the fact that the joint application process works well in Easton, or doesn't work well in Easton, is not the point. The real issue is whether the County can, or should, unilaterally take away growth allocation which had been allocated to Oxford and Saint Michaels

for years in order to improve its bargaining position in obtaining exactions from developers in municipalities or imposing conditions upon such developments.[2] It is clear that the attempt by the County to reserve to itself the power to imposes conditions and limitations on land use projects within municipal boundaries is at variance with every notion of appropriate relations between counties and municipalities in this State.

The Town of Easton recognizes that Talbot County faces difficult fiscal challenges. It agrees whole-heartedly with the principle that municipalities and the County should work together to address issues of raised by future development in the County and the towns. But Bill 933, which unilaterally eliminates the long-standing allotments of Growth Allocation acreage for Saint Michaels and Oxford, is hardly a means to accomplish this result.

Very truly yours,

John F. Ford
President, Easton Town Council

cc: Mayor and Council of Easton
Michael L. Pullen, Talbot County Attorney
David R. Thompson, Attorney, Town of Oxford
H. Michael Hickson, Esquire, Attorney, Saint Michaels

[2] Section 190-109 D(9)(d) of the County Zoning Ordinance, which gives the County Council the authority to grant supplemental growth allocation within a municipality purports to authorize the County Council to "impose such conditions, restrictions and limitations upon the use of such supplemental growth allocation, if any, as the County may consider appropriate."

ORIGINAL

EXCERPT

MEETING OF A PANEL

OF

THE STATE OF MARYLAND

CRITICAL AREA COMMISSION

FOR THE

CHESAPEAKE AND ATLANTIC COASTAL BAYS

(Talbot County Bill 933)

Testimony of Larry Duket

Maryland Department of Planning

Date: Wednesday, March 24, 2004

Time: 7:00 p.m.

Location: Easton High School
Easton, Maryland

Reported by. David M. Schafer, AA, CCR

Ex. 35
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EXHIBIT
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E. 995

MEMBERS OF THE PANEL:

Dave Blazer, Chair

William Giese

Joseph Jackson

Gary Setzer

Edwin Richards

Marianne Mason, Assistant Attorney General

MR. DUKET: How are you doing, Mr. Chairman, ladies and gentlemen of the panel, staff, counselor. For the record, I'm Larry Duket of the Maryland Department of Planning.

And I know what's going through your heads; here comes State Planning again.

But I want you all to think about the Critical Area law, but I want you to think about a little bit more than the Critical Area law.

I've been involved in State growth planning for nearly 30 years now. And if I had a couple hours to explain it all, you'd be amazed at how well all of our growth and environmental protection and funding laws fit together to form a pretty good growth strategy for Maryland.

I'm going to go ahead and read this statement rather than just speak extemporaneously, just to get this over with.

The Maryland Department of Planning appreciates the opportunity to offer comments on Council Bill 933.

The Bill would create a significant change in the manner in which Talbot County addresses the growth allocation needs of incorporated municipalities, or towns as they've been referred to tonight.

The bill is of significant interest to this department because it comes at a time when the State is committing its planning functions, its regulatory programs, its funding, its technical assistance and its capital programming in furtherance of directing growth towards both county designated growth areas and incorporated municipalities, which we now call County and Municipal Smart Growth and Priority Funding Areas, if you will.

With the current governor's Priority and Places initiative, this department is committed to participate in the debate on issues fundamental to the implementation of a sound growth strategy for Maryland.

E. 998

The growth allocation process was

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principally created to allow county and municipal governments to reconcile the comprehensive planning, zoning and capital programs with the new resource conservation rules of the Critical Area law.

The RCA category limits development to only one dwelling unit per 20 acres. From a land-use planning perspective it's unusual and economically inefficient to have land within municipalities relegated to one dwelling unit per 20 acres standard. Yet the Critical Area RCA had this effect on farm and forest lands not yet having public water and sewer that were located within municipalities, within municipal growth boundaries and on adjacent lands eligible for municipal annexation.

Municipal governments in particular when the law was being written were given assurances in the Critical Area law that their need for growth allocation would be accommodated.

E. 999

Under Council Bill 933 specific amounts of growth allocation reserved for towns would be

deleted from the Talbot County Critical Area program and consequently the County will have approval authority over all future growth allocation requests in town. This would occur through the supplemental growth allocation process that is now part of the County's program.

This process was really originally created for narrower purposes through Council Bill 762, the supplemental growth allocation process, and was approved as a refinement by the Commission, I believe circa 2000.

Looking back on it, it seems unlikely that in 2000 the Commission would have treated such a significant change to the growth allocation process as a mere refinement were it not for the retention at that time of specific language giving allocations to the town.

E. 1000

Under Council Bill 933, the County and a town with an applicant seeking growth allocation would use a joint hearing process to ostensibly assure that both municipal and county planning and

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growth issues are considered. And, as a matter of fact, this department supports the use of tools and processes that promote interjurisdictional coordination and cooperation, and appreciates that this is the primary goal of Council Bill 933.

Our concern, however, is that 933, by striking reserve amounts of allocation to each town, places the County as the final decision maker for all municipal requests for growth allocation.

Now, the County's process for accommodating the needs of municipalities for growth allocation should not operate as a blank check for towns. That's not what we are saying; that is, we do not believe that the rule calls for municipalities to always get what they purport to need.

But Council Bill 933 effectively makes the supplemental growth allocation process the primary and only process, and contains no decision-making criteria or standards to account for or accommodate municipal growth needs. Not even the

E. 1001

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municipal Comprehensive Plan or the municipal zoning map, nor a municipal Critical Area Program, nor a growth allocation map prepared by the town is relevant under the terms of Council Bill 933.

Council Bill 933 can result in the denial of a specific bona fide, good-faith request for growth allocation which meets the accounting and locational criteria of the Critical Area law. It appears that the Commission's growth allocation policy is consistent with Town planning and zoning laws and the Critical Area programs. It's difficult, if a denial should occur in such a situation, how that process accommodates the growth allocation needs of the towns.

Now I'm going to throw you a curve ball here because I want to talk about the Regional District Act just for a second just to clarify something.

E. 1002

Under the Regional District Act certain incorporated municipalities in Prince George's and Montgomery Counties are under the zoning authority

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of their respective counties because these municipalities have never been given the authority by the General Assembly to exercise their own zoning powers. That set aside, the concept of county control over municipal land-use decisions is not contemplated in Maryland's planning and zoning law. County and municipal planning and zoning programs are created on equal, separate and, at times, competitive footings. No mystery.

And the General Assembly has been careful to address county-municipal relationships in writing Maryland's planning, growth and environmental laws and, in doing so, uniformly the legislature has both preserved the sanctity of municipal land-use decisions and created laws that embody preferences for continued growth in municipalities that plan and zone for growth.

E. 1003

Even in that case where municipal annexation of land previously under county jurisdiction occurs the General Assembly has created a pretty clear rule that says that the county can

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control the zoning the municipal wants to put on there for five years, but after five years there is no longer any county control over municipal land use or zoning.

Now, when the Critical Area law was being drafted there was a lot of legitimate concern that was voiced over the application of the RCA category to farm and forest land that was either within municipal boundaries or at its edges where growth and expansion were planned. Such concerns were based on property interests, public infrastructure investments, long-range capital plans and professional land planning principles, but these concerns were answered very clearly by the creation of the growth allocation law.

The concerns of municipalities in particular were addressed by the rule that the counties shall have a process to accommodate the growth allocation needs of municipalities.

E. 1004

Now, in hindsight the issue of county control over municipal growth allocation should have

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been raised in the context of Council Bill 762; however, given that 762 retains specific allocations for each town, perhaps the issue was not as well defined as now presented in the context of Council Bill 933.

We also recognize the many approved programs in other counties with similar practice. We think these programs need to be revisited. Perhaps this can be evaluated during the six-year review process or perhaps it needs to be evaluated sooner if municipalities report to you they are not being accommodated.

Now, much has changed since the first generation of the Critical Area programs. The Commission and local governments know more, they have greater experience with much of the detail and technical nature of the Critical Area law and the criteria. And also since the adoption of the Critical Area law many new State laws have been enacted; the 1992 Planning Act, which applies to all State agencies and promotes eight different visions

or goals for growth in the State; Forest Conservation Act, Priority Funding Areas, Rural Legacy, Smart Codes, on and on it goes. If you look at the details of each of these laws you will find that they favor growth directed to county-designated growth areas and incorporated municipalities. Indeed, these new laws reflect the same spirit as the Critical Area's growth allocation rule. Growth within muni that plan and zone for it should be accommodated.

The Maryland Department of Planning offers its assistance to the County, several towns and the Critical Area Commission to work to resolve issues that show that municipal needs for growth allocation are accommodated.

I thank you for your attention. If there's any questions, I'll be glad to try to answer them.

PANEL MEMBER BLAZER: Thank you, Mr. Duket.

E. 1006

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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.

DAVID M. SCHAFER NOTARY PUBLIC MY COMMISSION EXPIRES AUG. 2006 WICOMICO COUNTY, MD

E. 1007

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Maryland Department of Planning

Ehrlich, Jr.
ernor

Michael S. Steele
Lt. Governor

Audrey E. Scott
Secretary

Florence E. Burian
Deputy Secretary

TO: Critical Area Commission Panel for Talbot County

FROM: Larry F. Duket,
Maryland Department of Planning

RECEIVED
MAR 24 2004
CRITICAL

SUBJ: Statement of the Maryland Department of Planning
Re: Talbot County Council Bill 933

DATE: March 24, 2004

INTRODUCTION

The Maryland Department of Planning appreciates the opportunity to offer comments on Talbot County's Council Bill 933. The Bill would create a significant change in the manner in which Talbot County addresses the growth allocation needs of incorporated municipalities (towns).

The Bill is of significant interest to this Department because it comes at a time when the State is committing its planning functions, regulatory programs, funding, technical assistance, and capital programs in furtherance of directing growth towards county-designated growth areas and incorporated municipalities (county and municipal "smart growth" and "priority funding" areas, if you will). With the Governor's Priority Places initiative, this Department is committed to participating in the debate on issues fundamental to the implementation of a sound growth strategy for Maryland.

The growth allocation process was principally created to allow county and municipal governments to reconcile their comprehensive planning, zoning, and capital programs with the new Resource Conservation Area (RCA) rules of the Critical Area law. The RCA category limited development to one dwelling unit per 20 acres. From a land use planning perspective, it is unusual and economically inefficient to have land within municipalities relegated to a one dwelling unit per 20 acre standard. Yet, the Critical Area RCA had this effect on farm and forest lands not yet having public water and sewer that were located within municipalities, within municipal growth boundaries, and on adjacent lands eligible for annexation. Municipal governments, in particular, were given assurances in the Critical Area law that their need for growth allocation would be accommodated.

301 West Preston Street · Suite 1101 · Baltimore, Maryland 21201
Telephone: 410.767.4500 · Fax: 410.767.4480 · Toll Free: 1.877.767.6272 · TTY Users: Maryland Relay
Internet: www.MDP.state.md.us

COUNCIL BILL 933

Under CB-933, specific amounts of growth allocation reserved for towns would be deleted from the Talbot County Critical Area Program. Consequently, the County will have approval authority over all future growth allocation requests in towns. This would occur through the supplemental growth allocation process that is now part of the County's Program. This process was originally created for narrower purposes by CB-762, "supplemental" growth allocation, and was approved as a refinement by the Commission in 2000. It seems unlikely that, in 2000, the Commission would have treated such a significant change to the growth allocation process as a mere refinement, were it not for the retention at that time of specific language giving allocations to the towns.

Under CB-933, the County, and a town with an applicant seeking growth allocation, would use a joint hearing process to ostensibly ensure that both municipal and county planning and growth issues are considered. This Department supports the use of tools and processes that promote interjurisdictional coordination and cooperation, and appreciates that this is the primary goal of CB-933. Our concern is that CB-933, by striking reserved amounts of allocation for each town, places the County as the final decision-maker for all municipal requests for growth allocation.

A county's process for accommodating the needs of municipalities for growth allocation should not operate as a blank check for towns. That is, we do not believe the rule calls for municipalities to always get what they purport to need. But CB-933 effectively makes the supplemental growth allocation process the "primary and only" process and contains no decision-making criteria or standards to account for or accommodate municipal growth needs. Not even the municipal comprehensive plan or zoning map is relevant under the terms of CB-933. Council Bill 933 can result in the denial of a specific, bona-fide, good faith request for growth allocation which meets the accounting and location criteria of the Critical Area law, adheres to the Commission's Growth Allocation Policy, and is consistent with town planning and zoning laws and town Critical Area Programs. It is difficult to understand how that process accommodates the growth allocation needs of the towns.

Under the Regional District Act, certain incorporated municipalities in Prince George's and Montgomery Counties are under the zoning authority of their respective county because these municipalities have never been given the authority to exercise their own zoning powers. That aside, the concept of county control over municipal land use decisions is not contemplated in Maryland planning and zoning law. County and municipal planning and zoning programs are created on equal, separate, and, at times, competitive footings. And the General Assembly has been careful to address county-municipal relationships in writing Maryland's planning, growth, and environmental laws. In doing so, the Legislature has both preserved the sanctity of municipal land use decisions and created laws that embody preferences for continued growth in municipalities that plan and zone for growth. Even in the case of municipal annexation of land previously under county jurisdiction, the General Assembly has limited the

County's control over land use decisions on annexed land to a five year period following the date of annexation.

When the Critical Area law was being drafted, much legitimate concern was voiced over the application of the RCA category to farm and forest land that was either within municipal boundaries or at its edges, where growth and expansion were planned. Such concerns were based on property interests, public infrastructure investments, long range capital plans, and professional land planning principles. These concerns were answered by the creation of growth allocation (growth increment) in the law. The concerns of municipalities, in particular, were addressed by the rule that the counties shall have a process to accommodate the growth allocation needs of the municipalities.

On hindsight, the issue of County control over municipal growth allocation should have been raised in the context of CB-762. Given that CB-762 retained specific allocations for each town, perhaps the issue was not as well defined as now presented in the context of CB-933. Also, there may be approved Programs in other counties with a similar practice; we think these Programs need to be revisited. Perhaps this can be evaluated during the six year review process, and perhaps it needs to be evaluated sooner if municipalities report to you that they are not being accommodated.

Much has changed since the first generation of Critical Area Programs. The Commission and local governments know more and have greater experience with much of the detail and technical nature of the Critical Area law and Criteria. Many new State laws have been enacted since then: the 1992 Planning Act, the Forest Conservation Act, Priority Funding Areas, Rural Legacy, Smart Codes, and so on. Each of these new laws favors growth directed to county-designated growth areas and incorporated municipalities. These new laws reflect the same spirit as the Critical Area law: growth within municipalities that plan and zone for it, is to be accommodated.

The Maryland Department of Planning offers its assistance to the County, the several towns, and the Critical Area Commission to work to resolve issues to ensure that municipal needs for growth allocation are accommodated. Thank you for the opportunity to offer our views on this important matter.

REQUEST OF THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND	*	BEFORE THE CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS
FOR APPROVAL OF TALBOT COUNTY BILL NO. 933	*	

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

MEMORANDUM OF LAW IN OPPOSITION TO COUNTY BILL NO. 933

The Commissioners Of St. Michaels (the "Town"), a municipal corporation located entirely within Talbot County, by its attorney, H. Michael Hickson, respectfully files this Memorandum Of Law in opposition to Talbot County Bill No. 933, in addition to the written testimony filed and the oral comments made on behalf of the Town at the panel hearing of the Critical Area Commission For The Chesapeake And Atlantic Coastal Bays (hereinafter the "Commission"). In addition to the prepared written testimony to be filed herewith, the Town relies on the oral comments of its representatives at the hearing in support hereof. The Town hereby respectfully requests that the Commission DENY approval sought by Talbot County for its Bill No. 933. The applicable law, and the reasons why Talbot County Bill No. 933 should be denied, are discussed herein.

I.
FACTUAL BACKGROUND

The Commissioners Of St. Michaels (hereinafter the "Town") is a Maryland municipal corporation whose corporate boundaries are located solely within Talbot County, Maryland. Since 1972 the Town has independently exercised the planning and zoning powers granted to it by Maryland Code, Article 66B (Land Use). Those powers exercised by the Town have resulted in the adoption and amendment of comprehensive plans, and in the enactment, administration and enforcement of zoning and subdivision laws, applied solely to land within the Town.[1] The County has consistently exercised planning and zoning powers over land surrounding the Town that has not been subject to the Town planning and zoning powers.

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[1] The Town exercised planning and zoning powers over an extra-territorial area within the County pursuant to a State law until that law was declared invalid. *See Gordon v. Commissioners of St. Michaels*, 278 Md. 128, 359 A.2d 543 (1976).

Ex. 37

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The Critical Area laws were first enacted by the State in 1984. Natural Resources Art., Section 8-1801 (Legislative findings), (a) (9) recognizes that 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 . . . [Bay] and [its] tributaries so as to minimize damage to water quality and natural habitats." [***Emphasis added.***] Natural Resources Article, Section 8-1801, Subsection (b), states:

> (b) It ***is the purpose of the General Assembly in enacting this subtitle:***
>
> (1) To establish a Resource Protection Program for the Chesapeake and the Atlantic Coastal Bays and their tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize damage to water quality and 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. [***Emphasis added.***]

The Critical Area laws empowered the Commission to adopt criteria for local programs, but limited the ability of the Commission to make substantive changes in such criteria that has previously been adopted. Those limitations are to prevent substantive amendments to the criteria by the Commission that would frustrate compliance therewith by the local governments and thereby "upset the ***cooperative endeavor*** between the State and the local governments that is ***at the heart of the legislation.***" [***Emphasis added.***] 73 Opinions of the Attorney General (1988) [Opinion No. 88-001]; and 72 Opinions of the Attorney General (3), (3) (1987) [Opinion No. 87-016, at 5]. *See* Nat. Res. Art., § 8-1801 (b) (2).

Following the theme of cooperation to accomplish the purposes of the Critical Area laws established by Section 8-1801, (b) (2), the Commission adopted a regulation, designated as COMAR 27.01.02.06 A, which states, in part:

> Location and Extent of Future Intensely Developed and Limited Development Areas.
>
> A. ***Intensely developed and limited development areas may be increased subject to these guidelines:***
>
> (2) When planning future expansion of intensely developed and limited development areas, ***counties, in coordination with affected municipalities, shall establish a process to***

accommodate the growth needs of the municipalities. ***[Emphasis added.]***

Maryland Code, Natural Resources Article, Section 8-1808, (Program development, implementation and approval), Subsection (a) (1), states:

> (a) (1) It is the intent of this subtitle that ***each local jurisdiction shall have primary responsibility for developing and implementing a program***, subject to review and approval by the Commission. ***[Emphasis added.]***

Pursuant to the legislative mandate of Section 8-1808 (a) (1), within a timely fashion thereafter, the County and the Talbot towns conferred to identify potential growth areas and to determine a quantity of growth allocation needed in the foreseeable future by each Talbot town. Thereafter, the County and each Talbot town, independently of each other, formulated and submitted its local Program to this Commission for review and approval. According to the County Program, quantities of growth allocation were reserved for each Talbot town, including 245 acres of growth allocation reserved for the Town. After this Commission approved the local critical area program for the Town (the "Town Program") it was enacted by the Town by amendments to the Town Comprehensive Plan, to the Town Zoning Ordinance, and to the Town Subdivision Ordinance. Since the establishment of the Town Program it has been implemented solely by the Town, without interference by the County, but subject to the requisite approvals by this Commission. At all times the Town Program has been intended by the Town to function independently of the County, and the county has not interfered.

The immediate effect of Bill No. 933 is to withdraw all unused growth allocation previously reserved to the towns in the County Program. The longer term effects of the Bill are more far-reaching. The Bill has been determined by the Chairman of the Commission to be an amendment, rather than a refinement, to the County Program. *See* Nat. Res. Art., § 8-1809 (Adopting programs; periodic reviews; amendment), Subsection (n). Therefore, the proposed amendment to the County Program is subject to review by the Commission pursuant to Nat. Res. Art., § 8-1809, Subsection (i).

A.
There Has Been No Cooperation Or Coordination By The County

In Amending The County Program As It Affects The Towns

No application for the award of growth allocation was submitted to the Town until 1997. At that time The Midland Companies ("Midland") submitted to the Town the first of its five (5) such applications for the award of growth allocation, all involving some or all of the same land. Seventy-two acres of that land was within the Town and the subject of a 1980 annexation agreement in which specific zoning was agreed to and granted, and certain development was contemplated. Therefore, while the Town had the duty to apply the applicable critical area criteria to any application for growth allocation relating to that land, because of the 1980 annexation agreement the Town had less than the normal discretion to deny growth allocation for that land if all criteria were satisfied. Shortly thereafter the Chesapeake Bay Maritime Museum submitted to the Town an application for the award of growth allocation, but that application was ultimately withdrawn. During the period from 1997 through the spring of 2002, three of the five Midland applications for the award of growth allocation were submitted to the Town, processed, and denied by the Town. Each of those denials was appealed by Midland through the judicial system, and the Town defended each of its decisions through the judicial process. Further, at the conclusion of that litigation, at the urging of Maryland Conflict Resolution Office ("MACRO"), a branch of the Maryland Attorney General's office, the Town promoted non-binding arbitration between Town citizen representatives and Midland. MACRO funded that arbitration, which resulted in some common ground being reached by the participants. In the spring of 2003, the Town Commissioners conducted a public workshop with Midland, in which a more specific group of common goals was identified and publicly announced. The entire Midland process cost the Town well in excess of $1 million, and was highly publicized by frequent news accounts appearing in the local daily newspaper. The point is, that at no during the five years of the Town's expensive and all-consuming disputes with Midland, did the County take any action, publicly or otherwise, to indicate to the Town that County was going to do anything that would relieve the Town of the ability to grant the growth allocation sought by Midland. To the contrary, in March of 2000 the County informed the Town that recent changes to the County's Program did not impact the Town, and that the Town continued to have the sole power, under the County Program, to award the 245 acres of reserved growth allocation. Based on that information, the Town ultimately concluded that it should set about the task of working with

Midland toward a formulation of a development plan that was the most satisfactory to the Town, including issues of density, design, and critical area criteria.

In the meantime, in the late spring of 2003 a third applicant, the Strausburgs, submitted their application for the award of growth allocation to the Town, in conjunction with a petition for annexation. The Strausburg development plan involves use of the annexed land substantially the same as specified in the County comprehensive plan. Late in 2003 approximately 20 acres of growth allocation was awarded to the Strausburgs. The Strausburg application and the Town decision relating thereto were forwarded to this Commission, where the award of growth allocation, including a 75 acre perpetual forest conservation easement donated to the Town by the applicant, was reviewed and approved. Since then, all conditions of the Strausburg annexation have been waived, so that the annexation of the Strausburg property to the Town is complete.

While the Strausburg application and annexation were being processed, the Midland matter was also making progress. The fourth Midland application for growth allocation, involving a proposed project referred to as "Miles Point II", was submitted to the Town in September of 2003. The Miles Point II application included approximately 70 acres of the land that was annexed to the Town in 1980, and 18 acres of land located immediately outside of, but proposed to be annexed into, the Town. The public hearing process for the Miles Point II application by the Town Planning Commission lasted from late September through early November of 2003. It was apparent from comments of some members of the Town Planning Commission during that process that the Miles Point II application was likely to receive a favorable recommendation to the Town Commissioners. On November 24, 2003, the Town Planning Commission issued a written recommendation to the Town Commissioners in favor of awarding growth allocation for the Miles Point II.

During the late stages of the Miles Point II proceedings at the Town Planning Commission, after it was apparent that the Miles Point II application for growth allocation was receiving far more favorable comments and reaction than previous applications, Bill 933 publicly appeared for the first time on Friday, November 14, 2003, only as a title in a County website.

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Upon inquiry by the Town to the County, copies of the Bill were not available, and no details on its content were provided. At a public meeting of the County council on November 18, with the Bill still unavailable to the public, the County Council introduced the Bill and referred it to the County Planning Commission for a public hearing. At that time it was stated that Bill 933 was necessary for the County to have enough growth allocation to award supplemental allocation to the Town Easton. Three days later, the County Council held a hastily convened workshop in which the members of the County Council chided the Commissioners of St. Michaels for entertaining the Midland Growth Allocation request and voted unanimously to urge the Commissioners to deny the Midland application.

Although the towns knew nothing about it until the last week, records of the Critical Area Commission staff document the following contacts have occurred from Talbot County, indicating that the County produced a Bill in the nature of what we are reviewing tonight, or at least had thought enough about it enough to know there was going to be such a Bill, without any contact or participation by the towns. Those records indicate the following contacts:

October 29, 2003 The County Manager called this Commission's Executive Director and informed him that the Bill would be introduced on November 18 or 25, that there would be a public hearing on December 16 or 23, that the Bill would be voted on in late December or early January, and that the bill would be to this Commission in January.

November 19, 2003 County councilman Carroll called this Commission's Executive Director about growth allocation regarding Midlands and Easton, and suggested a conference with the County Attorney.

November 24, 2003 There was a conference call with the County Manager.

November 24, 2003 There was a meeting about growth allocation between several Commission staff members and County Councilman Carroll, the County Manager, the County Attorney, and the County Planner. They discussed taking all growth allocation from the towns.

On December 1, 2003, a letter was sent from the Talbot County Council to Senator Madden, urging the Commission to deny any award of growth allocation the Town of St.

Michaels might make to Midland, citing lack of sewer capacity. The County letter does not mention the scheduled sewer plant expansion and upgrade, but cites the outdated plants statistics relating to the current sewer treatment plant.

On December 2, 2003, the County Planning Commission conducted a public hearing on the Bill. At that hearing representatives of three of the towns appeared and testified against the Bill, urging that before any such legislation should be introduced that there should be some dialog between the County and the towns, in which the perceived problem and possible solutions are revealed and discussed, to get input from the towns. The Talbot County Planning Commission recommended to the County Council that Bill 933 be withdrawn, as it is unnecessary, and urged the Council to talk to the towns about a compromise in the distribution of Growth Allocation acreage. The County Planning Commission also noted that the language of the Bill was incorrect, and that the County does have sufficient acreage to award supplemental growth allocation to Easton without taking it from the other towns.

On December 16, 2003, the County Council conducted a public hearing on a revised version of the Bill. The revised version, revealed to the public for the first time at that hearing, had a different name, different rationale and numerous changes to the text compared to the version reviewed by the County Planning Commission. The County Council voted to declare that the revised version did not contain any substantive changes from the version previously introduced by the County Council and heard by the County Planning Commission. At that hearing town representatives appeared and requested a dialogue with the County Council and Planning Commission to discuss the problem and find a better solution. At that same meeting the County Council voted to deny the Town's request that the County expressly relinquish County's five-year zoning control, pursuant to Maryland Code, Article 23A, Section 9 (c), over the 18 acres recently annexed to the Town, and which was part of the Miles Point II application for growth allocation. The fact that the Miles Point II application included 18 acres newly annexed to the Town made the Miles Point II application subject to the condition that the land be rezoned to a classification that is inconsistent with the existing County comprehensive plan with the County's express consent. The fact that the County council refused to give that consent

made it legally impossible for the Town to rezone that newly annexed land for five years. Therefore, Midland withdrew the Miles Point II application.

On December 23, 2003, the County Council voted to enact the Bill, to take effect 60 days after its enactment; that is, February 22, 2004. After the enactment of Bill 933 by the County Midland promptly submitted its fifth application to the Town for the award of growth allocation. The fifth application ("Miles Point III") included only acreage from the Miles Point II application that was annexed to the Town in 1980. Thus, all of the land that was the subject of the Miles Point III application had been within the Town for 24 years, and was the subject of the 1980 annexation agreement. The Miles Point III application has since been the subject of a public hearing by the Town Planning Commission, resulting in a favorable recommendation to the Town Commissioners. The Town Commissioners issued their approval of the Miles Point III application by written decision dated February 19, 2003.

Except for the public hearings conducted by the County Planning Commission and by the County Council that are required by law to enact any County laws of this nature, no officer, appointee or employee of the County has made any contact with the Talbot towns to inform the towns that the County Council perceived a problem with the County Program, to inform the towns of the nature of the perceived problem, to inform the towns as to how the County proposed to address the perceived problem, or to solicit suggestions from the towns for a solution to the perceived problem. **No meeting or discussion between any County representative and any of the towns relating to Bill 933, or any of the proposed changes in the County Program, has ever been suggested or participated in by any County representative before these Bills were enacted by the County.**

It appears from these events that when the County determined that a Midland application for growth allocation might be approved by St. Michaels, then the County quickly produced this legislation to take control of the growth allocation so that St. Michaels could not grant growth allocation without the County's consent.

All of the above actions of the County regarding growth allocation and the proposed amendment of the County Program can only be characterized as the antithesis of the coordination and cooperation required by the Critical area laws and regulations in the amendment of a county program.

B.

Bill 933 Does Not Accommodate Growth Needs Of The Affected Municipalities

Several years ago the Talbot County Code was amended to provide that when a town has exhausted the amount of growth allocation originally reserved to that town according to the Talbot County critical area program (the "County Program") as originally enacted and approved by the Commission, that town must thereafter seek supplemental growth allocation from the Talbot County Council (the "County Council") for any additional growth allocation that is to be awarded by that town. Instead of making a common pool of growth allocation available to all the towns and the County, for each jurisdiction to use by independently judging the applications that come to that jurisdiction, according to Bill 933 the County Council will sit as an independent judge of all applications for growth allocation within the towns, and effectively have the veto power if a town votes to award growth allocation. According to the County Program, the County Council is required to apply the County Comprehensive Plan and County criteria, and has the complete discretion to deny an application for growth allocation relating to land within a town even if all criteria are met. If the County Council participates in the judgment of whether growth allocation is granted within a town, there is no requirement that the County consider the town's comprehensive plan, laws or criteria for the award of the growth, and the County Council has the power to deny growth allocation despite the decision by the town government. Therefore, based on the significant area of St. Michaels and Oxford located within the critical area, and to a lesser extent in other towns, the County would effectively exercise planning and zoning control over land within the municipalities.

Bill No. 933, which repeals a number of current provisions in the County Code that constitute a part of the County Program, has the practical effect of withdrawing, or taking back, from the Talbot towns all of the unused growth allocation that was previously reserved to them by the County Program. Therefore, according to the Bill, all future applications for growth

allocation involving land within a town would follow the procedures established for the award of supplemental growth allocation. Under the County Program, when seeking supplemental growth allocation from the Talbot County (the "County"), both the town governing body and the County Council sit in judgment of the application for growth allocation, with each body making its decision independently of the other. The County Council would apply some criteria contained in the County Program that is not contained in the town criteria, such as compatibility with the County comprehensive plan. According to the County Program, if either governmental body fails to approve an application for supplemental growth allocation, then that application is considered denied.

In St. Michaels, over 68 percent of the land currently within the Town is located in the critical area, and over 84 percent of the undeveloped land within the Town is located in the critical area. The Town estimates that well more than one-half of the land within the Town of Oxford is located within the critical area. Therefore, in St. Michaels and in Oxford the withdrawal of all unused growth allocation from those towns would have the effect of immediately transferring ultimate planning and zoning authority over a significant part of those towns from the respective town governments to the County government.

According to the County Program, the process for the awarding of supplemental growth allocation by the County Council is discretionary even when all criteria are met. Therefore, the supplemental growth allocation process gives the County Council a "seat at the table" to negotiate with any applicant for supplemental growth allocation within a town for benefits to the County in exchange for the award by the County of supplemental growth allocation. This could cause the County, and the town in which supplemental growth allocation is being sought, to have conflicting or competing interests, which would affect on whether an application receives approval.

Further, according to revised language of Bill 933, unused growth allocation would include that growth allocation previously awarded by the towns in cases where the recipient has not obtained "vested rights" in the growth allocation by actually commencing substantial construction of improvements on the land pursuant to the development plan that was the subject

of the application for growth allocation. The requirement of vested rights is obviously aimed at the growth allocation awarded to the Strausburg property, being mentioned in the Bill and being the only case in which growth allocation was awarded but unused at that time.

Based on the above facts, it cannot reasonably be said that the intent of the County or the effects of Bill 933 will be to accommodate growth needs of the affected municipalities based on: (1) the lack of communication by the County with the towns in drafting and processing Bill 933; (2) the manner in with the County has both (a) withheld assistance to St. Michaels in its time of need with Midland, and (b) worked behind the scene against the direction in which St. Michaels is now moving with growth allocation for Midland; (3) the total withdrawal of all reserved growth allocation from the towns, which requires the towns to seek supplemental growth allocation from the County on a case-by-case basis; (4) the failure of the supplemental growth allocation procedures of the County Program to require that the County Council address town criteria and needs; (5) the purely discretionary power given to the County Council in the supplemental growth allocation procedures of the County Program; and (6) the ultimate control over planning and zoning within the towns given to the County Council in the supplemental growth allocation procedures of the County Program. Therefore, Bill No. 933 lacks a second essential requirement for approval by this commission under the State critical area laws and regulations.

II.
ARGUMENT

A.
The Bill Is An Amendment That Fails To Meet The Statutory Standard

Natural Resources Article, Section 8-1809, Subsection (j), states:

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

Therefore, the reasonable implication of Section 8-1809 (j) is that an amendment to a local program cannot be approved unless it meets such standards and criteria. *Guardian Life Ins. Co. of America v. Insurance Com'r of State of Md.*, 293 Md. 629, 446 A.2d 1140 (1982).

One requirement for approving the amendments effected by Bill 933, according to Natural Resources Article, Section 8-1809, Subsection (j), is satisfying the standards set forth in Natural Resources Article, Section 8-1808 (Program development, implementation and approval), Subsection (b), which states, in part:

> (b) A program shall consist of those elements which are ***necessary or appropriate***:
>
> (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. [***Emphasis added.***]

As will be discussed subsequently in this Memorandum, the County lacks the power to lawfully enact any planning, zoning or subdivision laws that would be effective within the Talbot towns because those powers are granted by law to the municipalities by Maryland Code, Article 66B. Further, the Bill would have the effect of taking away from the Talbot towns the power that they now have to use the growth allocation that is presently reserved to them according to the County Program. Presently, with respect to applications for unused reserved growth allocation involving land that has been annexed to the town for more than five years, the dual approval process, involving the County and the town in which the subject land is located, does not apply. Therefore, because a recommendation for supplemental growth allocation would not need to be sought from the County Planning Commission, and because a majority of the County Council would not have to vote to award supplemental growth allocation, it is now easier to obtain growth allocation within a town than it would be if the Bill is approved by the Commission. Therefore, it cannot reasonably be said that the Bill would accommodate growth. On the contrary, the Bill would make obtaining growth allocation, which is a requirement for growth in the critical area, more difficult than it is now.

Another requirement for approving the amendments effected by Bill 933, according to Natural Resources Article, Section 8-1809, Subsection (j), is satisfying the criteria adopted by the Commission under Nat. Res. Art. § 8-1808. One such criterion is set forth in COMAR

("Code of Maryland Regulations") 27.01.02.06 A (2), which requires that intensely developed and limited development areas may be increased pursuant to a process ***"to accommodate the growth needs of the municipalities"*** established by the County "***in coordination with affected municipalities***". [***Emphasis added.***]

The County Program, as proposed to be amended by the Bill, does not meet the growth needs of the Town. Moreover, to this date the County has not made any inquiry of the Town seeking to learn about its growth needs.

According to the way in which Bill 933 was developed by the County, without the knowledge or input of the most affected towns, one cannot reasonably conclude that the terms of the Bill were arrived at by any coordination by the County with the affected towns. *See* this Memorandum Of Law, Section I (Factual Background). Suddenly changing a basic component of the County Program, without consultation or input, thereby placing the towns under the absolute control of the County, indicates the antithesis of "the ***cooperative endeavor*** between the State and the local governments that is ***at the heart of the legislation***," described in 73 Opinions of the Attorney General (1988) [Opinion No. 88-001]; and 72 Opinions of the Attorney General (3), (3) (1987) [Opinion No. 87-016, at 5].

As discussed above, Nat. Res. Art, § 8-1801 (b) (2), strives for "local governments ***establishing and implementing their programs in a consistent and uniform manner.***" The sudden changes in its program at this time, and the effects of those changes on the programs of the Talbot towns, hardly promote consistency or uniformity among local programs.

Moreover, there is no evidence to indicate that the growth needs of the towns have been addressed. On the contrary, after a costly five-year legal struggle by the Town with Midland, it appears that the County only sprang into action by enacting the Bill after it appeared that the Miles Point II application would be approved by the Town. The Bill had the effect of thwarting approval of the Miles Point II application, which would have permitted environmentally responsible growth within the Town. Similar to the history of the Easton Village project, recently approved by the County Council for 156 acres of supplemental growth allocation, the

proposed Miles Point project has been universally been spoken of with disfavor in public by the County Council. Therefore, one could reasonably conclude that the only thing that could cure such a negative attitude about the proposed Miles Point project, and lead to the award of supplemental growth allocation for that project by the County, would be a healthy dose of money paid by the developer to the County. The amount of money paid to or for the County is not the appropriate measure of what development projects are worthy of growth allocation within a town.

The County has shown, by its actions and it inactions, that there has been no coordination or cooperation by the County with the Towns in arriving at Bill 933.

An administrative agency is governed by the enabling statutes that created it. *Department of Economic and Employment Development v. Lilley*, 106 Md.App. 744, 666 A.2d 921 (1995). Generally, an administrative agency is required to follow its own procedures or regulations. Regulations validly prescribed by a government administrator are binding upon him even when the administrative action is discretionary in nature. *Pollock v. Patuxent Inst. Bd. of Review*, 374 Md. 463, 823 A.2d 626 (Md. 2003).

Since the Commission is controlled by Natural Resources Article, Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program), and is bound to follow the regulations it has adopted, it is respectfully suggested that in its review of County Bill No. 933 it is incumbent upon the Commission, in exercise of its oversight responsibilities, to investigate and to determine whether, and to what extent, there has been, and will be, "implement[ed] . . . on a cooperative basis between the . . . affected local governments", "with local governments establishing and implementing their programs in a consistent and uniform manner", "in coordination with affected municipalities", resulting in the establish[ment of] a process to accommodate the growth needs of the municipalities." The County has refused to engage in any meaningful dialog with the Towns relating to Bill No. 933, and clearly, Bill No. 933 would add a layer of criteria and a layer of administrators that are, based on the State laws, regulations and oversight already put in place by the Legislature, unnecessary. In other words, according to the Legislature, a municipality is quite capable, with the oversight of the Commission, of

establishing and administering its own program within its jurisdictional territory to accomplish the goals of the Chesapeake Bay Critical Area Protection Program interference by the County.

Based on the failure of the Bill to satisfy the criteria for approval pursuant to Natural Resources Article, Section 8-1809, Subsection (j), and based on the unnecessary and counterproductive effect of the Bill on the purposes of the State Program, approval of the Bill should be denied by the Commission. That should be the end of the matter, but in case it isn't, the Bill violates other State laws and policies.

B.

The Bill Illegally Takes Planning And Zoning Powers From The Towns

As discussed above in Section II, A, of this Memorandum, there are some powers within municipalities, such as planning and zoning, that are granted exclusively to those municipalities. The Maryland Constitution, Article XI-E (Municipal Corporations), § 3 (Power of home rule), says:

> Any such municipal corporation, now existing or hereafter created, shall have the power and authority, (a) to amend or repeal an existing charter or local laws relating to the incorporation, organization, government, or affairs of said municipal corporation heretofore enacted by the General Assembly of Maryland, and (b) to adopt a new charter, and to amend or repeal any charter adopted under the provisions of this Article.

In *Campbell v. Mayor and Aldermen of the City of Annapolis*, 44 Md.App. 525, 532, 409 A.2d 1111 (1980), the court said:

> One of the objectives of home rule was to assure Maryland municipalities the power of self-government. . . . The intent of Article XI-E was specifically to grant Maryland municipalities the ***power to control their own local affairs***, and was ***designed to permit local legislation to be enacted solely by those directly affected.*** . . . [***Emphasis added.***]

Maryland Code, Art. 23A (Municipal Corporations), Section 9 (Definitions), Subsection (c), Part (1), states:

> (1) A municipal corporation which is subject to the provisions of Article XI-E of the Maryland Constitution may not amend its charter or exercise its powers of annexation, incorporation or repeal of charter as to affect or impair in any respect the powers relating to sanitation, including sewer, water and similar facilities, and zoning, of the Washington Suburban Sanitary Commission or of the

Maryland-National Capital Park and Planning Commission. Except that where any area is annexed to a municipality authorized to have and having then a planning and zoning authority, ***the municipality shall have exclusive jurisdiction over planning and zoning and subdivision control within the area annexed***; provided nothing in this exception shall be construed or interpreted to grant planning and zoning authority or subdivision control to a municipality not authorized to exercise that authority at the time of such annexation; and further ***provided, that no municipality annexing land may for a period of five years following annexation, place that land in a zoning classification which permits a land use substantially different from the use for the land specified in the current and duly adopted master plan*** or plans or if there is no adopted or approved master plan, the adopted or approved general plan or plans ***of the county or agency having planning and zoning jurisdiction over the land prior to its annexation without the express approval of the board of county commissioners or county council of the county in which the municipality is located.*** [***Emphasis added.***]

Therefore, it is clear that except during the initial five-year period after an annexation, as provided in Maryland Code, Art. 23A, § 9 (c), a county has no planning or zoning authority over land within a Maryland municipality.

Maryland Code, Art. 23A (Municipal Corporations), § 2 (Express Powers), states, in pertinent part:

(a) ***The legislative body of every incorporated municipality in this State***, except Baltimore City, by whatever name known, ***shall have general power to pass such ordinances not contrary to the Constitution of Maryland, public general law***, or, except as provided in § 2B of this article, ***public local law as they may deem necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality***; but nothing in this article shall be construed to authorize the legislative body of any incorporated municipality to pass any ordinance which is inconsistent or in conflict with any ordinance, rule or regulation passed, ordained or adopted by the Maryland-National Capital Park and Planning Commission and the Washington Suburban Sanitary Commission, and nothing in this article shall be taken or construed to affect, change, modify, limit or restrict in any manner any of the corporate powers of the Mayor and City Council of Baltimore which it now has or which hereafter may be granted to it.

(b) ***In addition*** to, but not in substitution of, the powers which have been, or may hereafter be, granted to it, ***such legislative body also shall have the following express ordinance-making powers:***

(30) To provide reasonable ***zoning regulations*** . . . . [***Emphasis added.***]

Exclusive planning powers are granted to municipalities by Maryland Code, Art. 66B, Section 3.01 (Grant of power), which states:

> (a) A ***local jurisdiction*** may enact, adopt, amend, and execute a plan as provided in this article and create by ordinance a planning commission with the powers and duties set forth in this article.
>
> (b) A ***municipal corporation may*** be included as part of a county plan under this article ***if***:
>
> (1) The ***legislative body of the municipal corporation***, by a resolution directed to the legislative body of the county in which the municipal corporation is located, ***indicates the intention to participate*** in the county plan; ***and***
>
> (2) The legislative body of the county approves the resolution. [***Emphasis added.***]

Article 66B, Section 1.00 (Definitions), includes the following definitions applicable to the above statute:

> (f) (1) "Local legislative body" means the elected body of a political subdivision.
>
> (2) "Local legislative body" includes:
>
> (i) A board of county commissioners;
>
> (ii) A county council; ***or***
>
> (iii) ***A governing body of a municipal corporation.***
>
> (g) "Local jurisdiction" means a county ***or*** municipal corporation and the territory within which its powers may be exercised. [***Emphasis added.***]

Thus, a municipality is not included in a county comprehensive plan unless the governing body of the municipality elects to do so.

Under State law, the zoning authority within municipal is granted exclusively to municipalities by Maryland Code, Article 66B, Section 4.01 (Grant of powers; statement of policy; construction of powers), which states:

> (a) (1) ***It is the policy of this State that:***
>
> (i) The orderly development and use of land and structures requires comprehensive regulation through the implementation of ***planning and zoning controls***; and
>
> (ii) ***Planning and zoning controls shall be implemented by local government.*** [***Emphasis added.***]

Note that the term "local government" is not plural, indicating that planning and zoning within the same jurisdiction cannot be controlled by more than one local government. Moreover, the language of Article 66B, Section 1.00 (Definitions), indicates that the term "local government"

means a county *or* a municipality, not a county *and* a municipality.

Maryland Code, Article 66B, Section 4.04 (Method of procedure) states, in part:

> (a) ***A local legislative body*** shall provide for the manner in which its regulations and restrictions and the boundaries of its districts shall be determined, established, enforced, and periodically amended or repealed. [***Emphasis added.***]

Further, Article 66B, Section 4.05 (Amendment, repeal and reclassification), states, in pertinent part:

> (a) (1) Zoning regulations, restrictions, and boundaries may periodically be amended or repealed.
>
> (2) (i) Where the purpose and effect of the proposed amendment is to change the zoning classification, ***the local legislative body*** shall make findings of fact.... [***Emphasis added.***]

These provisions of Article 66B clearly indicate that only one legislative body is intended to control the zoning within a town, and the term "local legislative body" is defined to include the legislative body for a town.

Any law contrary to the proposition that planning and zoning powers within a municipality are within the exclusive control of such municipality is addressed in Article 66B, Section 7.05 (Repeal of inconsistent laws), which states, in pertinent part, as follows:

> Except as otherwise provided in this article, ***any law or ordinance that is inconsistent with or contrary to the provisions of this article is repealed to the extent of the inconsistency.*** [***Emphasis added.***]

A local government ordinance which conflicts with a public general law enacted by the General Assembly is preempted and thus is invalid. *See, e.g., Boulden v. Mayor*, 311 Md. 411, 415-417, 535 A.2d 477, 479-480 (1988). A local ordinance is pre-empted by conflict when it prohibits an activity which is intended to be permitted by state law, or permits an activity which is intended to be prohibited by state law. *Boulden v. Mayor, supra*. By reason of the fact that in St. Michaels and Oxford are practically surrounded by water, most of there is in the critical area. The effect of Bill No. 933 would be to immediately remove all growth allocation reserve from those towns. Therefore, as to all land of St. Michaels and Oxford in the critical area, Bill 933 would place the ultimate planning and zoning powers in the County Council. The County has taken its authority to establish a local program under the Critical Area laws, and it has used that

authority to craft Bill 933 in such a way that in conflicts with Article 66B. Not all local laws establishing local programs conflict with Article 66B. Because Bill No. 933, as written creates a conflict with Article 66B, and because it is a local ordinance, the bill is pre-empted by Article 66B. Moreover, even if it were not a local law, Article 66B, Section 7.05 settles all conflicts in favor of Article 66B. The Court of Appeals has held that, in implementing its express powers, the council of a charter home rule county is empowered to enact countywide legislation effective in all municipal corporations within the county. *Town of Forest Heights v. Frank*, 291 Md. 331, 341-46, 435 A.2d 425 (1981). When the county has so acted, its legislation prevails over conflicting municipal enactments, unless the General Assembly prescribes differently by public general law. *Town of Forest Heights v. Frank, supra* at 350-51. In this instance, Article 66B, Section 7.05, a public general law, clearly indicates that that the planning and zoning power within their borders, granted to municipalities by Article 66B, prevails over other laws.

Given the fact that the County was not interested in seeking or listening to the concerns of the towns before enacting Bill 933, one could conclude that the Bill is more intended as a vehicle for the County to grab planning and zoning powers from the Towns than to address legitimate growth allocation concerns. That conclusion is reinforced by the second from the last "whereas" clause of the Bill, which states:

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

There is nothing in the Chesapeake Bay Critical Area Protection Program of the Natural Resources Article to indicate that growth allocation was intended by the Legislature to shift the power of planning and zoning within the municipalities of the State from those municipalities to the counties.

C.

Bill No. 933 Makes The Award Of Growth Allocation Within Towns More Difficult Than The Award Of Growth Allocation Outside Of Towns

The critical area laws are not the only Maryland laws and State policies that promote growth and development within municipalities. Article 66B indicates that in rural areas, such as

Talbot County, growth should be directed to municipalities. In that regard Maryland Code, Article 66B, Section 1.01 (***Visions***), states, in part:

> In addition to the requirements of § 3.05(c) of this article, ***a commission shall implement the following visions*** through the [comprehensive] plan described in § 3.05 of this article:
>
> (3) ***In rural areas, growth is directed to existing population centers*** and resource areas are protected.
>
> [***Emphasis added.***]

The Smart Growth initiatives, adopted by the previous State administration, promoted the idea that growth and development should occur in and around municipalities and villages to make the construction and operation of infrastructure more economical and to preserve agricultural and natural resources. The Talbot County Council adopted the Smart Growth concepts in its recent decision approving supplementary growth allocation for the Easton Village project. (Copy of the Talbot County Council's Easton Village decision attached.)

The policy that growth and development should occur within or around established municipalities and villages, on October 8, 2003, Governor Ehrlich issued Executive Order 2003.33, announcing the Maryland Priority Places Strategy, which Order states, in part:

> A. Established. There shall be a ***Maryland Priority Places Strategy.*** The Strategy shall be developed and ***implemented by the Maryland Department of Planning.***
>
> B. Purpose. The Strategy shall be to identify specific State actions that will be undertaken and definitive procedures that will be instituted ***to accomplish the following objectives:***
>
> (1) ***Achieve the established goals of State planning policy and local comprehensive plans for development, economic growth, community revitalization, and resource conservation;***
>
> (2) Accomplish these diverse goals through mutually supportive means; and
>
> (3) ***Promote fiscal responsibility of State government to achieve the best "public return" on State investments in these goals.***
>
> C. The Maryland Priority Places Strategy shall be ***based on:***
>
> (1) ***The eight statewide visions*** [contained in Art. 66B, § 1.01 (Visions)] ***of State Planning Policy for Economic Growth, Resource Protection and Planning established in the Economic Growth, Resource Protection and Planning Act of 1992;***
>
> (2) ***The Priority Funding Areas Act of 1997*** [codified in the Maryland Code, State Finance And Procurement Art., Division I (State Finance), Title 5 (State Planning), Subtitle 7b (Priority Funding Areas)]; ***and***

(3) Existing State and ***local planning requirements, comprehensive plans, regulations, powers,*** and processes.

D. ***The Maryland Department of Planning shall implement the Maryland Priority Places Strategy by developing initiatives to accomplish the following:***

(1) Ensure that State programs, regulations and procedures, and funds are used strategically to achieve the goals of local comprehensive plans and State planning policy and ***provide for the infrastructure necessary to support planned growth***;

(2) Better enforce existing laws, regulations and procedures that are designed to ensure mutually supportive public investments and actions;

(3) ***Streamline State regulations and procedures to make quality, well designed growth easier to build inside Priority Funding Areas***;

(4) Identify key plans and functions of State government that affect growth and development and make appropriate changes to those plans and functions to better support the goals of the Maryland Priority Places Strategy;

(5) ***Encourage resource protection and production outside of the Priority Funding Areas*** for environmental protection, recreation, tourism, forestry, and agricultural purposes; and

(6) Enhance existing brownfield cleanup and redevelopment, transit oriented development, and community revitalization efforts.

[***Emphasis added.***]

County Bill No. 933 and the County Program are contrary to the above-referenced State laws and policies because they immediately require weighing of evidence, interpretation of criteria, and approval by two governmental bodies, making complication and/or denial more likely.

The best illustration of this point is the written decision of the Talbot County Council approving supplemental growth allocation for the Easton Village project. Many of the criteria addressed by the County Council are also required to be addressed by the Town Commissioners of St. Michaels according to Town laws. It is conceivable that with regard to any such issue involving a record containing the same facts, that there will be substantial evidence supporting both sides of the same issue, and that the Town Commissioners could reach one conclusion while the County Council reaches the opposite conclusion on the same issue. Such a situation would create a legal quagmire if the owner of the affected land were to seek judicial review. In addition, there are criteria imposed by the County Code that are not imposed by the Town, and

which would not be an issue if not injected by the County into the supplementary growth allocation process. This includes such issues as compatibility with the County comprehensive plan. No other development within the Town of St. Michaels is required to meets such a standard. Further, the compatibility of a proposed development with existing and proposed development and land use in the surrounding area is not limited to areas within the Town. It stands to reason that development within a municipality would be more dense than development outside of the Town. Measuring the compatibility of development against County standards is an unnecessary, and at best duplicitous, requirement that lends nothing to a process that is intended to permit environmentally responsible development within municipalities. At worst, Bill No. 933 establishes a process that is ripe for: (1) legally cumbersome, arbitrary and capricious results; (2) treatment of property owners in violation of their due process and equal protection rights; and (3) administration by decision-makers who are not elected or appointed by the electorate of, or live within, the town in which the affected land is located. As it is in conflict with Maryland Executive Order 2003.33, County Bill No. 933 should not be approved by the Critical Area Commission For The Chesapeake And Atlantic Coastal Bays.

In short, the effects of Bill 933 are neither necessary nor appropriate to accommodate growth within the Talbot towns. Moreover the Bill frustrates other Maryland laws and policies.

D.
Programs Of A Town And The County Are Not Intended To Be Combined

Maryland Code, Natural Resources Article, Section 8-1808 (Program development, implementation and approval), provides, in part:

> (a) (1) It is the intent of this subtitle that ***each local jurisdiction*** shall have ***primary*** responsibility for developing and implementing ***a program***, subject to review and approval by the Commission. [***Emphasis added.***]

Maryland Code, Natural Resources Article, Section 8-1802 (Definitions; persons covered), Subsection (a), Part (11), defines the term "local jurisdiction" as "a county, ***or a municipal corporation with planning and zoning powers***, in which any part of the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area, as defined in this subtitle, is located." [***Emphasis added.***] Note that the word "or" does not have the same meaning as "and".

The language of Section 8-1802, Subsection (a), Part (11), is uncomplicated, in that it is referring to a local jurisdiction as either a county or a municipality, but not both a county and a municipality, relating to the application of development and implementation of a program affecting the same area.

Maryland Code, Natural Resources Article, Section 8-1802 (Definitions; persons covered), Subsection (a), Part (12) (i), defines the term "Program" to mean "the critical area protection program of a local jurisdiction." All municipal corporations within Talbot County have planning and zoning powers. St. Michaels, Oxford and Easton each have their own critical area protection program, as defined by Maryland Code, Natural Resources Article, Section 8-1802 (Definitions; persons covered), Subsection (a), Part (12) (i).

Thus, the term "program" is intended to refer to the critical area protection program of a county or a municipality; not a combined critical area protection program of more than one jurisdiction. Moreover, when the program of a town or a county is approved by the Commission, that program is reviewed, and is approved or fails, on its own; not in combination with the program of another local jurisdiction. The County Program was reviewed and approved by the Commission independently of the Talbot town programs. Each Talbot town program was reviewed and approved by the Commission independently of the County Program. The language of the Natural Resources Article, Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program), is clear that it does not contemplate the combination of local programs.

However, if local programs are intended to be implemented in combination, as is now contemplated by Talbot County with the enactment of Bill 933, then it is incumbent upon the Commission to review the County Program in conjunction with each town program, to determine whether, when administered in combination, they are compatible with the goals and objectives of the State critical area laws and regulations, and that they are not contrary to, or in conflict with, each other and/or other State land use laws or policies.

E.
In Light Of Existing Town Programs, Bill No. 933 Is Unnecessary And Therefore Violates Substantive Due Process

Substantive due process, as applied in Maryland, requires that where a subordinate agency of the State, such as a municipal corporation, acts directly in the exercise of the police power, a limitation upon its right to exercise the power is that it must act ***impartially,*** that any interference by it with the unrestricted use of private property must be ***reasonably necessary*** to the public welfare, and consistent with the prohibitions of the Constitution" [***Emphasis added.***] *Mayor of Pocomoke City v. Standard Oil Co.*, 162 Md. 368, 376-77, 159 A. 902 (1932). The validity of legislative and governmental acts imposing building and use restrictions upon real property must be reasonably necessary for the adequate protection of the public welfare, safety, health, comfort, or morals. Maryland courts employ a heightened level of scrutiny - something over and above the "minimum rationality" test required under the federal constitution. Although almost any zoning ordinance could be said to be rationally related to a legitimate governmental interest, the "substantial relationship" test is not so yielding. *Levinson v. Montgomery County*, 95 Md.App. 307, 319-21, 620 A.2d 961 (1993).

Talbot County, by Bill No. 933, proposes to establish a second layer of regulation and administration over land within the critical area in municipalities, as if to say that the regulation and administration established and carried on by the towns, pursuant to State law, is not sufficient. Yet, there is nothing to indicate that the towns have failed to adequately establish and implement their own programs. Therefore, the application of additional County standards and discretion to land within towns is inappropriate and is not reasonably necessary. On the contrary, if the County is only concerned that towns will "hoard" growth allocation, then all the County needs do is establish a common bank of growth allocation that can be drawn upon by all Talbot towns and the County, subject to the criteria of the local program under which the growth allocation is being awarded. The function of the Commission is to act as an overseer. By injecting itself into the growth allocation process involving the towns the County Council is in effect saying that it has no confidence in the towns or in this Commission to follow the law and exercise sound judgment.

F.

Bill No. 933 Was Enacted For Purposes Unrelated To The Critical Area Laws

As a condition of the award of growth allocation for Easton Village the County Council exacted from the developer an "offer" to pay $1± million, or to perform work worth an equivalent amount, for off-site improvements to Glebe Road. That exaction may lack the essential nexus to the impacts of the Easton Village project upon the County, and/or that may lack the roughly proportionality thereto, required by *Dolan v. City of Tigard,* 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994); and by *Nollan v. California Coastal Comm'n,* 483 U.S. 825, 841, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987). *See City of Annapolis v. Waterman*, 357 Md. 484, 745 A.2d 1000 (2000). In any event, that exaction has no relationship to the criteria for the award of growth allocation. Given the fact that Bill No. 933 reserves for the County Council the discretion to deny any request for the award of supplementary growth allocation despite the fact that all criteria therefore are met, Bill No. 933 lacks the reasonable necessity for the protection of the public health, welfare and safety. Such unbridled discretion in the County Program leads to the possibility that Bill No. 933 is intended as a vehicle for the County to make more exactions similar to that in the case of Easton Village, which are unrelated to the purposes of the State critical area laws.

G.
There Is No Demonstrated Need For Bill No. 933 To Be Operative Prior To Commission Approval Or To Require Exercising The Award

Bill 933 is worded such that it is intended to take effect 60 days after its passage by the County council, and to negate any award of growth allocation awarded by a town and approved by this Commission if no construction has begun pursuant to such award and approval of growth allocation before the effective date of Bill no. 933. The Town urges that the award of growth allocation by the Town for the Strausburg property is a valuable asset for the Town, and should not hinge on the start of construction at any time other than as provided in the decision of the town awarding growth allocation. Therefore, even if the Commission determines to approve Bill No. 933, there is no demonstrated need for it to take effect before it is approved by the Commission, or to in effect negate prior awards of growth allocation. Further, the requirement of substantial construction to vest rights in an award of growth allocation will only promote immediate construction when that may not necessarily be desirable in each case. Moreover, the County has ignored the power of municipalities to contractually grant vested rights by means of

a development rights and responsibilities agreement pursuant to the power granted by Maryland Code, Art. 66B, § 13.01.

III.
CONCLUSION

For each of the reasons stated above, any one of which would be legally and factually sufficient to do so, The Commissioners Of St. Michaels urge that the Critical Area Commission For The Chesapeake And Atlantic Coastal Bays DISAPPROVE of Talbot County Bill No. 933 in its entirety. Failing that, the Town urges that the effect of the amendments not be applied retrospectively or requiring substantial construction to vest rights in the award of growth allocation.

Respectfully submitted,

H. Michael Hickson
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113 S. Baptist Street
P. O. Box 44
Salisbury, Maryland 21803-0044
Telephone: 410-546-4644
Attorney for:
The Commissioners of St. Michaels

Attachment: Talbot County Council decision approving supplemental growth allocation for Easton Village project.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of March, 2004, an exact a copy of the foregoing MEMORANDUM OF LAW IN OPPOSITION TO COUNTY BILL NO. 933 was delivered to the following:

Marianne D. Mason
Assistant Attorney General
For The Department Of Natural Resources

Michael L. Pullen
Talbot County Attorney

David R. Thompson
Attorney for the Towns of Oxford and Trappe

Christopher B. Kehoe
Attorney for the Town of Easton

H. Michael Hickson

Town Memorandum Of Law In Opposition To County Bill No. 933.doc

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'
MOTION FOR SUMMARY JUDGMENT

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

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 Marvis
Secretary

EXHIBIT

tabbies

1

E. 1039

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

§ 190-109 D (9)

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

* * *

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

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

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

§ 190-109 D (11)

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

* * *

§ 190-109 D (14)

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

§ 190-109 D (15)

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

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

§ 190-109 D (16)

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

SECTION 2. Effective Date and Severability; legislative intent.

1. Vested Rights: Effective Date of Zoning Text Amendments

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

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

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

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

2. Severability.

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

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

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

PUBLIC HEARING

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

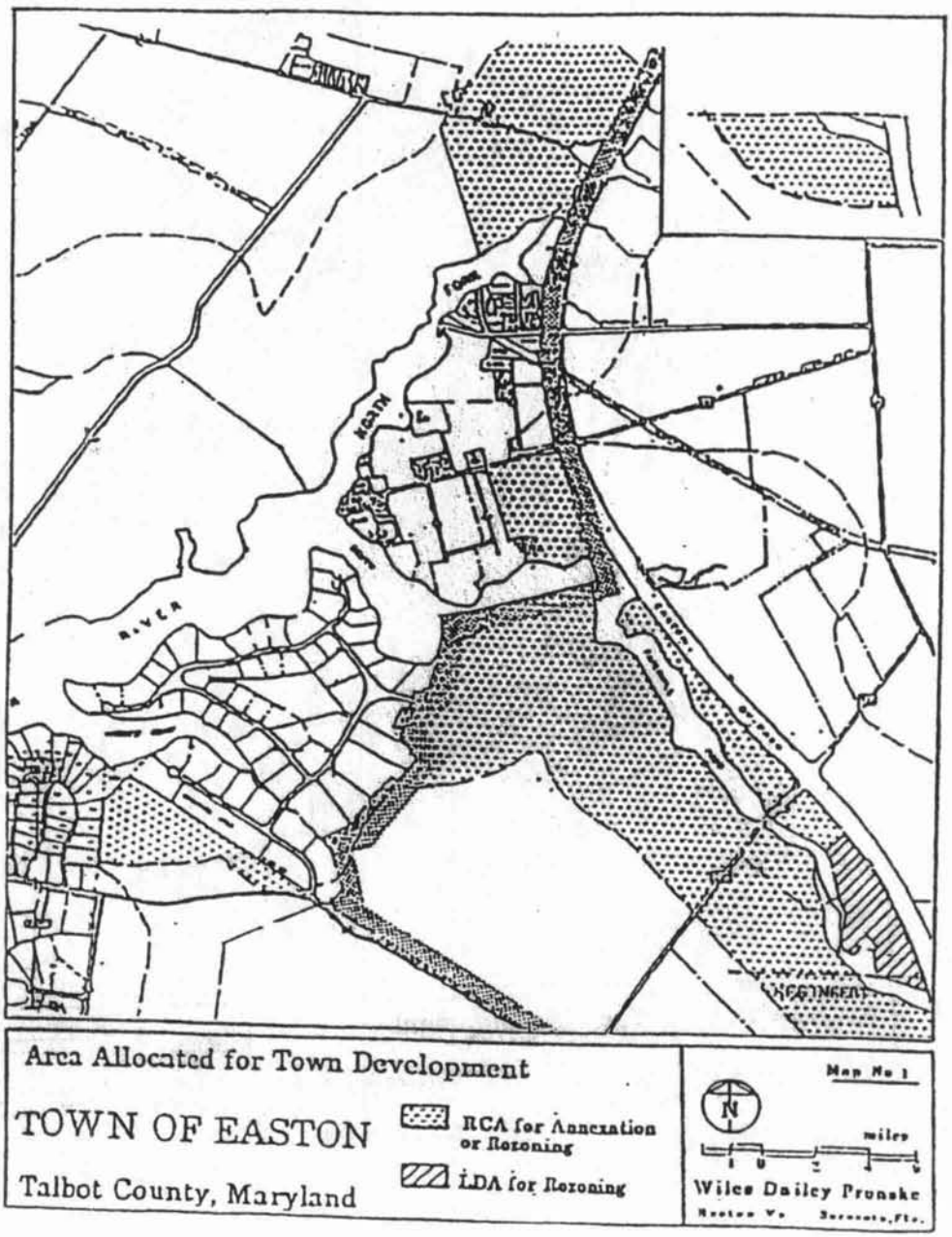
BY THE COUNCIL

Read the third time.

ENACTED December 23, 2003*
AS AMENDED

By Order _____
Secretary

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


Area Allocated for Town Development
TOWN OF EASTON
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
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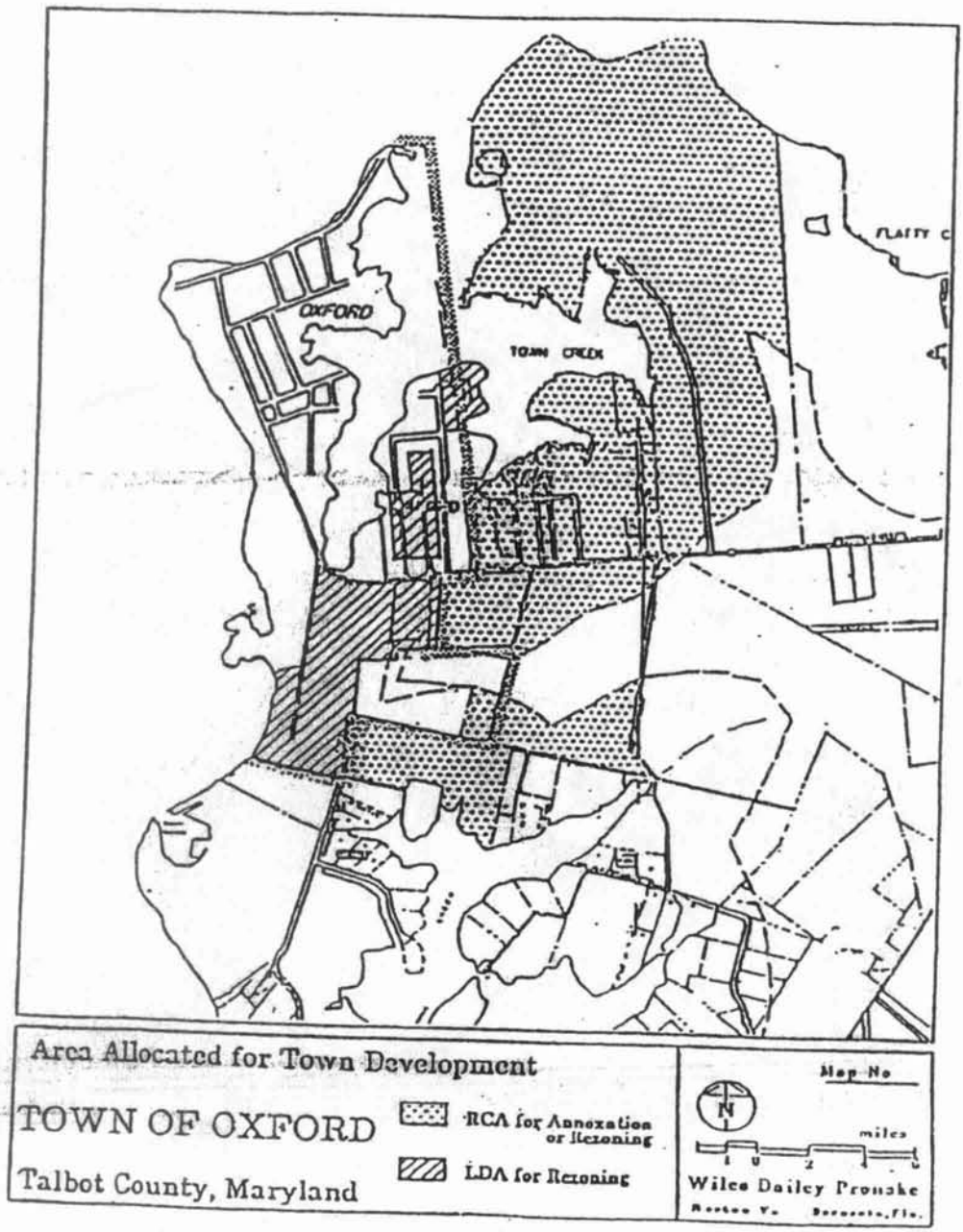
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Area Allocated for Town Development
TOWN OF OXFORD
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
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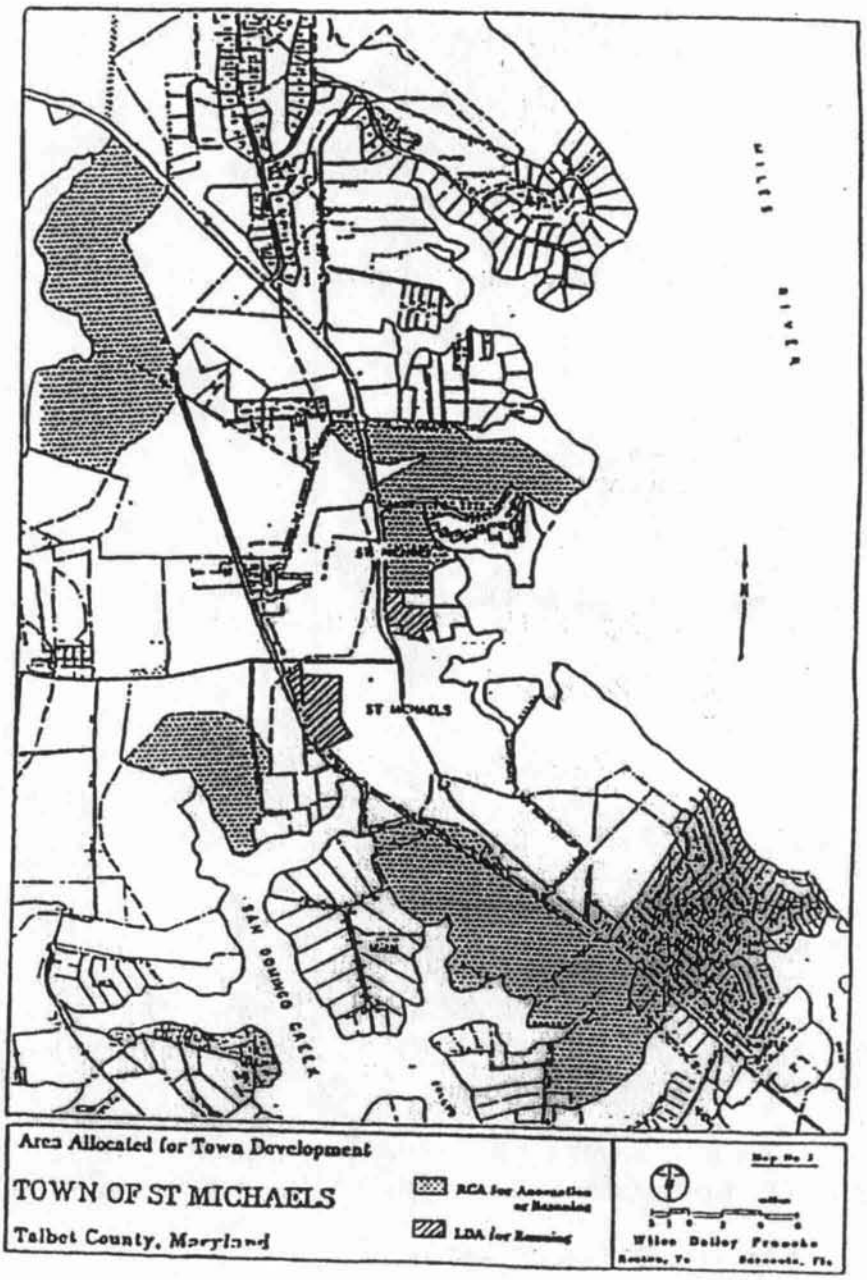
ST MICHAELS
SAN DOMINGO CREEK
Area Allocated for Town Development
TOWN OF ST MICHAELS
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
Wilce Dailey Francke

The Commissioners of St. Michaels

P.O. BOX 206
ST. MICHAELS, MARYLAND 21663-0206

SETTLED 1670-80
INCORPORATED 1804

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

December 16, 2003

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

Re: Opposition to proposed Talbot County Bill No. 933

Dear President Foster Council Members:

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

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

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

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

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

1. We think that this drastic step is unnecessary to manage available growth allocation among the towns and the County in a way that will achieve the stated purpose of the Bill, and to qualify the County for an additional allotment of growth allocation for use as IDAs. We believe that the current provisions of the County Code and a cooperative effort among the affected jurisdictions could accomplish the necessary results.

2. Maryland laws indicate that the Town is intended by the State to have home rule powers, and to have planning, zoning, and subdivision powers over all land within the Town, to the same extent as all other municipalities in this State. The Bill would create a situation in which the municipalities in Talbot County would effectively have less planning and zoning powers within their boundaries than other municipalities in this State, in violation of Maryland Constitution, Article XI-E (Municipal Corporations), Section 1.

3. The Code of Maryland Regulations ("COMAR"), § 27.01.02.06, relating to growth allocation, requires "a process to accommodate the growth needs of the" Town. We can find nothing about either the Bill, or the manner in which the Bill has come about, to indicate that it will create or facilitate such a process. As drafted, the Bill would have the effect of dismantling the right and ability of St. Michaels to self-determination regarding growth and development in the Critical Area within the Town.

4. For 20 years the Towns have exercised careful stewardship of their growth allocation. This fact is evidenced by the amount of allocation acreage remaining, and indicates that Bill 933 is unnecessary.

5. The County is a party to at least two contracts, of which we are aware, that could be either impaired or breached by the Bill and/or by acts taken pursuant to the Bill. Those contracts are as follows:
   a. The agreement for the assumption for the Town's sewer system by County Sewer District No. 2, which we believe has been subsequently assumed by the County; and
   b. The Annexation Agreement relating to Perry Cabin Farm.

   Rather than engage in counter-productive rhetoric, we enclose a copy of those documents herewith for your review. In addition to the Town, property owners may have rights pursuant to those contracts.

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

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

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

Thank you for your consideration.

Sincerely,

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

RTS/ct
Enclosure

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

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

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

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

The Commissioners of St. Michaels

P.O. BOX 206
ST. MICHAELS, MARYLAND 21663-0206

SETTLED 1670-80
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(410) 745-9535
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TDD/TTY RELAY 1-800-735-2258

Position Paper

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

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

1.
Bill No. 933 Is Unnecessary

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

a. The current County Code, Chapter 190 (Zoning) Section 190-109 (Administration), Subsection D (Growth allocation district boundary amendments in the Critical Area), Part (11), provides for periodic reviews "for possible reallocation" of growth allocation. We believe that this existing process could be used to meet and solve the stated problem in a way that would be mutually agreeable and within the applicable State laws.

b. We understand that the Critical Area Commission frequently does not require full compliance with Maryland Code, Natural Resources Article, Section 8-1808.1 (Growth allocation), Subsection (c), Part (5). Therefore, this avenue should be explored.

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

2.
Bill No. 933 Is Not Consistent With State Law

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

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

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

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

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

3.

<u>The Bill Is Contrary To State A Regulation</u>

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

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

(1) . . . .;

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

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

4.

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

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

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

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

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

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

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

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

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

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

RTS/ct

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

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

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

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

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

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

E. 1057

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TALBOT COUNTY OFFICE OF PLANNING & ZONING
COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601

PHONE: 410-770-8030
FAX: 410-770-8043
TTY: 410-822-8735

December 29, 2003

RECEIVED
DEC 31 2003
CHESAPEAKE BAY
CRITICAL AREA COMMISSION

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

Re: Easton Supplemental Growth Allocation
Talbot County Bill 933

Dear Ms. Hoerger:

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

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

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

Sincerely,

George Kinney, AICP
Talbot County Planning Officer

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

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TALBOT COUNTY OFFICE OF PLANNING & ZONING
COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601

ONE: 410-770-8030
FAX: 410-770-8043
TTY: 410-822-8735

January 19, 2004

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

Re: Amendments to Talbot County Critical Area Program

Dear Mrs. Hoerger:

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,
Talbot County Office of Planning and Zoning

George Kinney
Planning Officer

Enclosures

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

GROWTH ALLOCATION ACREAGES

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

* 1213 Original Limit, 1213 Potential Additional Limit, 128 Reserved LDA to IDA = 2554 Acres

2004 Jan

obert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

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

February 5, 2004

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

Re: Talbot County Bill 933

Dear Mr. Kinney:

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

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

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

Sincerely,

Lisa A. Hoerger
Natural Resources Planner
LAH/jjd
cc: The Honorable Richard F. Colburn
The Honorable Jeannie Haddaway
The Honorable Adelaide C. Eckardt
The Honorable Sidney S. Campen, Jr.
The Honorable Robert C. Willey
The Honorable Cheryl Lewis
The Honorable Philip C. Foster, Esq.
The Honorable Robert T. Snyder
Mr. R. Andrew Hollis
St. Michaels Planning Commissio

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

MEMORANDUM

To: Dave Blazer, Chair; Gary Setzer; Bill Giese; Ed Richards; Joe Jackson

From: Mary Owens, Lisa Hoerger

Date: March 17, 2004

Subject: Talbot County Bill 933
County Council Bills 922, 926, 927, 929, 931, 932

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

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

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

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

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

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- The original awards are "inconsistent with current principles of proper planning and the land use goals and policies in the existing and draft Talbot County Comprehensive Plans;" and

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

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

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

STATEMENT OF CLOSING MEETING

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

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

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

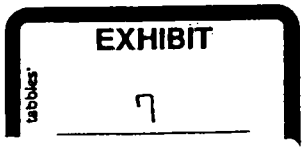
Reasons for Closing Meeting:

1. To consult with counsel to obtain legal advice on the applicable sections of the Critical Area law and criteria governing the panel's deliberations.

2. To consult with counsel to obtain legal advice on the applicability of other State laws, policies, and regulations (including but not limited to, Planning & Zoning, Smart Growth) cited by commenters in the record of the proceedings.

3. To consult with counsel to obtain legal advice about the effect of Bill 933 on any other Critical Area Program, program amendment, or program refinement approved by the Commission.

4. To consult with counsel to obtain legal advice on the conflicting interpretations offered by commenters on the meaning of Commission criteria COMAR 27.01.02.06 A.



Talbot minutes

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

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

Commission counsel: Marianne Mason

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

Bill 922

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

Bill 926

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

Bill 927

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

Bill 929

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

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

Bill 931

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

Bill 932

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

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

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

Bill 933

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

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

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

Joe Jackson made a motion to close the session to consult with counsel. The chair called for a vote.
Ed Richards – aye
Bill Giese - aye
Gary Setzer - aye
Joe Jackson- aye
David Blazer, chair – aye

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

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

Panel meeting adjourned at 3:50 pm.

Minutes submitted by LeeAnne Chandler, Critical Area Commission.

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

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

Critical Area Commission (CAC) Counsel: Marianne Mason

Critical Area Commission Staff:
Ren Serey: Executive Director
Mary Owens: Chief, Program Implementation
Regina Esslinger: Chief, Project Review
Lisa Hoerger: Staff Planner, Talbot County and St. Michael's amendment reviews
Wanda Cole: Staff Planner, Recorder of minutes of panel meeting

Closed Session

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E. 1071

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

In attendance in the gallery:
Judge John C. North, III
Thomas Deming, esq.
George Kinney, Talbot County Planning Officer
Mike Pullen, Counsel for Talbot County
Hope Harrington, Councilwoman
Pete Carroll, Councilman
Martin Madden, Chairman, Critical Area Commission
Judith Evans, Commissioner at Large- Western Shore
Ken Pensyl, Director, MDE Stormwater Management Program
Peggy Campbell, Secretary to the Commission Chairman
Eight others not identified

Bill 931
Sets an application process for growth allocation. Panel had no comments nor recommended changes.

Bill 926
Changes to Definitions section of Ordinance.

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

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

Bill 927

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

- Pg 3 Parks & Playgrounds- recommend adding additional bullet to address passive recreation uses.
- Pg 8 & 9- for treated septic, sludge application for agriculture and horticulture, community sewage treatment plant, recommend restrict these uses to:

1. No closer than 200 feet from tidal wetlands;
2. Assure uses are restricted from the 100-foot zone.

Bill 929

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

Bill 929

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

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

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

Bill 931

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

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

Bill 933

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

St. Michaels Program

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.

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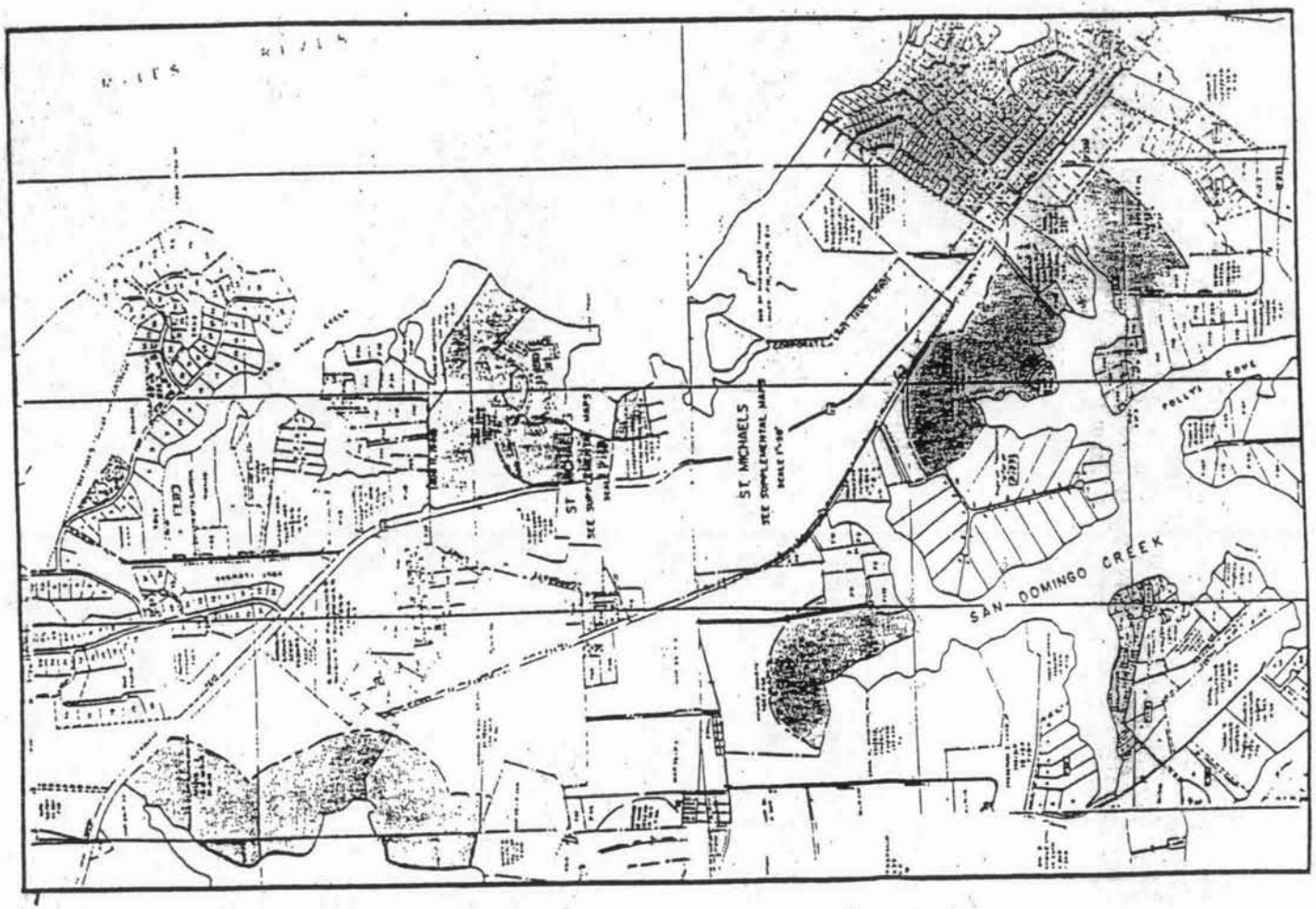
E. 1078



FUTURE GROWTH AR

Map II-1

E. 1079

APPX. 403.1 AC

FUTURE GROWTH

ST. MICHAELS, MA

REDMAN/JOHN
ASSOC

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.

E. 1080

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

E. 1081

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.

E. 1082

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

E. 1083

2. Location of slips in a manner which minimizes dredging needs and volumes. Dredged channels should decrease in width and depth toward shore with provision made for berthing deeper draft boats farthest from shore. Design of slips which are two feet (2) deeper at mean low water than the lowest projection of boats moored in them will minimize turbidity and bottom disturbances.

3. Maintenance of water circulation patterns to include tidal flow patterns, and preservation of salinity and distribution of nutrients in the water. Dimensions and locations of channels should be designed to achieve maximum flushing of the marina basin area.

4. Maintenance of the flow and volume of the natural drainage system, both on site and on adjacent properties.

5. Approaches taken through design to reduce storm water runoff volumes and erosion. Use of impervious ground surfacing should be minimized where possible. Maximum distances should be maintained between water and land areas proposed to be used for parking and loading purposes, to minimize the consequences of site runoff.

6. Effective use and location of site screening and vegetation in a manner which minimize noise and lighting impacts to surrounding residential uses.

7. Many off-site considerations which are significant should be reviewed in relation to the proposed marine facility location. It should be the applicant's responsibility to further assure the review body that their location proposals or projects should not adversely affect:

   (a) Maintenance of state water quality standards.

   (b) Land and water circulation needs. Marine locations should avoid interference with traffic flow on Town streets and the land/water transportation patterns of the surrounding area.

   (c) Preservation of rooted submerged aquatic vegetation of value to fish, shellfish and wildlife in the area.

   (d) Preservation of area wetlands, (tidal and non-tidal), fish spawning areas, shellfish beds and waterfront nesting sites.

Section IX. Growth Allocation Process

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

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

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

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

Purpose and Intent

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

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

Project Location Criteria

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

St. Michaels Zoning Ordinance Section 5.11

b) That the water body upon which these activities are proposed has adequate flushing characteristics at the site;

c) That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;

d) That adverse impacts to water quality that may occur as a result of these activities, such as non-point source run-off, sewerage discharge from land activates or vessels, or from boat cleaning and maintenance operations are minimized;

e) That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;

f) That dredging shall be conducted in a manner, and using a method, which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the Critical Area.

g) That dredged spoil, except for clean sand for beach nourishment, will not be placed within the Buffer or elsewhere in that portion of the Critical Area which has been designated as a Habitat Protection Area; and

h) That interference with the natural transport of sand will be minimized.

i) That no disturbances will occur to historic waterfowl staging and concentration areas.

11. Growth Allocation District - GA

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

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

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

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

1) Submission Requirements

a) Five (5) copies of the request for growth allocation and "GA" floating zone classification and all required items for submission shall be submitted to the Town of St. Michaels Planning Commission.

b) Concept plans, site plans and subdivision plats shall be prepared as per the applicable requirements of the Zoning Ordinance and/or Subdivision Regulations.

2) Procedure for Processing GA District Applications:

a) All grants of the floating zone district by the Town Commissioners shall meet the same procedural requirements as for amending the Critical Area Overlay District, contained in Section 14.

b) All applications for the GA Growth Allocation District Classification shall be accompanied by a preliminary site plan or subdivision plat prepared as per the requirements of the St. Michaels Zoning Ordinance and the Subdivision Regulations.

c) All applications will be reviewed by the Planning Commission for consistency with the Town of St. Michaels Comprehensive Plan, the Town of St. Michaels Critical Area Program, and the Town of St. Michaels Zoning Ordinance. The Planning Commission shall make a determination of consistency and make additional recommendations concerning conditions of approval.

d) After revising the site plan or plat based on the Planning Commission Review, the developer shall submit a preliminary site plan or plat.

e) The Planning Commission shall then hold a public hearing on all submissions. Submissions shall include the following:

i) Presentation of projects by the developers;

ii) Staff review comments; and

iii) Public comments.

f) The Planning Commissioners will then make its final recommendation and forward the application to the Critical Area Commission for review and approval.

g) Following approval of the application by the Critical Area Commission the Town Commissioners shall hold a public hearing on the proposed development projects. The hearing shall include the following:

i) Presentation of projects by the developers;

ii) Planning Commission recommendations;

iii) Critical Area Commission recommendations; and

iv) Public comments.

h) The Town Commissioners will then make the final decision on awarding growth allocation and may grant the floating zone request. The Town Commissioners may also establish conditions of approval to accompany the "GA" district classification, including a time limitation for completion of the proposed project.

3) Recording the GA Growth Allocation District

a) The Official Critical Area Map(s) will be amended to reflect the new "GA" district classification along with a notation of the new land management classification.

b) Successful projects granted the "GA" district classification will be submitted for final site plan or final subdivision approval as per the requirements of the Zoning and/or Subdivision

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

12. MARITIME MUSEUM ZONE - MM

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

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

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

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

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

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

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

a. Permitted Principal Uses:

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

2. Single family detached dwellings.

3. Two-family dwellings.

4. Semi-detached dwellings.

5. Public parks.

Oxford Program

SECTION 34. "GA" GROWTH ALLOCATION DISTRICT

34.01 - Purpose and Intent

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

34.02 - Location.

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

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

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34.03 - Conditions of Approval.

1. A condition of approval shall be that the projects approved for the "GA" Growth Allocation District shall be substantially completed within three (3) years of the date of approval. If after three years the project is not completed, the "GA" Growth Allocation District classification shall be withdrawn.

2. The Supervisor of Public Works shall determine whether a project is substantially completed or not. Substantially completed projects are defined as projects in which all public improvements, such as roads, community sewer and/or water facilities, etc., have been built, as required by the Town or State.

3. The development of a proposed project must demonstrate to the Planning Commission that the following design standards will be met or exceeded in order to be approved:

   a. All applicable requirements of the Town of Oxford Critical Area Program, the Zoning Ordinance and the Subdivision regulations.

   b. Limit the area of disturbance for non-residential development to no more than 60 percent of the total site area.

   c. The design of the development enhances the water quality and resource and habitat values of the area, e.g., results in additional planting of forest cover in the Buffer or implementation of Best Management Practices on portions of the site to be retained in agriculture use.

   d. The development incorporates the comments and recommendations of the Planning Commission and the Maryland Department of Natural Resources in the project design.

   e. The developer executes covenants that guarantee maintenance of the required open space areas.

34.04 - Computing the Use of the Growth Allocation.

1. Subdivision of any parcel of land that was recorded as of December 1, 1985, and classified as RCA or LDA, where all or part of the parcel is identified by the Town of Oxford as a Growth Allocation area, shall result in the acreage of the entire parcel counting against the Growth Allocation, unless conditions such as the following obtain:

   a. On Qualifying Parcels as described in d below, on which a change in classification is requested, a single development envelope will be specified, the acreage of which would be counted against the Growth Allocation. The envelope will include: 1) individually owned lots; 2) any required buffers; 3) impervious surfaces, utilities,

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

b. The remainder of the parcel may not count against the Town's growth allocation if it is contiguous and at least 20 acres in size, retained its natural features or its use by resource utilization activities (agriculture, forestry, fisheries activities, or aquaculture) and was restricted from future subdivision and/or development through restrictive covenants, conservation easements, or other protective measures approved by the Planning Commission. A Forest Management Plan is required for any forested areas in the undeveloped portion of the parcel. Replanting should be accomplished on lands abandoned from agriculture.

c. A minimum 100 foot naturally vegetated Buffer must be established and included in any acreage deductions. In the case of Growth Allocation being applied in an RCA area, a 300 foot naturally vegetated Buffer is strongly encouraged, and in the case where it is provided, the Buffer shall not be deducted from the Town's Growth Allocation, even if that Buffer does not meet the 20-acre minimum.

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

(1) Those parcels designated as new IDA's which are located within an LDA or adjacent to an existing IDA, where the development on the parcel is located at least 300 feet from the edge of tidal waters, tidal wetlands or tributary streams providing such designation:

(a) minimizes adverse impacts to agriculture, forest lands, fisheries or aquaculture;

(b) minimizes adverse impacts to Habitat Protection Areas; and

(c) optimize benefits to water quality.

(2) Those parcels designated as new LDA's which are located adjacent to existing LDA's or IDA's and where the development on the parcel is located at least 300 feet from the edge of tidal waters, tidal wetlands, or tributary streams providing such designation conforms to the requirements of 1 (b) and (c) above.

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

34.05 - **Process.**

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

1. All applications for Growth Allocation shall be submitted to the Planning Commission for investigation and recommendation to the Town Commissioners for Growth Allocation.

2. All applications for the Growth Allocation District Classification shall be accompanied by a sketch plan, or development plan which provides sufficient information to permit Planning Commission review for consistency with Critical Area Program requirements.

3. The Planning Commission will review concept, sketch, or comprehensive development plans submitted for consistency with the Critical Area Program and will provide technical comments and recommendations to the applicant prior to submission of preliminary plats consistent with the requirements of Town Subdivision regulations. Permitted development density or intensity will be determined at this time, subject to the applicant obtaining approvals from local, State and Federal authorities for such things as sewer, water, access, dredging permits, and forest management plans.

4. After the applicant has addressed the Planning Commission's recommendations, a sketch plan may be revised and submitted for review with respect to Growth Allocation District designation.

5. A public hearing on the application for Growth Allocation amendment will be held by the Town Commissioners.

6. In approving an application for Growth Allocation, the Town Commissioners may establish conditions of approval that are consistent with the intent of the Oxford Critical Area Program.

7. Applications for Growth Allocation will be forwarded to the Critical Area Commission after the Town Commissioners have conducted their public hearing and granted an approval subject to Critical Area Commission review (conditional approval). The Town Commissioners may only adopt Growth Allocation requests that have been approved by the Critical Area Commission.

8. Following adoption by the Town Commissioners, the applicant may proceed to the preparation of the final site plan or subdivision plat for recordation.

9. Prior to approving the final site plan or subdivision plat, the Planning Commission will ensure that all conditions of approval are incorporated into the final plan, public works agreement, deed covenants, etc.

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

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

1. The Official Critical Area Map(s) will be amended to reflect the new "GA" district classification along with a notation of the new land management classification.

2. Successful projects granted the "GA" district classification will be submitted for final site plan or final subdivision approval as per the requirements of the Zoning and/or Subdivision Regulations and shall delineate the Growth Allocation District on the record plat or site plan.

Chesapeake Bay Critical Area Program

Oxford, Maryland

December 1995

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- New IDA and LDA's should be located in such a way that impacts to Habitat Protection Areas are minimized and in such a manner that optimize benefits to water quality.

- New IDA and LDA's which are located within RCA's should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.

Accounting for Growth Allocation

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

Subdivision of any parcel of land that was recorded as of December 1, 1985, and classified as RCA or LDA, where all or part of the parcel is identified by the Town of Oxford as a Growth Allocation area, shall result in the acreage of the entire parcel counting against the Growth Allocation, unless conditions such as the following obtain:

- On Qualifying Parcels as described below, on which a change in classification is requested, a single development envelope will be specified, the acreage of which would be counted against the Growth Allocation. The envelope will include: 1) individually owned lots; 2) any required Buffers; 3) impervious surfaces, utilities, stormwater management measures, on-site sewage disposal measures; 4) any areas subject to human use such as active recreation areas; and, 5) any additional acreage needed to meet the development requirements of the criteria.

- The remainder of the parcel may not count against the County's growth allocation if it is contiguous and at least 20 acres in size, retained its natural features or its use by resource utilization activities (agriculture, forestry, fisheries activities, or aquaculture) and was restricted from future subdivision and/or development through restrictive covenants, conservation easements, or other protective measures approved by the Commission. A Forest Management Plan is required for any forested areas in the undeveloped portion of the parcel. Replanting should be accomplished on lands abandoned from agriculture.

- In the case of Growth Allocation being applied in an RCA area, a 300 foot naturally vegetated Buffer is strongly encouraged, and in the case where it is provided, the Buffer shall not be deducted from the Town's Growth Allocation, even if that Buffer does not meet the 20-acre minimum.

Qualifying Parcels

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

1. Those parcels designated as new IDA's which are located within an LDA or adjacent to an existing IDA, where the development on the parcel is located at least 300 feet from the edge of tidal waters, tidal wetlands or tributary streams providing such designation:

   a. minimizes adverse impacts to agriculture, forest lands, fisheries or aquaculture;

   b. minimizes adverse impacts to Habitat Protection Areas; and

   c. optimize benefits to water quality.

2. Those parcels designated as new LDA's which are located adjacent to existing LDA's or IDA's and where the development on the parcel is located at least 300 feet from the edge of tidal waters, tidal wetlands, or tributary streams providing such designation conforms to the requirements of 1.(b) and (c) above.

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

ELEMENT B: WATER-DEPENDENT FACILITIES

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

Marinas

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

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

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

2. Preparation of a site plan review check list and guidance for use by the developers as well as Town staff approval authorities. The check list will serve to familiarize users with all information necessary to be shown or identified on a specific site proposed for development to assure resources to be protected are properly identified.

3. Preparation of a mitigation manual which identifies alternative mitigation techniques for various kinds of disturbances to site resources as well as techniques (structural and non-structural) for mitigating water quantity and quality related impacts. This manual will be helpful in assessing whether or not 10 percent reduction in pollutant loadings are achieved for new development in Intensely Developed Areas, likewise it will assist in determining whether or not redevelopment achieves 10 percent reductions in pollution form pre-development levels to ascertain the degree or magnitude of mitigation required offsite.

4. Preparation of landscape standards for developed sites which incorporate standards for aerial extent of planting by type of plant units on a per acre basis or portion thereof. These standards should be consistent with the Forest and Woodland protection element of this program. Urban forestry planting considerations and plantings which enhance wildlife food value should be incorporated to achieve program intent and accomplish previously identified objections.

5. Modification of the Town's plans for park development to include model or demonstration buffer plantings with the assistance and cooperation of State agencies and/or civic organizations in the Town.

6. Identification of specific sites which represent appropriate locations for retrofitting measures to address existing Stormwater Management problems, as public improvements.

7. Encouraging redevelopment of privately-owned sites within the Intensely Developed Area where structures are vacant or under-utilized and/or large portions of the site are currently occupied by impervious surfaces.

8. Focus efforts to expand the size and/or enhance plantings in the existing Town waterfront areas located in The Buffer.

Growth Areas

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

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of its municipalities.

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

1. New IDA's should be located in existing LDA's or adjacent to existing IDA's.

2. New LDA's should be located adjacent to existing LDA's or IDA's.

3. New IDA and LDA's which are located within Resource Conservation Areas should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.

4. If the County is <u>able</u> to utilize its growth allocation as prescribed above, no more than half of the expansion allocated in the Criteria of the Commission may be located in RCA's (adjacent to LDA's or IDA's).

5. If the County is <u>unable</u> to utilize a portion of the growth allocated to the County as per 1 and 2 above, within or adjacent to existing IDA's or LDA's as demonstrated in the Talbot County Local Program approved by the Commission, then that portion of allocated expansion which cannot be so located may be located in the RCA in addition to expansion allocated in 4 above. A developer shall be required to cluster any development in any area authorized.

6. New IDA's and LDA's should be located in order to minimize impacts to Habitat Protection Areas and in a manner that optimizes benefits to water quality.

7. New IDA's or LDA's located in the RCA shall conform to all Criteria of the Commission for such areas and shall be designated on the Comprehensive Zoning Map submitted by the Local jurisdiction as part of its application to the Commission for program approval or at a later date as per 8-1809 (g) (Proposed Amendments).

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

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

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

Footnotes

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

2 Ibid., p. 4.

3 Ibid.

TOWN OF EASTON

CHESAPEAKE BAY CRITICAL AREA LOCAL PROGRAM

Originally Approved June 26, 1988

Comprehensively Revised _____, 1993

RECEIVED

JUL 29 1993

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

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

Critical Area Commission

PANEL REPORT
May 5, 2004

APPLICANT:	Talbot County
PROPOSAL:	County Council Bill 933 Review and Reallocation of Growth Allocation for the Towns
COMMISSION ACTION:	Vote
COMMISSION PANEL:	Dave Blazer (Chairman), Bill Giese, Joe Jackson, Ed Richards and Gary Setzer
PANEL RECOMMENDATION:	Pending Panel Discussion
STAFF:	Ren Serey
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article §8-1809 (h)

DISCUSSION:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- The applicable sections of the Critical Area Law and Criteria governing growth allocation.

- The effect of Bill 933 on other approved Critical Area Programs, program amendments, or program refinements.

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

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

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

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

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

1. To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

2. To conserve fish, wildlife, and plant habitat; and

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

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

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

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

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

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

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.

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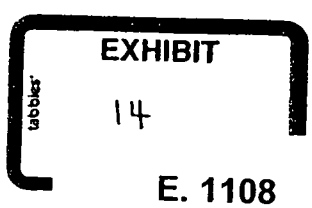
Critical Area Commission
For the Chesapeake and Atlantic Coastal Bays
People's Resource Center
100 Community Place
Crownsville, Maryland
May 5, 2004

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

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

NOT IN ATTENDANCE:
James N. Mathias, Jr., Ocean City
Gail Booker Jones, Prince George's County

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<u>Bill 926 - Chapter 190, Article II Definitions and Word Usage, § 190-14</u>
Section Three, Dwelling Unit (See page 2) - Change the definition of dwelling unit to state, "Dwelling unit means a single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. Dwelling unit includes a living quarters for domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence." Section Nine, Shoreline Development Buffer (See page 4) - Amend the definition of shoreline development buffer to state, "The area at least 100 feet wide measured landward from the mean high-water line of tidal waters, tributary streams and tidal wetlands." Section One, Development Activities (CA) (See page 2) - Request deletion of the last two sentences in item "b." This is where "substantial alteration" is defined. The motion was seconded and carried unanimously.

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

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

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

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

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

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

a) A time period for implementing the plan and provisions for a final inspection by the County after which the Plan will be certified complete; or

b) Provisions for removal of invasive/exotic species and/or maintenance of native vegetation for a period of up to 5 years including provisions for annual inspections by the County."

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

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

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

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

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

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

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

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

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

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

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

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

Old Business

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

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

New Business

There was no new business reported.

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

Minutes submitted by: Peggy Campbell, Commission Coordinator

ıbert 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

Dear Mr. Kinney:

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

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

> Accepting Bill 933 would negate at least one previous Commission action approving a local program change. This is the refinement to the St. Michaels program for the Strausburg growth allocation approved in October 2003.
>
> Accepting Bill 933 would create conflicts between the County program and several approved municipal programs. The municipal programs have their own approved growth allocation procedures premised on the growth allocation reserves provided by the County. The conflict that Bill 933 would create is contrary to the Commission's oversight responsibility to ensure that local programs are implemented in a consistent and uniform manner.

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

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

Sincerely,

Lisa A. Hoerger

Lisa Hoerger
Natural Resource Planner

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

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

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

MOTION FOR SUMMARY JUDGMENT BY THE TOWN OF OXFORD

The Town of Oxford ("Oxford"), Defendant/Counter-Plaintiff, by its attorneys, David R. Thompson, Brynja M. Booth and Cowdrey, Thompson & Karsten, files this Motion for Summary Judgment, and in support thereof, incorporates by reference the Memorandum in Support of its Motion for Summary Judgment, which has been filed simultaneously herewith. The Town of Oxford also incorporates by reference the Memorandum in Support of St. Michaels Motion for Summary Judgment, and the Motion for Summary Judgment filed by Miles Point Property, LLC, and The Midland Companies, Inc., which are incorporated by reference herein.

WHEREFORE, for all of the reasons stated in the attached Memorandum, and the memoranda incorporated by reference, the Town of Oxford respectfully requests that the Court order and declare as follows:

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

(2) That the Critical Area Commission correctly disapproved Bill 933 as an amendment to Talbot County's Critical Area Program;

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

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

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

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

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

(a) Create lots or parcels that maximize the opportunities for clustered development that protect habitat and agricultural resources;

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

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

(d) Minimize soil erosion and runoff;

(e) Maximize protection of eroding shorelines;

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

(g) Minimize impacts on nontidal wetlands;

(h) Maximize protection of plant and wildlife habitats, particularly for threatened and endangered species, plant and wildlife common to the Chesapeake Bay Region, and anadromous fish propagation waters; and

(i) Maximize protection of forests.

(3) The application shall first be referred by the Council to the Planning Officer for an investigation and recommendation.

(a) The Planning Officer shall cause such investigation to be made as he deems necessary.

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(b) The Planning Officer may hold such informal public hearings as he deems appropriate.

(c) The Planning Officer shall refer all such amendments to the Planning Commission for their review and subsequent recommendations.

(d) The Planning Officer shall submit his recommendation, the recommendation of the Planning Commission and any pertinent information to the County Council within 60 days of application filing.

(4) Introduction of bill; considerations.

(a) After receiving the recommendation of the Planning Officer and Planning Commission concerning a proposal for a growth allocation district boundary amendment and before approval or denial, the Council shall introduce a bill (legislation) for the proposed amendment and hold a public hearing in order that interested parties and citizens shall have an opportunity to be heard. The Council shall provide public notice of such hearing in accordance with the provisions set forth in § 190-112.

(b) In deciding whether to approve or disapprove an application for a growth allocation district boundary amendment, in addition to the specific requirements and purposes set forth elsewhere in this chapter, the Council may also consider:

[1] Consistency with the purposes and intent of the Talbot County Comprehensive Plan;

[2] Compatibility with existing and proposed development and land use in the surrounding area;

[3] Availability of public facilities;

[4] The effects on present and future transportation patterns;

[5] The effect of population change within the immediate area;

[6] The past, present, and anticipated need for future growth of the County as a whole;

[7] The location, nature, and timing of the proposed growth allocation in relation to the public interest in ordered, efficient, and productive development and land use;

[8] The protection of the public health, safety and welfare.

(c) The fact that an application for a growth allocation district boundary amendment complies with all the specific requirements and purposes set forth in this chapter shall not be deemed to create a presumption that the proposed growth allocation district boundary amendment would in fact be compatible with surrounding land uses, and is not, in itself, sufficient to require approval.

(5) A complete record shall be kept of the hearing including the vote of all members of the Council in deciding all questions relating to the proposed growth allocation district boundary amendment.

(6) Site visit. The Council shall not approve or disapprove any applications for a growth allocation district boundary amendment unless and until a site visit has been made by at least a majority of the Council members in order to inspect the physical features of the property and to determine the character of the surrounding area.

(7) Critical Area Commission approval.

(a) All requests approved by the County Council shall be submitted by the County to the Maryland Critical Area Commission for approval as an amendment to the County's Critical Area Program. By state law, the Commission has 90 days to act on a request. If no action is taken in 90 days, the request will be considered approved. A request approved by the County Council shall take effect 60 days after adoption by the Council, and upon approval by the Critical Area Commission.

(b) If a project receiving growth allocation approval, in accordance with the provisions of this subsection, does not obtain final subdivision recordation or final site plan approval, as appropriate, within two years of the final growth allocation approval, the Critical Area and zoning classifications may revert to the previously designated classifications, upon recommendation of the Planning Officer and approval by the County Council.

(c) Upon receipt of a written request by the property owner or the applicant, a time extension may be granted to the two-year period, upon a recommendation by the Planning Officer and approval by the County Council.

(d) A request denied by the Critical Area Commission may be reconsidered by the County Council. Such a request shall be revised by the applicant to address the reasons for Critical Area Commission denial. The revised request shall be submitted to the Planning Officer for reconsideration by the County Council within 90 days of Critical Area Commission denial. An extension of the ninety-day deadline may be requested for a specific period of time, if the applicant can demonstrate, to the satisfaction of the Planning Officer, circumstances beyond the applicant's control.

(8) Growth allocation district boundary amendment requests for property outside of the towns and outside of areas shown as possible annexation areas should be reviewed by the County on an annual cycle, with requests submitted to the Planning Officer by October 1st of each year.

(9) Awarding of supplemental growth allocation to municipalities in County.

(a) Not more than 1,213 acres of the Critical Areas of the County, including all land lying within the Critical Area within incorporated towns, shall be

reclassified from the Rural Conservation (RC) District (or town zoning districts established for the Resource Conservation Area of the Critical Area) to any other zoning district. Of these 1,213 acres, 155 acres is reserved for the Town of Easton, 195 acres is reserved for the Town of Oxford, 245 acres is reserved for the Town of St. Michaels for growth allocation associated with annexations, and 618 acres is reserved for the County.

(b) When 1,092 acres (90% percent of 1,213 acres) has been approved for growth allocation by the towns and/or the County, then the County shall request permission from the Maryland Critical Area Commission to double the maximum number of acres that may be reclassified from the Rural Conservation District (or comparable town districts) from 1,213 to 2,426 acres. Upon Critical Area Commission approval, the County shall reserve acreage for each town.

(c) If the Commission approves the doubling of the number of acres that may be rezoned under this subsection, the County will have its full allocation of 2,554 acres for growth as specified in the County's Critical Area Plan, that is 1,213 acres (original limit) + 1,213 acres (potential additional limit) + 128 acres (amount reserved in Subsection D(10) below = 2,554 acres). The Maryland Critical Area law does not allow for the full 2,426-acre allocation (1,213 + 1,213) at the time of the establishment of this section (August 13, 1989).

(d) Upon request for supplemental growth allocation by any municipal corporation within the County, the County Council may transfer growth allocation to the municipal corporation and may impose such conditions, restrictions, and limitations upon the use of any such supplemental growth allocation, if any, as the Council may consider appropriate. All such requests shall comply with the following requirements:

[1] Application process. The applicant shall file the application with the municipality. In addition to complying with all municipal requirements, the applicant shall also provide the information required by § 190-109D(2) of this chapter, as amended, and shall also comply with the design standards set forth in § 190-109D(2)(a) through (i) of this chapter, as amended. The municipality shall forward the application to the County Council for consideration and review within five working days.

[2] Staff and Planning Commission review. The planning staff and the Planning Commission shall review the application in accordance with the procedures set forth in § 190-109D(9)(d)[1] through [4], except that municipal and county staff reports shall be forwarded to the Planning Commissions of both jurisdictions, and the planning staff shall schedule a joint hearing on the application before the Planning Commissions of both jurisdictions. The designated Chairperson of each Planning Commission shall co-chair the hearing. Each Planning Commission shall vote separately and make its recommendations to its respective

council or commission. Each Planning Commission shall provide a copy of its recommendations to the other jurisdiction.

[3] Council review. The county and municipal councils or commissions shall hold a joint hearing on the application, co-chaired by the designated Chairperson of each council or commission which may be coordinated jointly with the Critical Area Commission. The county and municipal councils or commissions shall make their respective decisions separately as independent entities. The County Council shall evaluate the application in accordance with § 190-109D(4).

[4] Amendments to approved projects. Any amendment to an approved project shall be subject to County Council review and approval for a period of five years following the date of initial approval.

(10) Reclassification of land within incorporated towns.

(a) Not more than 128 acres of the Critical Area of the County, including lands within the incorporated towns, shall be reclassified from a Limited Development Area (LDA) to an Intensely Developed Area (IDA). For purposes of this section, LDA Zoning Districts include Rural Residential (RR), Town Residential (TR) and Village Center (VC) or areas of less than 20 contiguous acres of Limited Commercial (LC), General Commercial (GC) or Limited Industrial (LI). Town zoning districts include all districts classified as LDA. The requested IDA classification shall include areas of 20 or more contiguous acres of LC, GC, LI or town zoning districts established for the IDA of the Critical Area.

(b) In determining whether the twenty-acre threshold has been reached, the contiguous areas of existing commercial and/or industrial zoning districts, whether located in the Critical Area or Non-Critical Area, shall be considered. Of the 128 acres, 24 acres is reserved for the Town of Easton, 44 acres for the Town of Oxford, 24 acres for the Town of St. Michaels for growth allocation or growth allocation associated with annexations, and 36 acres for the County for growth allocation for property outside of the towns and outside of areas shown as possible annexation areas. (See Maps 1, 2 and 3.)[8]

(11) The number of reserved areas allocated among the towns for rezoning in § 190-109D(9) and (10) should be reviewed by the County and Towns by June 1, 1993 for possible reallocation and at least every four years thereafter.

(12) In any one rezoning review cycle, not more than 100 acres should be approved by the County for reclassification from the Rural Conservation District to any other zoning district. Not more than 20 acres should be reclassified from the Rural Residential, Town Residential, or Village Center Districts or area of less than 20 contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial Districts to establish a total area of 20 or more contiguous acres of

8. Editor's Note: Maps 1, 2 and 3 are included at the end of this chapter.

Limited Commercial, General Commercial, and/or Limited Industrial Districts (including contiguous areas of existing Commercial or Industrial Zoning Districts).

(13) Zoning Map amendments from the LDA Zoning District to another LDA Zoning District or from one IDA Zoning District to another IDA Zoning District shall not require growth allocation, but shall instead be required to follow the procedures of a Non-Critical Area Zoning Map amendment as prescribed in § 190-109B.

(14) Specific annexation requests for property included in the acres reserved for the towns in § 190-109D(9) and (10) above and as shown in Maps 1, 2, and 3, shall be reviewed by the County for consistency with the County Comprehensive Plan and shall be subject to all current ordinances regulating annexations. The County shall not act on rezoning requests adjacent to the towns as shown on Map 1, 2, and 3 until an annexation request for the property has been denied by the town or until 12 months after an annexation request for the property has been submitted to the town, whichever occurs first. If the County approves a rezoning request not associated with an annexation request for property adjacent to the towns as shown on Maps 1, 2 and 3, then the acreage of the property rezoned shall be subtracted from the acres reserved for the Town for annexation in § 190-109D(9) and (10).

(15) Growth allocation requests for property that has been annexed within five years of the request shall be reviewed by the County for consistency with the County Comprehensive Plan. Growth allocation request(s) for property that has been in the town for more than five years prior to the request does not require review by the County; however, the towns shall inform the County of such reclassification to ensure that the total reserved acres, listed above, are not exceeded.

(16) The location of growth allocation requests within Towns or growth allocation requests associated with annexation requests is not limited to the areas shown in Maps 1, 2 and 3, however, the total acres reserved per town shall not be exceeded.

(17) When considering growth allocation requests from the Rural Conservation District, priority shall be given based on the district requested in the following order: Village Center, Town Residential, Rural Residential, Limited Commercial, General Commercial, Limited Industrial. When considering growth allocation requests from the Rural Residential, Town Residential, or Village Center District, priority shall be given based on the district requested in the following order: Limited Commercial, General Commercial, Limited Industrial.

(18) A growth allocation request for the Rural Residential District should be adjacent to existing Rural Residential, Town Residential, or Village Center Districts. Such requests should not be adjacent to Limited Commercial, General Commercial, or Limited Industrial Districts of any size. Property proposed for the Town Residential District should be adjacent to the Rural Residential, Town Residential, or Village Center Districts or to an area of less than 20 contiguous acres of Limited Commercial, General Commercial, or Limited Industrial Districts, or to any area of Limited Commercial or General Commercial Districts. Property proposed for the Village Center District should be adjacent to an existing Rural Residential, Town Residential, or Village Center District or to any size area of

Limited Commercial, General Commercial, or Limited Industrial Districts. For purposes of this section adjacency means at least 25% of the perimeter land boundary of the subject parcel is in common with the referenced zoning district(s). Land boundaries shall be measured at the center line of any rights-of-way.

(19) A growth allocation request to establish a total area of less than 20 contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial Zoning Districts (including contiguous areas of existing commercial or industrial Zoning Districts) shall be adjacent to the Town Residential, Village Center, Limited Commercial, General Commercial, or Limited Industrial District. Such requests should not be adjacent to the Rural Residential District. For purposes of this section, adjacency means at least 25% of the perimeter land boundary of the subject parcel is in common with the referenced zoning district(s). Land boundaries shall be measured at the center line of any rights-of-way.

(20) A growth allocation request to establish a total area of 20 or more contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial Zoning Districts (including contiguous areas of existing commercial or industrial zoning districts) should not be approved unless the proposed development activity is water-dependent, will have substantial economic benefit to Talbot County, and cannot be located within the limits of an incorporated town. Such a request should be located within or adjacent to a Village Center, Limited Commercial, General Commercial or Limited Industrial Districts. For purposes of this section, adjacency means at least 25% of the perimeter land boundary of the subject parcel is in common with the referenced zoning district(s). Land boundaries shall be measured at the center line of any rights-of-way. Such a request should be located so as not to conflict with the character and purpose of the Rural Conservative District.

(21) Growth allocation for specific uses in the Rural Conservation RC Zone. Specific uses in the Rural Conservation RC Zoning District listed in § 190-19, General Table of Land Use Regulations, are permitted to expand only with the issuance of growth allocation. The process for granting growth allocation for specific Rural Conservation RC uses is as follows: **[Added 12-9-2003 by Bill No. 932, effective 2-7-2004]**

(a) Application for growth allocation shall accompany an application for site plan review and shall be made on forms provided by the Planning Office.

(b) An application shall be submitted to the Planning Office meeting all of the general site plan requirements as stipulated in § 190-92 of this chapter. The application shall indicate the area and number of growth allocation acres requested.

(c) The Planning Officer, or his or her designated representative, shall review the application materials, including the site plan and all attachments, for completeness and, if found to be in order, shall accept the application.

(d) The application shall be submitted by the Planning Officer or his or her designated representative to the Technical Advisory Committee (TAC) for review and comment.

(e) Upon completion of the Technical Advisory Committee review, all comments shall be passed on to the Planning Officer. The Planning Officer or his or her designated representative shall prepare a staff report, which shall accompany the site plan report required under § 190-92 of this chapter and forward to the Planning Commission.

(f) The Planning Commission shall review the application, related materials and the Planning Office staff report for both the site plan and the application for growth allocation at a regular public meeting. Upon favorable approval by the Planning Commission and the Planning Officer, the Planning Officer shall forward the recommendation on the growth allocation request to the County Council.

(g) After receiving the recommendation of the Planning Officer and the Planning Commission concerning a proposal for growth allocation associated with a use expansion in the Rural Conservation RC Zone, the Council shall hold a public hearing in order that interested parties and citizens shall have an opportunity to be heard. The Council shall provide public notice of such hearing in accordance with the provisions set forth in § 190-112 of this chapter.

(h) In deciding whether to approve or disapprove an application for a growth allocation for expansion of specific uses in the Rural Conservation RC Zone as listed in § 190-19 of this chapter, the Council shall consider the following:

[1] Consistency with the purposes and intent of the Talbot County Comprehensive Plan;

[2] Compatibility with existing and proposed development and land use in the surrounding area;

[3] Availability of public facilities;

[4] The effects on present and future transportation patterns;

[5] The effect of population change within the immediate area;

[6] The past, present, and anticipated need for future growth of the County as a whole;

[7] The location, and nature of the proposed use and/or expansion of the use; and

[8] The protection of the public health, safety and welfare.

(i) The fact that an application for a growth allocation complies with all the specific requirements and purposes set forth in this chapter shall not be deemed to create a presumption that the proposed growth allocation would in fact be compatible, and is not, in itself, sufficient to require approval with surrounding land uses.

(j) A complete record shall be kept of the hearing, including the vote of all members of the Council in deciding all questions relating to the proposed growth allocation.

(k) Site visit. The Council shall not approve or disapprove any applications for a growth allocation unless and until a site visit has been made by at least a majority of the Council members in order to inspect the physical features of the property and to determine the character of the surrounding area.

(l) All requests approved by the County Council shall be submitted by the County to the Maryland Critical Area Commission for approval as an amendment to the County's Critical Area Program. By state law, the Commission has 90 days to act on a request. If no action is taken in 90 days, the request will be considered approved. A request approved by the County Council shall take effect 60 days after adoption by the Council, and upon approval by the Critical Area Commission.

(m) The County Council may reconsider a request denied by the Critical Area Commission. Such a request shall be revised by the applicant to address the reasons for Critical Area Commission denial. The revised request shall be submitted to the Planning Officer for reconsideration by the County Council within 90 days of Critical Area Commission denial. An extension of the ninety-day deadline may be requested for a specific period of time, if the applicant can demonstrate, to the satisfaction of the Planning Officer, circumstances beyond the applicant's control.

§ 190-110. Appeals to the Courts.

Any person aggrieved by any decision of the Board of Appeals may appeal the same to the Circuit Court of Talbot County according to Subtitle B of the Maryland Rules of Procedure.[11]

§ 190-111. Duties of Planning Officer, Board of Appeals and County Council.

A. It is the intent of this chapter that all questions of interpretation and enforcement shall be first presented to the Planning Officer and that such questions shall be presented to the Board of appeals only on appeal from the decision of the Planning Officer, and that recourse from the decisions of the Board or Appeals shall be the courts.

B. It is further the intent of this chapter that the duties of the County Council in connection with this chapter shall not include hearing and deciding questions of interpretation and enforcement that may arise. Under this chapter the County Council shall have only the duties of considering and adopting or rejecting proposed amendments to the text and maps, or the repeal of this chapter.

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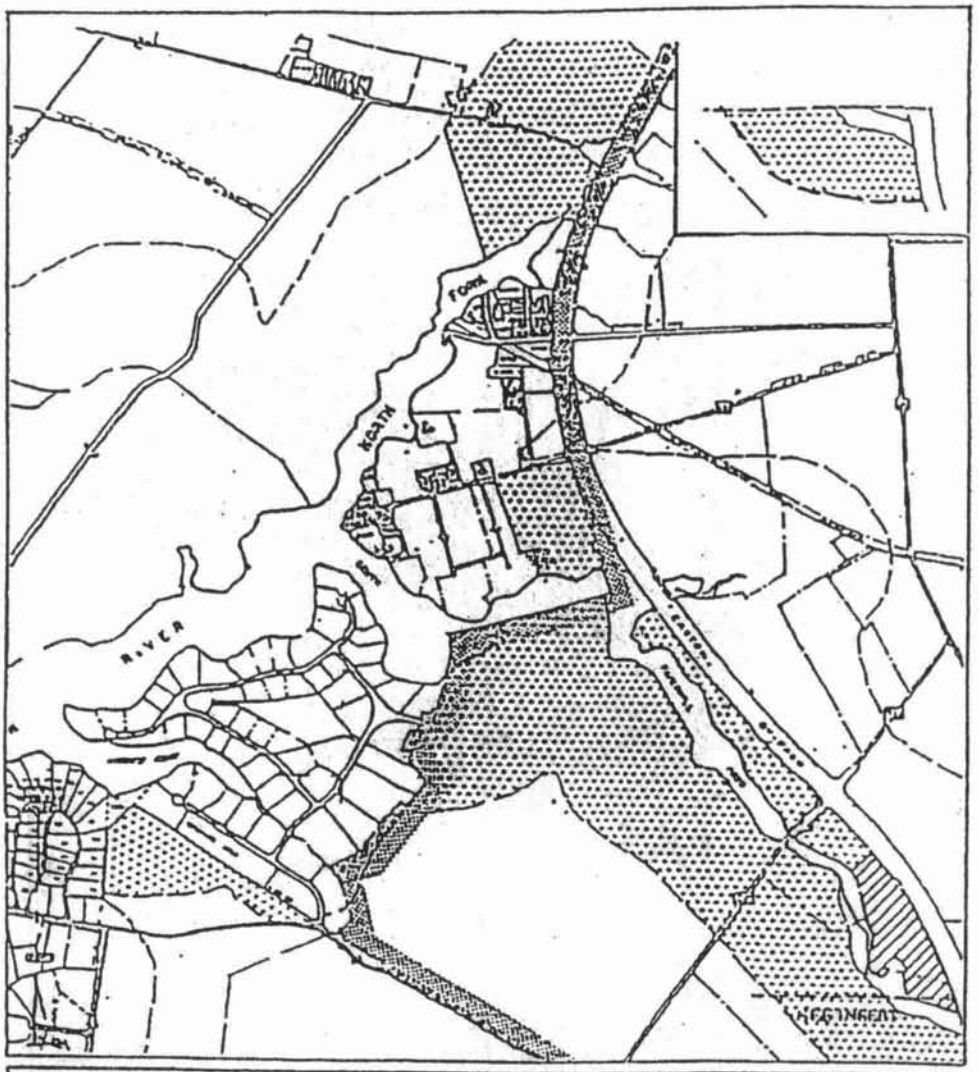
11. Editor's Note: Former Sections 19.14(e), Enforcement and Penalties, and 19-14(f), Injunction Powers, were repealed 1-18-2000 by Bill No. 751, effective 3-18-2000. See now Article XV of this chapter.


Area Allocated for Town Development
TOWN OF EASTON
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
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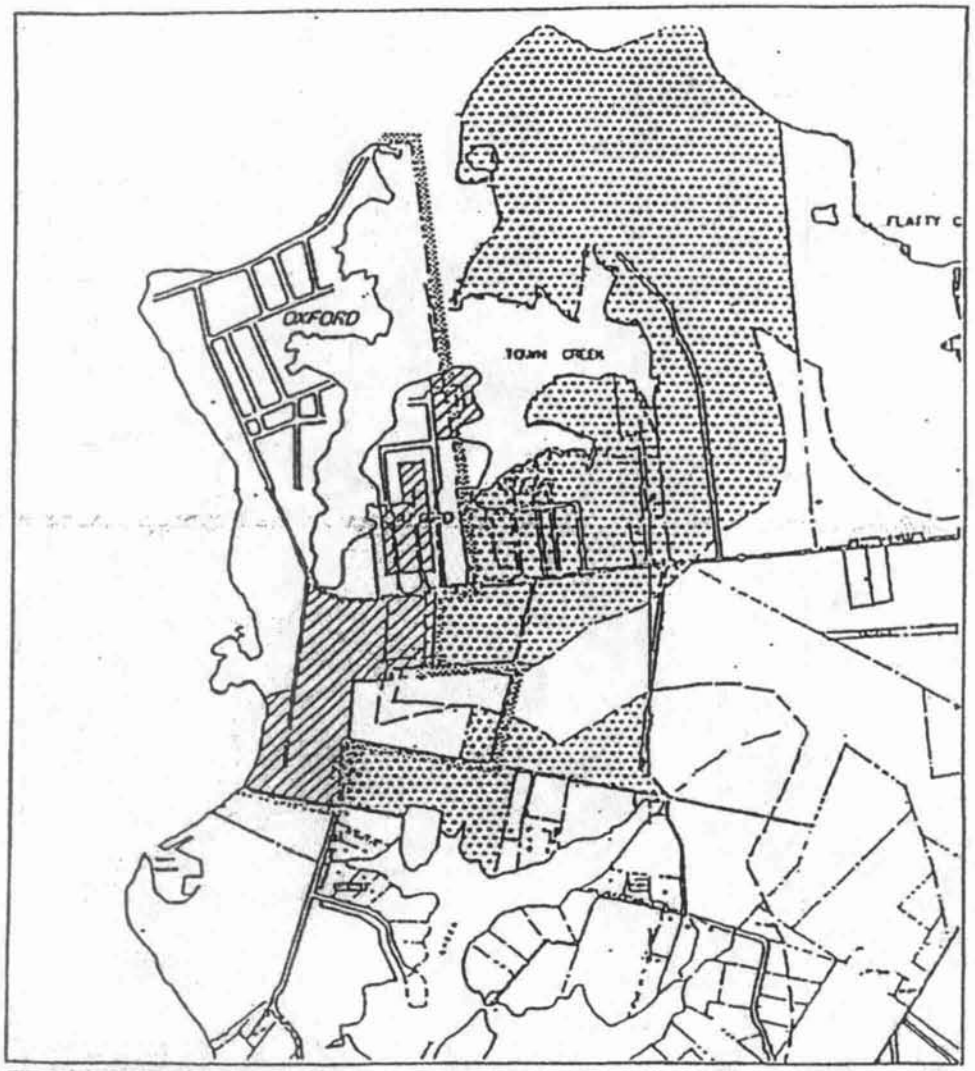

Area Allocated for Town Development

TOWN OF OXFORD

Talbot County, Maryland

RCA for Annexation or Rezoning

LDA for Rezoning

Map No

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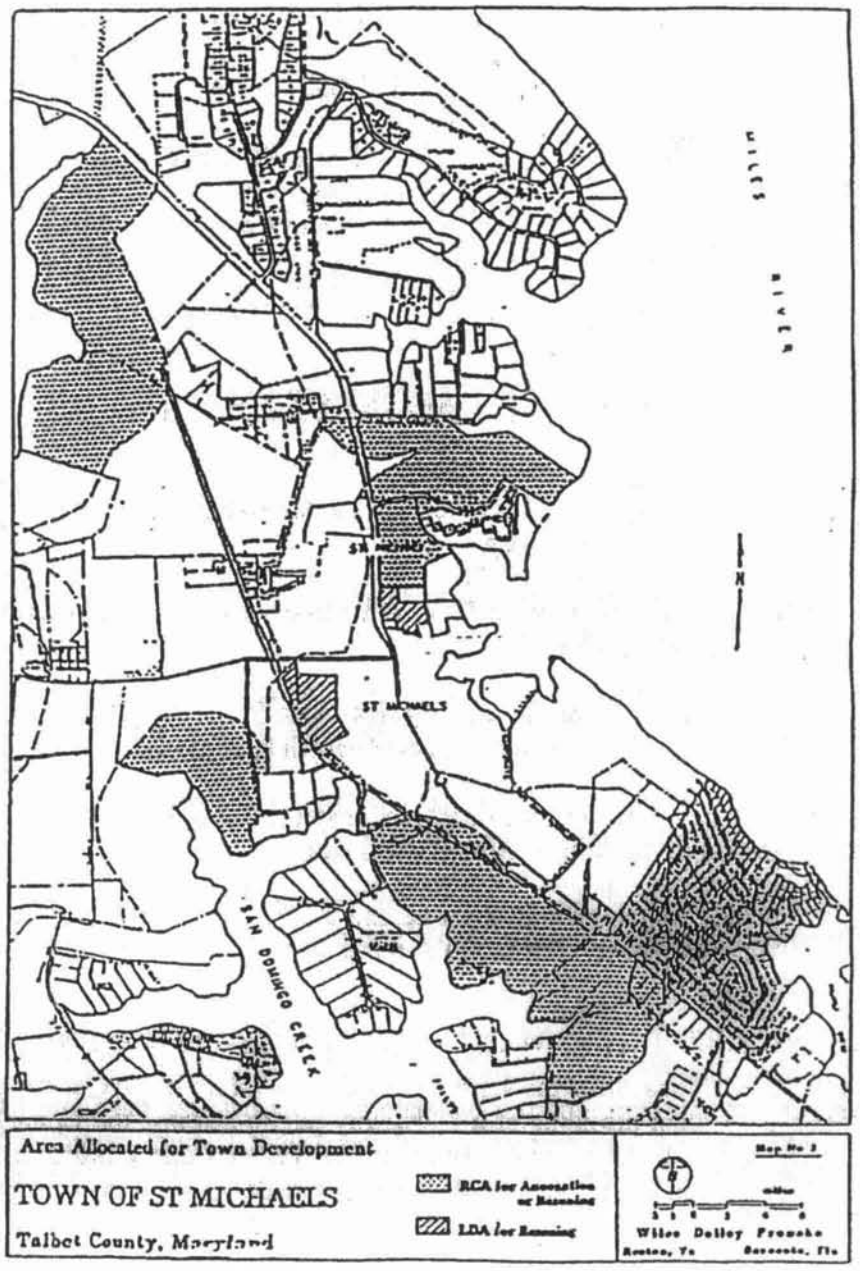
ZONING


MILES RIVER
ST MICHAELS
SAN DOMINGO CREEK
Area Allocated for Town Development
TOWN OF ST MICHAELS
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
Wilce Dailey Franeke

TALBOT COUNTY, MARYLAND	*	IN THE
Plaintiff	*	CIRCUIT COURT
v.	*	FOR
DEPARTMENT OF NATURAL RESOURCES	*	TALBOT COUNTY,
	*	MARYLAND
Defendant	*	Case No. 20-C-04-005095DJ

* * * * * * * * * *

AFFIDAVIT OF SIDNEY S. CAMPEN, JR.

1. I am over the age of 18 years old, have personal knowledge of the matters contained herein, and I am competent to be a witness.

2. I have been a Commissioner of the Town of Oxford since 1998. I am currently the President of the Commissioners of Oxford.

3. The Town of Oxford adopted its own Critical Area Program in 1988, which was approved by the Critical Area Commission on or about March 8, 1988.

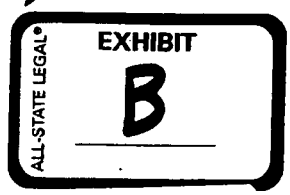
4. The Oxford Critical Area Program has been updated and amended on several occasions, all with the approval of the Critical Area Commission.

5. Exhibit C to this Memorandum is a true and accurate copy of pertinent provisions of the Oxford Zoning Ordinance. Exhibit D is a true and accurate copy of the Town of Oxford's Zoning Map.

6. Prior to enacting Bill 933, the County Council declined to consult or discuss with the Talbot County municipalities either the substance or the procedure in the creation and enactment of Bill 933. Other than presiding at a mandatory public hearing, the County Council had no communication with the representatives of the Talbot County municipalities concerning their current, pending or future growth plans, and made no effort to coordinate the proprosed critical area plan changes with the Commissioners of Oxford.

I hereby certify under the penalties of perjury that the foregoing is true and correct, to the best of my information, knowledge and belief.

Sidney S. Campen, Jr.



State of Maryland
Talbot County

Subscribed and sworn to before me, a notary public, of and for the jurisdiction aforesaid this 14 day of November, 2005.

Patricia E. Campen
Notary Public

My Commission Expires: 6/1/08

ZONING ORDINANCE

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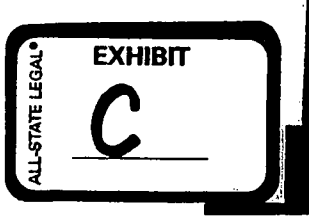
Oxford, Maryland

Adopted July 9, 1996



"WS/WC"	Wildlife Sanctuary/Corridor District
"O"	Critical Area Overlay District
"GA"	Growth Allocation District

SECTION 4. PROVISION FOR OFFICIAL ZONING MAP

4.00 - Establishment, Attestation, and Location.

The boundaries of the zoning districts are shown on the Official Zoning Map of Oxford, Maryland, which together with all notations and explanatory matter thereon are hereby made a part of this ordinance. The Official Zoning Map shall be properly attested and shall remain on file with the Clerk/Treasurer of the Town of Oxford, with a copy to be provided to the Clerk of the Circuit Court for Talbot County and the Planning Officer for Talbot County.

4.01 - Changes to Official Zoning Map.

If, in accordance with the provisions of this ordinance, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Town Commissioners. No changes of any nature shall be made on the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this ordinance. Any unauthorized changes of whatever kind by any person shall be considered a violation of this ordinance and punishable as provided under Section 17.

4.02 - Replacement of Official Zoning Map.

In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the Town Commissioners may by resolution adopt a new Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof. The new Official Zoning Map shall be properly attested, and a notation of the date of adoption shall be entered on the map. Unless the prior Official Zoning Map has been lost or totally destroyed, the prior map and any significant parts thereof remaining shall be preserved, together with all available records pertaining to the adoption and amendment of the prior map.

4.03 - 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 of Oxford. They shall delineate the extent of the Critical Area Overlay District ("O") that shall correspond to the Chesapeake Bay Critical Area.

1. 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:

   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 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, Annotated Code of Maryland; and

   c. Modification to these areas through inclusion or exclusion proposed by the Town of Oxford and approved by the Commission as specified in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland.

2. Within the designated Critical Area all land shall be assigned one of the following land use management classifications:

   a. Intensely Developed Area (IDA)

   b. Limited Development Area (LDA)

   c. Resource Development Area (RCA)

   The land use management classification shall be as designated in the Town of Oxford 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.

was a substantial change in the character of the area where the property is located, or that there is a mistake in the existing zoning classification.

5. Where the decision involves a text amendment, the resolution shall be accompanied by an opinion of the Town Commissioners setting forth their conclusions and reasons therefore.

15.06 - Filing Fee for Reclassification.

A filing fee, in an amount which shall be determined by the Town Commissioners, shall be charged for processing an application for reclassification.

15.07 - Repeated Application for Reclassification.

No application for reclassification shall be accepted for filing by the Town Commissioners if the application is for the reclassification of the whole or any part of land for which reclassification has been denied within 18 months from the date of the Town Commissioners decision.

15.08 - Changing of Official Zoning Map.

It shall be the duty of the Town Commissioners to change the Official Zoning Map promptly upon the adoption of any amendments, in order that said Map shall always be an up-to-date public record of the zoning districts in the Town.

15.09 - Amending Land Use Management Classifications.

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).

15.10 - Amendment Procedures for Land Use Management Classification.

1. Proposed amendments to the text of this Ordinance as it relates to the Critical Area District may only be initiated by the Planning Commission and Town Commissioners.

Commercial Dock. A facility for the mooring, berthing, storing, or securing of watercraft, and which is operated as a commercial enterprise, e.g. compensation is received in exchange for the provision of service(s). Included may be such services and sales operations as are directly incidental to the mooring, berthing, storing, securing or operation of watercraft.

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.

Comprehensive Plan. A plan prepared by the Oxford Planning Commission and adopted by the Town Commissioners which contains goals and objectives for the future of the Town and which sets forth policy and desirable actions for attaining those goals and objectives.

Condominium. A form of property ownership providing for individual ownership of a specific apartment (or other space not necessarily on the ground level) together with an undivided interest in the land or other parts of the structure in common with other owners.

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.

Conventional Construction. Buildings which are fabricated or assembled in the greater part at the site where such buildings are to be located, not including mobile homes, or recreational trailers and vehicles, or buildings which are designed to be portable.

Critical Area. 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 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

3. Modification to these areas through inclusions or exclusions proposed by the Town of Oxford 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.

Critical Aread District. The Town of Oxford portions of the Critical Area, as defined in this ordinance.

Deck. A flat floored structure or impervious surface, without a roof, used in connection with (or by the occupants of) another structure on the property. A deck or patio may be attached to or separated from another structure.

Demolition. An action which results in the destruction or removal of a building or structure or portion thereof representing 20% or more of the floor area of the principal structure.

Density. The number of dwelling units per acre of gross area of a development tract, unless otherwise specified.

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.

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.

Directional Signs. Signs which display the name and/or nature of a commercial activity, geographical area, or public building and indicate through writing or graphic material the geographic location of such an activity or building.

District. A portion of territory lying within the zoning jurisdiction of Oxford and subject to certain uniform requirements and regulations under the provisions of this ordinance.

Disturbed Area. The area of a site where natural cover has been removed for construction of buildings, placement of septic systems or shared facilities, drives, roads, parking area, etc. and not replaced.

Drainageways. 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, including: The land, except where areas are designated as floodplain, on either side of and within fifty (50) feet of the centerline of any intermittent or perennial stream shown on the U.S. Geological Service's 7 ½ minute Quadrangle sheets covering the incorporated areas of Talbot County.

Duplex. A single dwelling consisting of two single family units, situated side by side and having a common interior wall with separate utilities for each dwelling unit.

Dwelling, Multi-family. A residential building designed for or occupied by three or more families.

Dwelling, Single Family. A detached residential building designed for and occupied by one family only.

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.

Freeboard. An increment of elevation added to the Base Flood elevation to provide a factor of safety for uncertainties in calculations, wave actions, subsidence, or other unpredictable effects.

Garden Type Apartment. A type of multi-family dwelling in which a single building contains three or more dwelling units. Such units may share a common entrance, as well as common utilities and service facilities. Each story of a garden apartment building may contain separate dwelling units, but no building shall contain more than three stories or exceed the height requirements of this ordinance.

Grandfathered. The term describes the status accorded certain properties and development activities that are of record prior to the date of adoption of this Ordinance or provisions of this Ordinance.

Gross Floor Area. The total floor area of all finished and usable floors, or portions thereof, when measured from outside to outside of exterior walls.

Growth Allocation.

1. An area of land calculated as five (5%) percent of the total Resource Conservation Area (excluding tidal wetlands and federally owned land) in the County, a portion of which the Town may convert to more intense management areas to accommodate land development; also

2. An act of the Town Commissioners, (i.e., approving the Growth Allocation), 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 Critical Area District to another land management classification which allows an increase in the permitted density.

Guesthouse. Living quarters within a residence or a detached accessory building located on the same premises, such quarters not rented or otherwise used as a separate dwelling and having no separate utility meter.

Habitat Protection Areas. The Buffer, Non-Tidal Wetlands, Threatened and Endangered Species and species in Need of Conservation, Plant and Wildlife Habitat, and Anadromous Fish Propagation waters as defined in the Oxford Critical Area Program and COMAR 14.15.09.

Height. (See Building height)

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 notion 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.

SECTION 34. "GA" GROWTH ALLOCATION DISTRICT

34.01 - Purpose and Intent

Growth Allocation is an area of land calculated as five (5%) percent of the total Resource Conservation Area (excluding tidal wetlands and federally owned land) in the County, a portion of which the Town may convert to more intense management areas to accommodate land development. The Growth Allocation District is designated for use within the Critical Area District on lands classified as Resource Conservation Areas (RCA) and/or Limited Development Areas (LDA). The purpose of the "GA" District is to designate areas of the Critical Area District where the Planning Commission and Town Commissioners may approve a change in the current land management classification on specific sites and for specific development projects that they may be developed to the extent permitted by this ordinance and the new land use management classification. Only specific development projects, for which the preliminary plat has been approved by the Planning Commission, shall be approved for the "GA" Growth Allocation District reclassification and thereby receive Critical Area Growth Allocation.

34.02 - Location.

The granting of the "GA" Growth Allocation District reclassification shall be consistent with the Town of Oxford Critical Area program. When approving the "GA" Growth Allocation District, the Planning Commission and the Town Commissioners shall use the following guidelines to determine if the location of the proposed land management classification under the "GA" District classification is consistent with the Town of Oxford Critical Area Program:

1. New IDA will be located in existing LDA or adjacent to existing IDA;

2. New LDA will be located adjacent to existing LDA or IDA;

3. To the extent possible no more than half of the growth allocated will be located in the RCA.

4. If the Town is unable to utilize any portion of its Growth Allocation within or adjacent to existing IDA or LDA, that portion of the Growth Allocation which cannot be so located may be located in the RCA;

5. New IDA and LDA will be located so as to minimize impacts to Habitat Protection Areas and in a manner that optimizes benefits to water quality.

6. New IDA or LDA located in the RCA will conform to all criteria of the Town of Oxford Critical Area Program for such areas; and

7. When Growth Allocation is permitted in RCA not adjacent to IDA or LDA the developer will be required to minimize the impact of the development on water quality and wildlife habitat and provide for resource enhancement in the design of such development.

34.03 - Conditions of Approval.

1. A condition of approval shall be that the projects approved for the "GA" Growth Allocation District shall be substantially completed within three (3) years of the date of approval. If after three years the project is not completed, the "GA" Growth Allocation District classification shall be withdrawn.

2. The Supervisor of Public Works shall determine whether a project is substantially completed or not. Substantially completed projects are defined as projects in which all public improvements, such as roads, community sewer and/or water facilities, etc., have been built, as required by the Town or State.

3. The development of a proposed project must demonstrate to the Planning Commission that the following design standards will be met or exceeded in order to be approved:

   a. All applicable requirements of the Town of Oxford Critical Area Program, the Zoning Ordinance and the Subdivision regulations.

   b. Limit the area of disturbance for non-residential development to no more than 60 percent of the total site area.

   c. The design of the development enhances the water quality and resource and habitat values of the area, e.g., results in additional planting of forest cover in the Buffer or implementation of Best Management Practices on portions of the site to be retained in agriculture use.

   d. The development incorporates the comments and recommendations of the Planning Commission and the Maryland Department of Natural Resources in the project design.

   e. The developer executes covenants that guarantee maintenance of the required open space areas.

34.04 - Computing the Use of the Growth Allocation.

1. Subdivision of any parcel of land that was recorded as of December 1, 1985, and classified as RCA or LDA, where all or part of the parcel is identified by the Town of Oxford as a Growth Allocation area, shall result in the acreage of the entire parcel counting against the Growth Allocation, unless conditions such as the following obtain:

   a. On Qualifying Parcels as described in d below, on which a change in classification is requested, a single development envelope will be specified, the acreage of which would be counted against the Growth Allocation. The envelope will include: 1) individually owned lots; 2) any required buffers; 3) impervious surfaces, utilities,

stormwater management measures, on-site sewage disposal measures; 4) any areas subject to human use such as active recreation areas; and, 5) any additional acreage needed to meet the development requirements of the criteria.

b. The remainder of the parcel may not count against the Town's growth allocation if it is contiguous and at least 20 acres in size, retained its natural features or its use by resource utilization activities (agriculture, forestry, fisheries activities, or aquaculture) and was restricted from future subdivision and/or development through restrictive covenants, conservation easements, or other protective measures approved by the Planning Commission. A Forest Management Plan is required for any forested areas in the undeveloped portion of the parcel. Replanting should be accomplished on lands abandoned from agriculture.

c. A minimum 100 foot naturally vegetated Buffer must be established and included in any acreage deductions. In the case of Growth Allocation being applied in an RCA area, a 300 foot naturally vegetated Buffer is strongly encouraged, and in the case where it is provided, the Buffer shall not be deducted from the Town's Growth Allocation, even if that Buffer does not meet the 20-acre minimum.

d. Qualifying Parcels: Parcels of land that qualify for application of the above accounting guidelines are the following:

(1) Those parcels designated as new IDA's which are located within an LDA or adjacent to an existing IDA, where the development on the parcel is located at least 300 feet from the edge of tidal waters, tidal wetlands or tributary streams providing such designation:

(a) minimizes adverse impacts to agriculture, forest lands, fisheries or aquaculture;

(b) minimizes adverse impacts to Habitat Protection Areas; and

(c) optimize benefits to water quality.

(2) Those parcels designated as new LDA's which are located adjacent to existing LDA's or IDA's and where the development on the parcel is located at least 300 feet from the edge of tidal waters, tidal wetlands, or tributary streams providing such designation conforms to the requirements of 1 (b) and (c) above.

e. On all other parcels that receive Growth Allocation and that do not meet these qualifications the entire parcel of record as of December 1985 will be deducted from the total Town Growth Allocation.

34.05 - Process.

The Town's Growth Allocation may be used on a proposed development site to permit densities that are consistent with the Comprehensive Plan, the Critical Area Program, and the existing zoning when a specific development project is proposed. The procedures set forth in Section 15.10 and following procedures will be followed in determining if a site and/or project qualifies for Growth Allocation.

1. All applications for Growth Allocation shall be submitted to the Planning Commission for investigation and recommendation to the Town Commissioners for Growth Allocation.

2. All applications for the Growth Allocation District Classification shall be accompanied by a sketch plan, or development plan which provides sufficient information to permit Planning Commission review for consistency with Critical Area Program requirements.

3. The Planning Commission will review concept, sketch, or comprehensive development plans submitted for consistency with the Critical Area Program and will provide technical comments and recommendations to the applicant prior to submission of preliminary plats consistent with the requirements of Town Subdivision regulations. Permitted development density or intensity will be determined at this time, subject to the applicant obtaining approvals from local, State and Federal authorities for such things as sewer, water, access, dredging permits, and forest management plans.

4. After the applicant has addressed the Planning Commission's recommendations, a sketch plan may be revised and submitted for review with respect to Growth Allocation District designation.

5. A public hearing on the application for Growth Allocation amendment will be held by the Town Commissioners.

6. In approving an application for Growth Allocation, the Town Commissioners may establish conditions of approval that are consistent with the intent of the Oxford Critical Area Program.

7. Applications for Growth Allocation will be forwarded to the Critical Area Commission after the Town Commissioners have conducted their public hearing and granted an approval subject to Critical Area Commission review (conditional approval). The Town Commissioners may only adopt Growth Allocation requests that have been approved by the Critical Area Commission.

8. Following adoption by the Town Commissioners, the applicant may proceed to the preparation of the final site plan or subdivision plat for recordation.

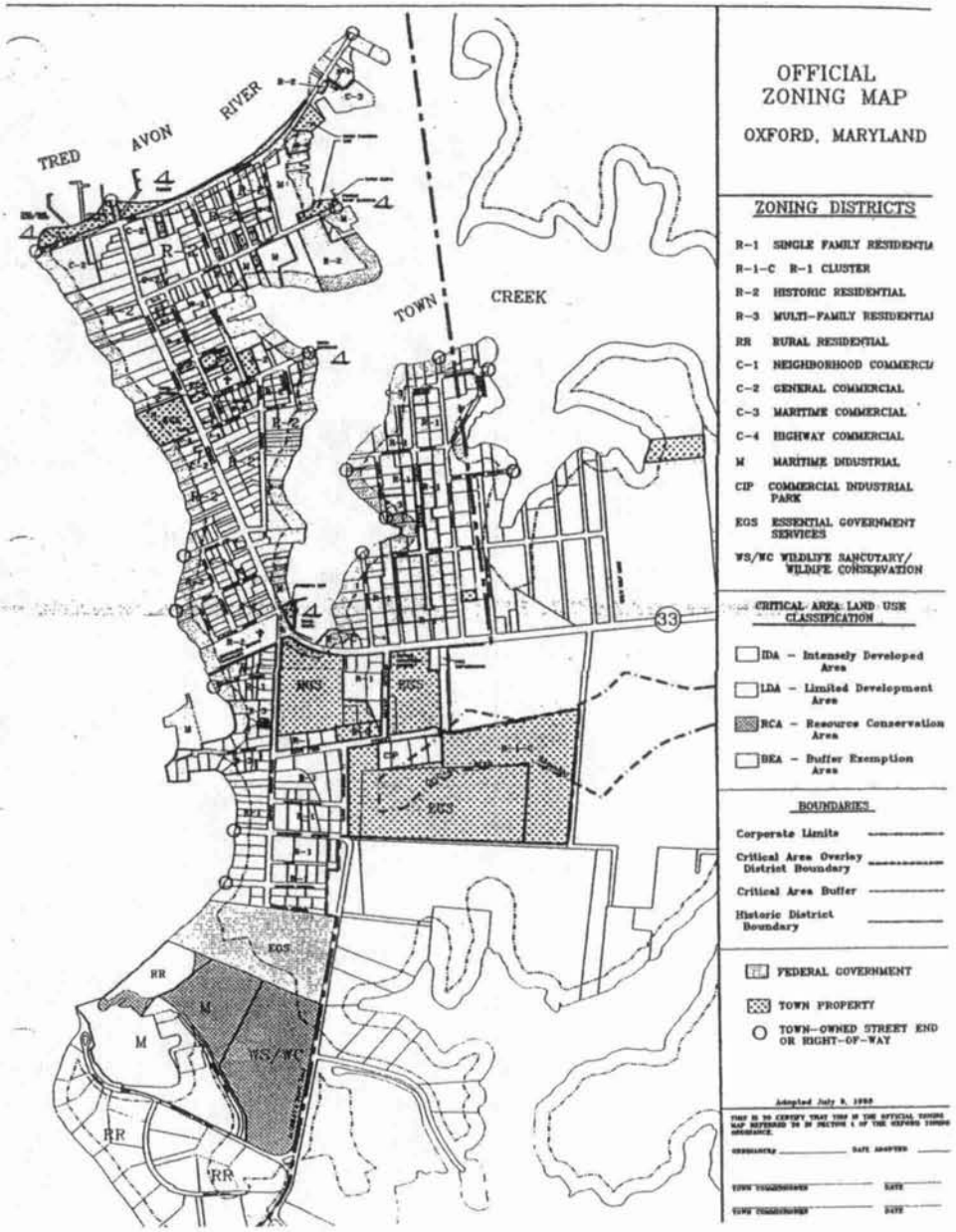
9. Prior to approving the final site plan or subdivision plat, the Planning Commission will ensure that all conditions of approval are incorporated into the final plan, public works agreement, deed covenants, etc.

10. Final Subdivision Plats and Site Plans shall be processed as per the requirements of this Ordinance and/or the Town of Oxford Subdivision Regulations.

34.06 - **Recording a change in the "GA" Growth Allocation District.**

1. The Official Critical Area Map(s) will be amended to reflect the new "GA" district classification along with a notation of the new land management classification.

2. Successful projects granted the "GA" district classification will be submitted for final site plan or final subdivision approval as per the requirements of the Zoning and/or Subdivision Regulations and shall delineate the Growth Allocation District on the record plat or site plan.


OFFICIAL
ZONING MAP
OXFORD, MARYLAND
ZONING DISTRICTS
R-1 SINGLE FAMILY RESIDENTIA
R-1-C R-1 CLUSTER
R-2 HISTORIC RESIDENTIAL
R-3 MULTI-FAMILY RESIDENTIAL
RR RURAL RESIDENTIAL
C-1 NEIGHBORHOOD COMMERCI
C-2 GENERAL COMMERCIAL
C-3 MARITIME COMMERCIAL
C-4 HIGHWAY COMMERCIAL
M MARITIME INDUSTRIAL
CIP COMMERCIAL INDUSTRIAL PARK
EGS ESSENTIAL GOVERNMENT SERVICES
WS/WC WILDLIFE SANCUTARY/ WILDIFE CONSERVATION
CRITICAL AREA LAND USE CLASSIFICATION
IDA - Intensely Developed Area
LDA - Limited Development Area
RCA - Resource Conservation Area
BEA - Buffer Exemption Area
BOUNDARIES
Corporate Limits
Critical Area Overlay District Boundary
Critical Area Buffer
Historic District Boundary
FEDERAL GOVERNMENT
TOWN PROPERTY
TOWN-OWNED STREET END OR RIGHT-OF-WAY
TRED AVON RIVER
TOWN CREEK
33
EGS
RR
M
WS/WC

Ex. D

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2003 Legislative Session, Legislative Day No. November 18, 2003

Bill No. 933*

AS AMENDED

Expiration Date: January 22, 2004

Introduced by: Mr. Carroll, Ms. Harrington, Mr. Duncan

A BILL TO REVIEW AND REALLOCATE THE NUMBER OF RESERVED ACRES OF GROWTH ALLOCATION ALLOCATED AMONG THE TOWNS FOR REZONING TO COMPLY WITH THE CHESAPEAKE BAY CRITICAL AREA COMMISSION FOUR-YEAR REVIEW REQUIREMENT

By the Council November 18, 2003

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, December 16, 2003 at 1:30 p.m. at the County Council Chambers, 142 North Harrison Street, Easton, Maryland 21601.

By Order _____
Secretary

ALL-STATE LEGAL®
EXHIBIT
E
E. 1149

A BILL TO REVIEW AND REALLOCATE THE NUMBER OF RESERVED ACRES OF GROWTH ALLOCATION ALLOCATED AMONG THE TOWNS FOR REZONING TO COMPLY WITH THE CHESAPEAKE BAY CRITICAL AREA COMMISSION FOUR-YEAR REVIEW REQUIREMENT

WHEREAS, when Talbot County adopted its Critical Area Program effective August 13, 1989, it adopted three maps showing then anticipated growth areas around the Towns of Easton, St. Michaels, and Oxford, and

WHEREAS, at the time of adoption, § 190-109 D (11) provided that the number of reserved areas allocated among the towns based on those maps for rezoning for growth allocation should be reviewed by June 1, 1993 for possible reallocation, and at least every four years thereafter. None of the four-year reviews have occurred and these maps continue to reflect a prospective look to the future from 1989; and

WHEREAS, the 1989 maps do not reflect current Town boundaries, nor any development during the ensuing 14 years, nor do they represent current planning for growth areas around the towns. Since 1989, the County has awarded 301.771 acres, the Town of Easton has awarded 183.762 acres, St. Michaels has conditionally awarded up to 20 acres, and Oxford has awarded 15. 223 acres of growth allocation; and

WHEREAS, the 1989 projections have no continued validity for any planning or zoning purpose; and

WHEREAS, these 1989 maps have been used to justify "leap-frog" or "pipe-stem" annexation, which is inconsistent with current principles of proper planning and the land use goals and polices in the existing and draft Talbot County Comprehensive Plans; and

WHEREAS, the process created by the 1989 zoning ordinance is both redundant and inconsistent or potentially inconsistent with the Comprehensive Planning Process; the Comprehensive Planning Process required by Art. 66B, Md. Ann. Code, more appropriately accomplishes planning for growth areas around Towns; and

WHEREAS, Talbot County had a total of 2,554 acres of growth allocation under the State formula for calculating the total amount for each county [5% of the total resource conservation area located within the County]; and

WHEREAS, § 8-1808.1 (c) (3), Natural Resources Art., Md. Ann. Code provides, with certain exceptions, no more than one-half of the expansion permitted by growth allocation in the critical area may be located in resource conservation areas (RCA); and

WHEREAS, § 8-1801.1 (c) (5) Natural Resources Art., Md. Ann. Code provides that if Talbot County is unable to utilize a portion of the County's total growth allocation within or adjacent to exiting intensely or limited development areas, then that portion of the growth allocation which cannot be so located may be located in an RCA; and

WHEREAS, Talbot County has followed this requirement of State law by restricting the use of available growth allocation through § 190-109 D. (9) (a) of the Talbot County Code. That section provides that not more than 1,213 acres of land lying within the Critical Areas of the County shall be reclassified from RCA to any other zoning district. [The 1,213 acres is derived from the total acreage available for growth allocation in the entire county by the following formula: (5% of total acres in resource conservation areas; equal to 2,554 acres = total available growth allocation), less 128 acres reserved for reclassification from limited development areas to intensely developed areas, divided by 50%. The calculation is: 2,554 acres minus 128 acres divided by ½ = 1,213 acres.]; and

WHEREAS, the County may not utilize the remaining 50% of available growth allocation [1,213 acres] until the Critical Area Commission grants permission, under the exception provided in § 8-1801.1 (c) (5), cited above, based upon a showing that the County is unable to utilize that portion of its available growth allocation in areas adjacent to limited or intensely developed areas; and

WHEREAS, to trigger release of the withheld 50% of the County's growth allocation, § 190-109 D. (9) (b) provides that when 1,092 acres [90% of 1,213 acres] has been approved for growth allocation by the towns and/or the County, then the County shall request permission from the Maryland Critical Area Commission to double the maximum number of acres that may be reclassified from RCA from 1,213 to 2,426 acres; and

WHEREAS, Section 190-109 D. (9) (a) of the Talbot County Code adopted in 1989 reserved 155 acres of growth allocation for the Town of Easton, 195 acres for the Town of Oxford, 245 acres for the Town of St. Michaels. and 618 acres for Talbot County; and

WHEREAS, the Town of Oxford has allocated only 15.223 acres of growth allocation, and the Town of St. Michaels has conditionally allocated only up to 20 acres of growth allocation. The Town of Oxford has 139.777 acres remaining, and the Town of St. Michaels has 225 acres remaining. Combined, Oxford and St. Michaels have 364.777 acres of growth allocation; and

WHEREAS, the County currently has a total of 316.229 acres of growth allocation. If it grants a pending application for supplemental growth allocation submitted by the Town of Easton for 156 acres, the County will have 160.229 acres of growth allocation; and

WHEREAS, under current law the Town of Oxford, or the Town of St. Michaels, either separately or in combination, could forever block the County from accessing the remaining growth allocation under § 190-109 D. (9) (b), by preventing the total acres utilized to equal or exceed 1,092 acres, the required trigger under § 190-109 D. (9) (b); and

WHEREAS, the Town of Easton has fully allocated the growth allocation reserved to it, and Talbot County has worked, and continues to work, cooperatively with the Town of Easton in approving projects for which the Town has requested supplemental growth allocation; and

WHEREAS, growth in and around the towns affects not only the particular town, but also the County as a whole, and the County should, therefore, have some ability to protect the County's legitimate interests as they are affected by development in the critical area, as contemplated by State law when it gave this control to the counties under the Chesapeake Bay Critical Area Protection Program, § 8-1801, et. seq., Md. Ann. Code; and

WHEREAS, § 8-1809 (g), Natural Resources Art., Md. Ann. Code, requires that Talbot County review its entire critical area program and propose any necessary amendments to its entire program, including local zoning maps, at least every 4 years beginning in 1993 and every 4 years thereafter; and

WHEREAS, Talbot County is currently near completion of such a 4-year review, and as part of that process desires to make the following amendments to the County's critical area program to better reflect the original intent of the State law governing growth allocation, which calculated growth allocation for Talbot County as 5% of the resource conservation area in the County, and gave the County the authority to determine, within the limits imposed by State law and regulations, how that growth allocation would be utilized, and reallocated among the Towns and the County, project by project.

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that Chapter 190, Talbot County Code, "Zoning" shall be and is hereby amended as set forth herein.

Maps 1, 2, and 3, attached, are hereby repealed.

* * *

§ 190-109 D (9)

(a) Not more than 1,213 acres of the Critical Areas of the County, including all land lying within the Critical Area within incorporated towns, shall be reclassified from the Rural Conservation (RC) District (or town zoning districts established for the Resource Conservation Area of the Critical Area) to any other zoning district. ~~Of these 1,213 acres, 155 acres is reserved for the Town of Easton, 195 acres is reserved for the Town of Oxford, 245 acres is reserved for the Town of St. Michaels for growth allocation associated with annexations, and 618 acres is reserved for the County.~~

* * *

§ 190-109 D (10) Reclassification of land within incorporated towns

(a) Not more than 128 acres of the Critical Area of the County, including lands within the incorporated towns, shall be reclassified from a Limited Development Area (LDA) to an Intensely Developed Area (IDA). For purposes of this section, LDA Zoning Districts include Rural Residential (RR), Town Residential (TR) and Village Center (VC) or areas of less than 20 contiguous acres of Limited Commercial (LC), General Commercial (GC) or Limited Industrial (LI). Town zoning districts include all districts classified as LDA. The requested IDA classification shall include areas of 20 or more contiguous acres of LC, GC, LI or town zoning districts established for the IDA of the Critical Area.

(b) In determining whether the twenty-acre threshold has been reached, the contiguous areas of existing commercial and/or industrial zoning districts, whether located in the Critical Area or Non-Critical Area, shall be considered. ~~Of the 128 acres, 24 acres is reserved for the Town of Easton, 44 acres for the Town of Oxford, 24 acres for the Town of St. Michaels for growth allocation or growth allocation associated with annexations, and 36 acres for the County for growth allocation for property outside of the towns and outside of areas shown as possible annexation areas. (See Maps 1, 2 and 3.)EN~~

§ 190-109 D (11)

~~The number of reserved areas allocated among the towns for rezoning in § 190-109D(9) and (10) should be reviewed by the County and Towns by June 1, 1993 for possible reallocation and at least every four years thereafter.~~

* * *

§ 190-109 D (14)

~~Specific annexation requests for property included in the acres reserved for the towns in § 190-109D (9) and (10) above and as shown in Maps 1, 2, and 3, shall be reviewed by the County for consistency with the County Comprehensive Plan and shall be subject to all current ordinances regulating annexations. The County shall not act on rezoning requests adjacent to the towns as shown on Map 1, 2, and 3 until an annexation request for the property has been denied by the town or until 12 months after an annexation request for the property has been submitted to the town, whichever occurs first. If the County approves a rezoning request not associated with an annexation request for property adjacent to the towns as shown on Maps 1, 2 and 3, then the acreage of the property rezoned shall be subtracted from the acres reserved for the Town for annexation in § 190-109D(9) and (10).~~

§ 190-109 D (15)

~~Growth allocation requests for property that has been annexed within five years of the request shall be reviewed by the County for consistency with the County Comprehensive Plan. Growth allocation request(s) for property that has been in the town for more than five years prior to the request does not require review by the County; however, the towns~~

~~shall inform the County of such reclassification to ensure that the total reserved acres, listed above, are not exceeded.~~

§ 190-109 D (16)

~~The location of growth allocation requests within Towns or growth allocation requests associated with annexation requests is not limited to the areas shown in Maps 1, 2 and 3, however, the total acres reserved per town shall not be exceeded.~~

SECTION 2. Effective Date and Severability; legislative intent.

1. Vested Rights: Effective Date of Zoning Text Amendments

This ordinance shall apply to the total growth allocation acreage allocated to the County under § 8-1808.1 (b) Natural Resources Article, Annotated Code of Maryland that remains unutilized on the effective date of this ordinance.

(a) For purposes of this subsection, the term "unutilized" includes the total growth allocation acreage allocated to the County under State law, less growth allocation acreage that (1) has been previously allocated by any town or the County; and, (2) prior to the effective date of this ordinance, has resulted in actual physical commencement of some significant and visible construction; (3) which has been undertaken in good faith, with the intention to carry it through to completion; and, (4) which has occurred pursuant to a validly issued building permit.

(b) For purposes of this subsection, growth allocation acreage allocated to the County does not include growth allocation allocated to the towns under § 8-1808.1 (b) (5% of the total resource conservation area in the town at the time of original approval of the town's critical area program by the Critical Area Commission).

(c) For purposes of this subsection, County growth allocation acreage that has been previously allocated by any town shall first be counted as part of that town's allocation under § 8-1808.1 (b) and, to the extent the town's allocation has been exceeded, growth allocation that has been utilized prior to the effective date of this ordinance shall be deducted against the County's remaining growth allocation. Growth allocation awarded by any town that remains unutilized on the effective date of this ordinance shall revert to the County. Growth allocation awarded by the County, prior to or after the effective date of this ordinance, shall be deducted from the total growth allocation acreage allocated to the County under § 8-1808.1 (b).

2. Severability.

The County Council intends that, if a Court issues a final decision holding that any part of this ordinance, or the application thereof to any person or circumstance, is unconstitutional or

invalid, the remaining provisio... hereof and the application there... 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.

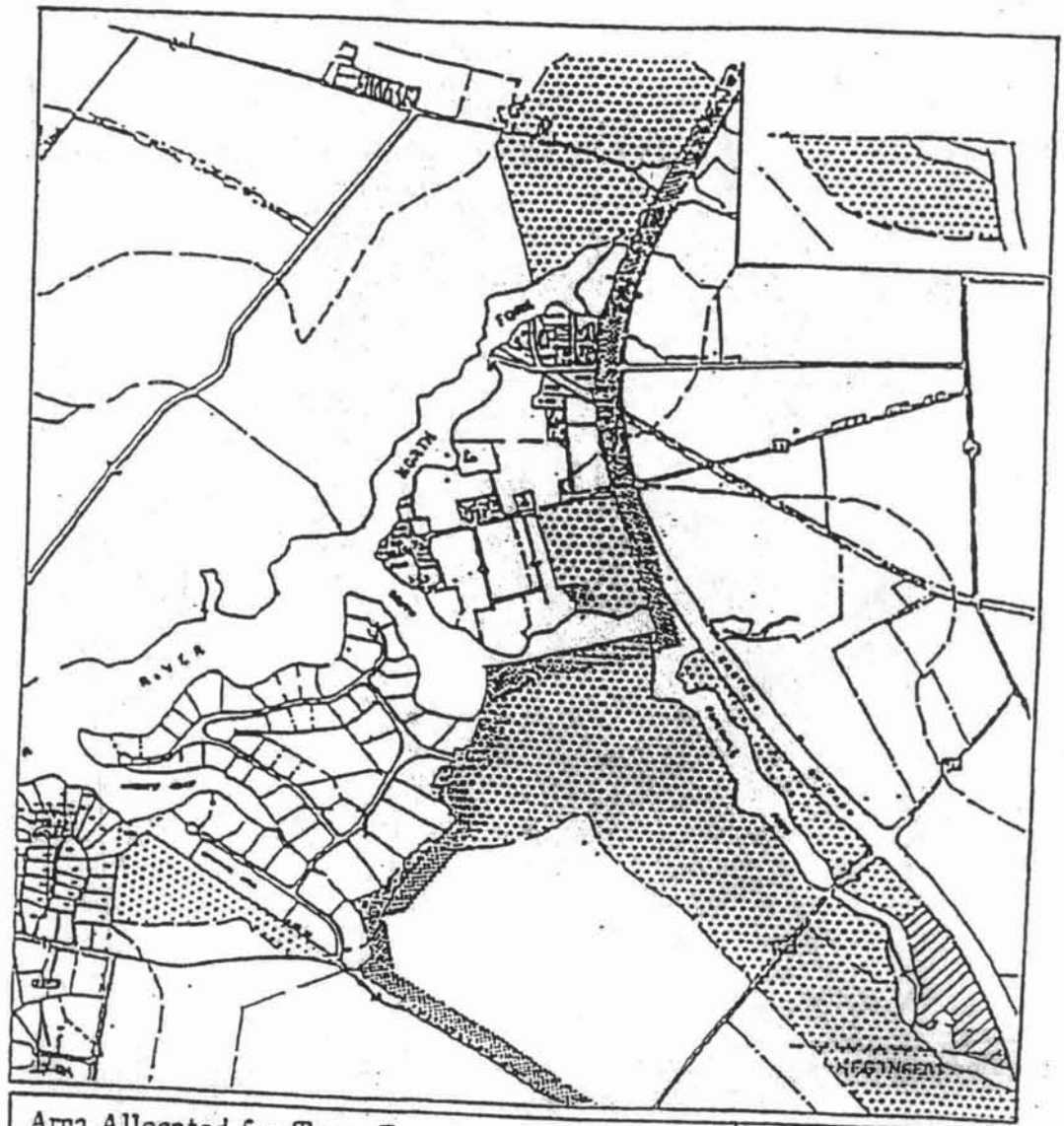
BY THE COUNCIL

Read the third time.

ENACTED December 23, 2003*
AS AMENDED

By Order Louise Mann
Secretary

Foster – Nay
Duncan – Aye
Harrington – Aye
Spence – Aye
Carroll - Aye


Area Allocated for Town Development
TOWN OF EASTON
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
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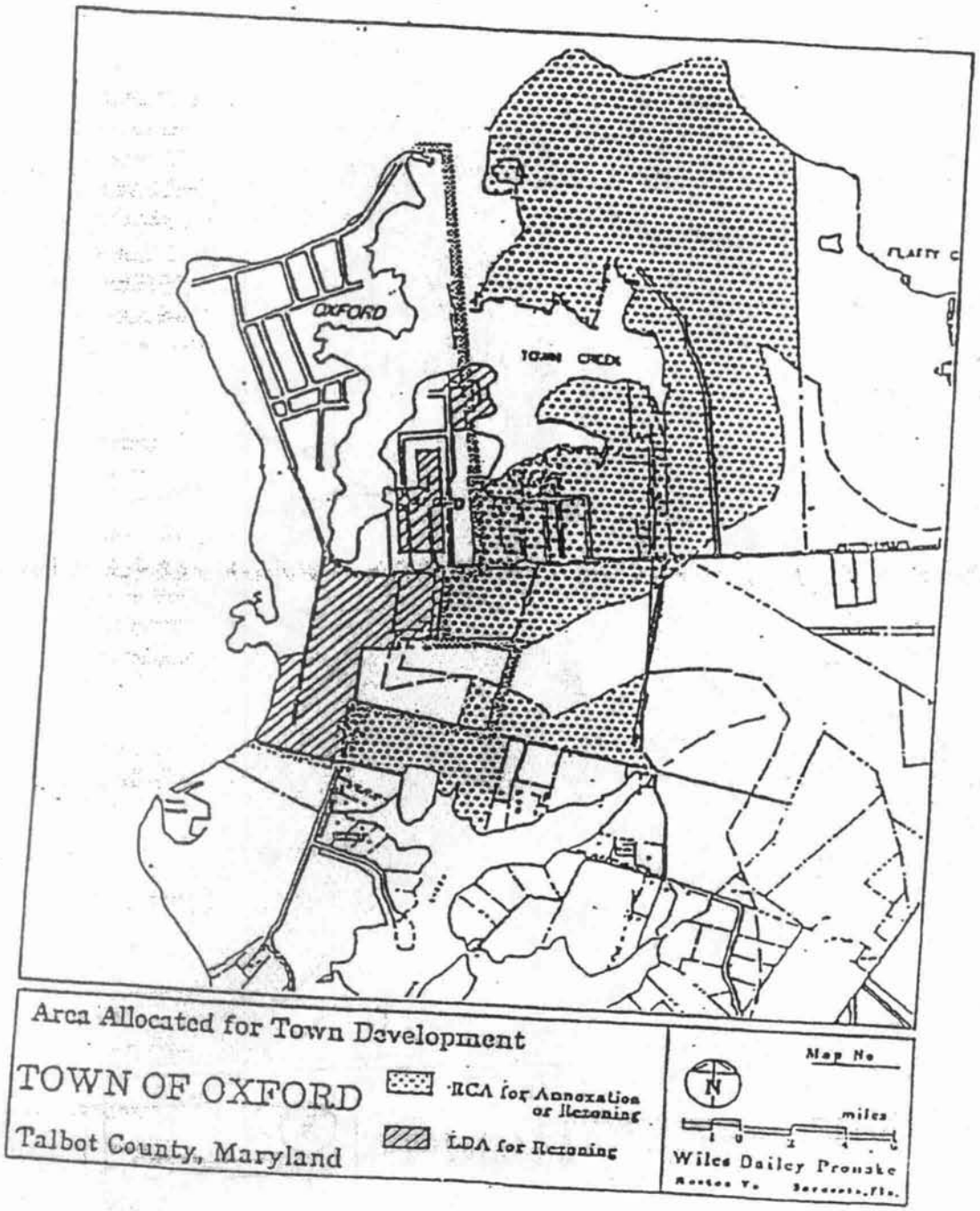
OXFORD
Area Allocated for Town Development
TOWN OF OXFORD
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
Map No
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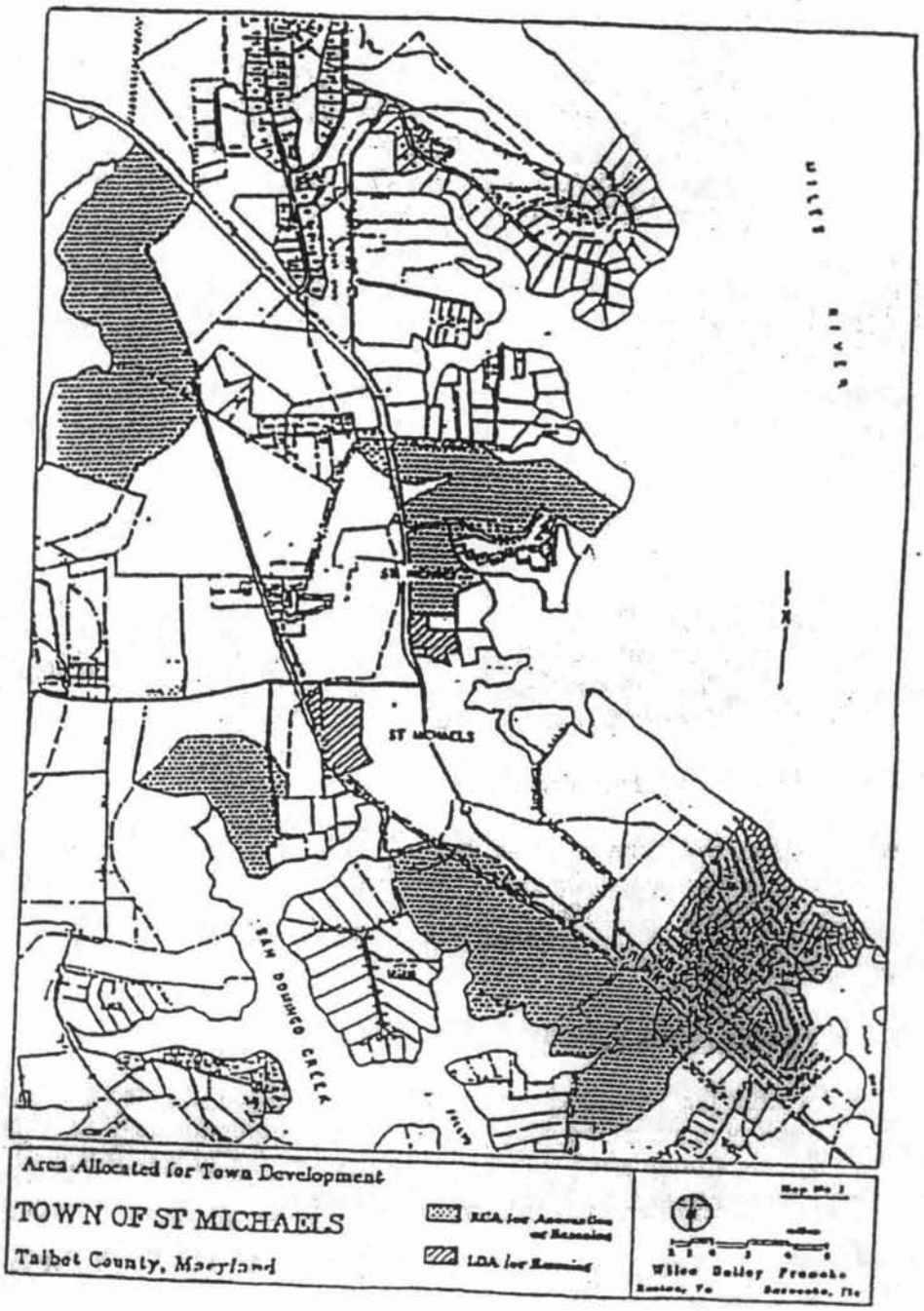
ST MICHAELS
Area Allocated for Town Development
TOWN OF ST MICHAELS
Talbot County, Maryland
LDA for Rezoning

TALBOT COUNTY PLANNING COMMISSION
TALBOT COUNTY GOVERNMENT BUILDING
TALBOT COUNTY COUNCIL MEETING ROOM
EASTON, MARYLAND
MINUTES FOR DECEMBER 3, 2003

RECEIVED
MAR 11 2004
CRITICAL AREA COMMISSION

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

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 1st 1/2, once this is used, the second 1,213 can be requested. It is not correct that 128 acres is the only growth allocation acreage that can go to IDA.

- Mr. Philip Dinkle, Commissioner of Town of St. Michaels.

Mr. Dinkle read a letter the Town had written to the Commission. It noted that Bill 933 would deprive its ability to award growth allocation. The Commissioners of St. Michaels requested the Planning Commission to table their consideration of this Bill until their January meeting, in order to give time for more consideration.

- Michael Hickson, Esq., Banks, Nason, & Hickson, P.A., 113 South Baptist St., Salisbury

Mr. Hickson stated that this legislation would very much affect the future of the Town. Almost all the process is complete in regard to the Strausburg property. This legislation would undo all of the work they have done regarding this property. He noted that to take such a drastic, disruptive, radical step as this, is like throwing the baby out with the bathwater. He stated that the Perry Cabin property was annexed in 1980, pursuant to an Annexation Agreement, and in the 1980's they received 245 acres for IDA, now all of a sudden without any consultation or input, the Council has introduced this Bill. He asked

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that the Planning Commission postpone their hearing on this, not make a recommendation to the County at all, and conduct a workshop where this could be discussed. He asked the Planning Commission to allow the Towns to meet with them, to discuss the problems that prompted this Bill. Possibly conduct a workshop. He stated he felt this Bill is contrary to State law. To put the ultimate control of growth allocation totally in the County hands is counter-productive. Good planning dictates that growth occur in and around the current existing Towns. This takes away the autonomy of the individual Towns. The Towns have the right to determine their own destiny. He also asked that the Commission make no recommendation, and schedule some work sessions to address this issue.

Chairman Hutchison noted that when this growth allocation was determined, they felt that all the acreage would be gone by now. He stated there was a mechanism in the Ordinance to have these discussions with the Towns. They haven't done that till now, because we have had plenty of growth allocation. However, on page 190:178, item 11, of the Planning Ordinance addresses this matter, and that this suggested legislation is not needed, if they follow the current Ordinance. He also noted they are wanting to do away with the maps, however item #16 on page 179, which discusses the maps are to be used as guides only, and not definitive, in deciding growth allocation issues. He feels the legislation is unfair, and flawed.

Mr. Hickson said he feels if the Commission simply makes a recommendation, either for or against, then the County Council can still act. He recommended again, that the Commission have work sessions. Chairman Hutchison stated he was not sure the Council would wait that long for a response.

Mr. Dave Thompson noted his recollection is they have 60 days before the Council can move without a comment from the Commission.

Mrs. Makosky noted the population of the Town vs. the population of the County and the responsibility of the County to address the health, safety and welfare of the majority of the citizens. She believed that the County was justified in exercising this power.

Mr. Sewell noted that for years now, they have been saying that the communication between the Town and the County has been cut off, and this is an excellent example.

- Steve Florkewicz, East Morango Street, St. Michaels

He spoke in favor of acceptance of the Bill. He agreed with Mrs. Makosky in that what happens in St. Michaels will affect the County in general, and that the Town Commissioners have chosen to ignore any comment from people out side of the Town, regarding projects such as Miles Point.

➢ David Thompson, Esq., 130 N. Washington St., Easton

Mr. Thompson spoke as a legal representative of Trappe and Oxford, as well as Mr. and Mrs. Strausburg (whose property received growth allocation from the Town of St. Michaels). Mr. Thompson stated that politics has begun to replace planning. He stated there is a rush to bring to the table a Bill, which we already know is flawed. A good piece of legislation requires multiple drafts, good planning, and thorough planning. He recommended that the Commission not make a decision on this Bill, and suggested meetings to discuss this issue.

➢ Barry Gillman, St. Michaels Town Commissioner

Mr. Gillman spoke against this Bill. He stated it seemed that there was a belief that if St. Michaels doesn't do something that no development will occur. This is just not the case. If Bill 933 is directed at the Inn at Perry Cabin Farm, it is not appropriate. There will be no permits unless the infrastructure, including sewage, can handle it.

➢ Mr. Robert Fletcher, 24640 Yacht Club Rd., St. Michaels

Mr. Fletcher stated he attended the St. Michaels Commissioner meetings, and they were not very accepting of the other residents comments, and felt they were intimidating to people that lived in the County. He stated the Miles Point project, or any other project similar, is total lunacy. The issues facing St. Michaels are huge, and should not be rushed into these decisions.

➢ Michael Hickson

He spoke in defense of the St. Michaels Commissioners in regards to their meetings. He also noted that the Commissioners are working with the County in regards to the quality of the sewage treatment for the Town, along with the expansion.

➢ Mr. Robert Amdur, Bozman

He spoke against the level of density as in regards to the Miles Point project, but had no comment directly toward this Bill.

➢ Mike Pullen, Esq., Talbot County Attorney, Washington St., Easton

Mr. Pullen addressed issues regarding Bill 933. Chairman Hutchison noted legislation should be presented before them before it is introduced to Council. This is an exception, and noted they are not in the 60 day comment period, however, Mr. Pullen clarified that they were in the 60 day comment period.

Mr. Pullen indicated that the maps designating the area allocated for town development in the back of the Zoning Ordinance were adopted in 1989 with the requirement and that

they would be reviewed and amended in four years, by 1993, and every four years thereafter. This was apparently intended to coincide with the State law requirement that the local critical area program be reviewed and proposed amendments be forwarded to the state Critical Area Commission for their quadrennial review and approval. None of those four-year reviews have taken place as anticipated. The maps remain a prospective, forward-looking view from 1989. The maps do not reflect the actual growth that has occurred since then, nor the current town boundaries in some instances.

Mr. Pullen stated that by eliminating these maps from the Zoning Ordinance the planning and zoning functions are separated. The planning function is more appropriately performed through the periodic reviews and updates to the Talbot County Comprehensive Plan and not through the Zoning Ordinance.

State law provides that after subtracting 128 acres reserved for reclassification from LDA to IDA the remaining balance may be reclassified from Rural Conservation zoning to any other zoning classification. Half of the 2,426 acre remaining balance, 1,213 acres, has been allocated between the towns of Easton, Oxford, St. Michaels, and the County. When 90% of this first half has been utilized, the County may request dispensation from the Critical Area Commission of the second 1,213 acre allocation.

Under the existing arrangement, if either the Town of Oxford or the Town of St. Michael's elects to not utilize the growth allocation acreage allotted to them in 1989, individually or collectively, it will be impossible for Talbot County to utilize 90% of the first half of the total amount of growth allocation allotment. This will effectively prevent the County from ever being able to request or utilize the above-mentioned dispensation of the second 1,213 acre allocation from the Critical Area Commission.

Mr. Pullen noted that the Town of Easton has utilized all of its allotted growth allocation acreage and that Talbot County has reviewed subsequent individual applications for growth allocation within the Town of Easton in accordance with existing procedures for supplemental growth allocation in the Zoning Ordinance. This has worked well. Withdrawal of the 1989 allocation from the Towns would simply mean that the Towns' and the County's process to award growth allocation would be coordinated, and that no Town could unilaterally award growth allocation. Adopting this procedure county-wide would put all of the municipalities on the same playing field as the Town of Easton. From a policy standpoint uniformity among the Towns and joint participation in the process, including both the Town and the County, is intended to achieve coordination between the jurisdictions involved, which, hopefully, will result in better development, and greater consistency with the goals of the Critical Area Program.

Mrs. Makosky spoke in favor of the Bill. She feels that it is time for the County to use that power, let the bill take place, and then the negotiations will happen.

Mr. Zuehkle stated his view is opposite of Mrs. Makosky.

Mr. Zuehkle moved to recommend to the County Council to withdraw Bill 933 and instead use the review process as outlined in the current Ordinance, Item 11 on Page 190

Section 178, and within that process recognize that the related maps were intended as guides, as opposed to law. Also as stated in Item 16 Page 190 Section 179.

Mr. Sewell seconded.

Makosky voted NO because she believes it is necessary for the Bill to pass in order to trigger the much wished for process of discussion that everyone has been asking for.

Motion passed 3-1

written, this bill would recapture the remaining acres from the towns and require them to approach the County in the even of growth allocation as necessary for a specified future town project. This change would afford the County the opportunity to involve itself in the growth allocation award process and further help to achieve 90 percent threshold necessary to request additional allocation acreage from the critical area commission, as Mike has already pointed out. The planning commission recommendation, for the record, they did recommend the following. They moved to recommend that County Council withdraw bill 933 and instead use the existing reallocation process as outlined in the current ordinance. That motion was seconded and passed by a three to one vote. I was asked by one planning commission to articulate her descending vote, and it was her belief it was necessary for the bill to pass in order to prompt a discussion

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that all the parties have been requesting.

MR. FOSTER: In order to what.

MR. KINNEY: To prompt discussion regarding reallocation.

MR. FOSTER: We will now take public comment. As I promised, you can be first. If you'll come over to the microphone. If one of you wants to allow a seated microphone.

KEN THOMPSON: I don't need a seat, I'll be brief.

MR. FOSTER: If there's somebody that needs to sit down, give them that option. Who else would like to speak. Mr. Alspach, you can come take the seat and you'll go after him.

KEN THOMPSON: I'm just astounded on the last --

MR. FOSTER: If you would identify yourself.

KEN THOMPSON: I'm Ken Thompson, we spoke earlier in the day prior to the current meeting. It's a happenstance I showed up

today. But a grammatical change in law, Mr. Council, as you well know, has content and intent in the law, and statutory words do have substantive actions. Grammatical changes in phraseology of statutory text can change the content of the words. And for this Council to sit here and say it's non-substantive, and you as a former counselor, I find appalling. Thank I.

MR. FOSTER: Thank you very much. Mr. Alspach. Who would like to be next. Next person just come up to the microphone.

THOMAS ALSPACH: I thank you, Mr. President. For the record my name is Tom Alspach. I'm speaking on this bill on behalf of Talbot Preservation Alliance. I think above all else it's most important to step back and recognize exactly what this bill would accomplish as opposed to some of the suggestions about what it might do that have been circulating in the press. The purpose of

this bill is not to take away growth allocation from the towns, it does not mean that St. Michaels or Oxford or Easton for that matter will never any longer be able to award growth allocation. It's solely for the purpose of ensuring the County will be a participant in future awards of growth allocations in those communities. In other words, it would put Oxford and St. Michaels on the same footing as Easton is at this point with regard to the need to collaborate with the County when awarding growth allocation. The passage of this bill would not mean by any means that, for example, the midlands project in St. Michaels would not go forward. It does not mean that. What it would mean is that the County would have some ability to participate in negotiations that it should have been included in but has not been included in. That current project proposes to include the construction of 320 dwelling units, a 30 room inn, and 15,000 acres of commercial

space on a piece of property outside of St. Michaels, and proposes to have approximately three or four entrances on to a County road with only one entrance on to Route 33. The County has not been consulted in any fashion with regard to necessary improvements on that County road. More importantly, as some of the members of the Council have alluded to earlier in discussions this afternoon, this project would add a huge amount of volume to the waste water system. The County should be involved in discussions about a result of that magnitude. At the present time the Town of St. Michaels, as I understand it, is engaged in the negotiation of a so-called developers rights and responsibilities agreement with the developer that will set forth the parameters for not just the development but for what contributions the developer will make to the public good. Once again, because of the counties -- because of the impact on the

County, the development of this size, the County should be involved in this project. Now, I just for the record want to note something, I want to read something into the record on the general subject of whether the reallocation of growth allocation is contemplated by existing law. And what this is is a passage from a staff report prepared for the Miles Point project in February 2000, prepared by Mr. Tony Redman of the firm Redman and Johnston on behalf of the Town of St. Michaels. And there's a discussion in this report about what some of the alternatives might be for future use of growth allocation in that area. And Mr. Redman, and I want to make sure the record reflects, Mr. Redman, as many of you know, was very closely involved in the actual drafting of the critical area law. Mr. Redman states, "indeed it is possible that Talbot County could reduce or could take away entirely the amount of growth allocation that

is currently assigned to the Town of St. Michaels. Or use-- for use in other areas of the County. If the County were to take back all unused growth allocation, the fact that an area was premapped would mean nothing." He goes on in this vein. I think that is ample recognition by a drafter of the law that this kind of reallocation was certainly contemplated. There have been a lot of comments in the press and elsewhere about the so-called political nature of this bill. This is not, I believe -- I do not believe this is a political matter. I would like to remind everyone that the last County Council, which hardly could be accused of having been anti-growth or anti-development, I believe it was the last County Council that voted unanimously to require Easton to come back to the County for growth allocation and when Easton ran out of their allocation and wanted to have more allocated to them. So there is

precedence for this in the last County Council. I have some other comments but I won't go on any further because a lot of people may want to speak. I think above all else I want the record to be clear that contrary to arguments you'll hear this afternoon, passage of this bill would not mean the midlands project can not go forward or that St. Michaels or Oxford or Easton for that matter are going to be foreclosed in the future from granting growth allocation.

MR. FOSTER: Thank you. I neglected when this began to indicate that we want to hear from everyone, we want everyone to have an opportunity to tell us all that you have to say. In order to make sure that we don't have a lot of people speaking at great length in the beginning and some people leaving because they were worried we won't get to them, we're going to ask you to keep your initial comments to about three minutes. Ms. Spence will take the

clock on that. And if after the first go around you have more to say, you can come back and expand upon the comments that you made earlier. Also if anybody here has heard somebody make the argument they intended to make, feel free to get up and give us your name and say, I agree with Mr. Jones and sit down. Judge North. Next and who else would like to speak. Anybody else. Mr. Keller, you can follow Judge North. If you'll both come. Great believer of on deck circle. A lot of time is wasted at hearings while people try to get out of the row and so forth, so I'm going to have an on deck person ready to go after each person finishes. Judge North.

JUDGE NORTH: Mr. Chairman, ladies and gentlemen, at the outset I should like to thank each of you for coming to grips with a problem which your predecessors have successfully avoided for the last 14 odd years. It was a source of some embarrassment to me as chairman

of the critical area commission to experience the want of concern and interest demonstrated by Talbot County and complying with the law requiring a quadrennial review of the local critical area program. I'm sure that there were reasons for that. But since I was chairman and this was my home turf, it was a source of some personal embarrassment that the County had not complied with what the law required heretofore. And I'm delighted to see that you ladies and gentlemen are coming to grips with that requirement. With respect to the immediate issue before you, I spoke by phone today with Ren Surry, who is the executive director of the critical area commission, and has been such since I was his chair, to review with him my understanding of the law pertaining to the application of the growth allocation principal. He pointed out several things to me which I was only tangentally aware of. First off that

apparently initially the practice was for the commission to allocate to each County its growth allocation, as determined by 5 percent of the resource conservation area in the County, and the County was then left on its own rather as to how it handled the application of those numbers. Some counties awarded growth allocation to municipalities within the County, some did not. St. Mary's County, Charles County and Caroline County have never, never, granted growth allocation to any municipalities within those counties. Thereby those counties have retained the control which they have today. I would quote to you from COMAR 27010206 subparagraph A-2, and I think this is directly on point, "when planning future expansion of intensely developed and limited development areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities." COMAR, in other words, says,

dictates if you will, that it's the responsibility of the County to work with the municipalities in accommodating municipalities growth needs. So unless you do this, unless you adopt what is being proposed here today, you're not conforming with what the law requires of you.

MR. FOSTER: Thank you.

JUDGE NORTH: That concludes my commentary.

MR. FOSTER: Thank you. Whoever wants to be next, come forward.

PHILIP KELLER: Members of the Council.

MR. FOSTER: And when no one comes forward, this hearing is over.

PHILIP KELLER: I do agree that the County should accommodate the towns with growth allocation. I think on that part Judge North and I agree. Your own planning commission voted three to one against this bill. I believe it takes away self rule in the internal

operations and land that falls within the municipalities. Because towns like St. Michaels have been judicious and careful with their allocation, they're being penalized, whereas the County and other municipalities may have used theirs up is not a good reason to punish those who have to make decisions within the critical area. I think it's disrespectful of the municipalities and it adds another layer of planning commission and veto power to that which goes on inside of our towns. We have known about the sewage problem for decades, and I heard today it's going to take another five years to fix it. I have a hard time believing it's taken the County so long to address this issue. The timing of this on the very day that the commissioners in St. Michaels are considering awarding growth allocation, I find problematic. I'm also going to read very quickly from the annexation agreement which Talbot County Council and Talbot County is a

part of. "Members of the Council for Talbot County hereby consent to the annexation in this agreement and expressly approve the zoning classification of the 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 the annexation agreement and full knowledge that the zoning classification allows land use substantially different from the use of the land specified if the current duly adopted master plan of Talbot County." In addition --

MR. DUNCAN: Excuse me, Mr. Foster. Is there a date on that agreement.

PHILIP KELLER: Yes, sir. I think it says 3/2/80.

MS. HARRINGTON: 1980.

MR. FOSTER: Is that during your time.

MS. HARRINGTON: Could you identify yourself.

PHILIP KELLER: I'm Phil Keller, I live in St. Michaels.

MR. CARROLL: Do you know the date that the critical areas commission -- the critical areas legislation came on.

PHILIP KELLER: Yes, I do. It was several years later. But it doesn't invalidate a contract. It also says, "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 owners expense." I believe the County has an obligation, since this is all about midland anyway, to live up to its contractual agreement despite the fact that that agreement may be a few decades old. Thank you.

MR. FOSTER: Thank you, Mr. Keller. For purposes of information, since I suppose there will be misunderstandings, I met with Sherry Thomas of St. Michaels and Commissioner Dinkle.

How do these things get scheduled on the same day. We actually had scheduled ours, they had some procedural things happen during their process that caused them to reschedule their hearing. They have indicated to me, and I have no reason to doubt, that they did not know that our hearing was scheduled the same -- already scheduled at the time they set theirs up. But I do want to reassure you that the County didn't intentionally set its hearing to conflict with anything going on in St. Michaels or anywhere else. And I accept their assurance that they did not as well. It's just one of those things that happened.

KATHY RADCLIFFE: Kathy Radcliffe, commissioner of Oxford. Mr. Foster and County Council. I gave you a copy of an article by Kathy Daniels a little bit ago about planning from the bottom up. We are just in the process of working on a plan from the bottom up and we will need some growth allocation. I understand

the need for this -- this review, but I would request that you would consider reviewing with municipalities rather than reviewing alone. So when I look at this bill, it says a bill to review, I would like to say who is reviewed, with the County and the municipalities or something to that effect so we could have a part to play in that. And I don't understand how it would work in the future for our plan and how the -- how this growth allocation will be divied out. Thank you.

MR. FOSTER: Commissioner.

MS. SPENCE: 195 acres is reserved for the Town of Oxford. Do you at this point, I know you can't speak for all the commissioners, do you have a sense of what portion of that 195 Oxford might use in the future given the fact that your geographic location and isolation and kind of where you set your boundaries.

KATHY RADCLIFFE: I think it would be fair to say that we have a designated growth area.

If we took the number of acres in the designated growth area and the number of acres that the town has already, and that's part of our planning, we would be able to come up with a number to give you. But I don't have it off the top of my head.

MR. FOSTER: Thank you. Yes.

JIM FRANCOS: My name is Jim Francos, I live in St. Michaels. And I'm not a lawyer so I'm going to attempt to try to do this.

MR. FOSTER: Mr. Carroll will like you much better.

JIM FRANCOS: Thank you.

MR. CARROLL: You're off on the right foot.

JIM FRANCOS: I believe that the challenge for every board that's involved in this project that seems to be focusing on midland, okay, has an awesome responsibility. Because no matter what step you take, somebody is going to be upset. But I do believe precedence has some

importance. This board and your predecessors voted to allow this, as I understand it, over five years ago. And to change it today, once again makes other people who want to work with this County in any position, whether they are developing property or anything else, have to wonder how can you possibly plan for the future when commitments are made and then they are changed. And the only thing it could possibly do, and I certainly hope it wouldn't come to this, is drag it out in another legal battle between whatever parties there are. And the only thing that happens in that is that we have people outside of area making decisions because we can't sit down at a table with a developer and with the towns to sit across a table and work it out. Now, your board is very busy. I have attended a great number of meetings in the last six months. I don't believe I've seen any one of you at any of those meetings in the last six months. And that's not being critical,

it's just exactly what I said. Everybody is so busy, yet this vote that you take has the responsibility at having both sides of this argument understood so that your decision is not influenced by any one party. I just hope that you will take the time to either postpone your decision, postpone your vote, make sure you've garnished all the information involved, and then make whatever vote you choose to make. You can't vote on something unless you've got all the facts and there can't just be one side of the story. That's all I ask. Thank you.

(Reporter changed paper.)

MR. HIXON: President Foster, members of the County Council, thank you for the opportunity today. As I said earlier, I represent all five of the commissioners of St. Michaels and they are very sorry that they couldn't be here today for this extremely important issue. More than 50 percent of the town of St. Michaels is located in the critical

area. And that's what makes this issue so important to this town of St. Michaels. If we were in the middle of Kansas, it would be a different issue. I respectfully suggest it is even somewhat of a different issue for the town of Easton because it's not so intensely surrounded by water. This is a very important issue, and at least all of the town has to go on is the face of this bill. Looking at the bill itself, it would appear that at the very least the County Council is going to assume a veto power over any development proposal or any planning -- any development proposal that may come forth in the town in the critical area. To this point I respectfully suggest that there has been no indication to the towns as to what the problem is and the invitation to the towns to get together collectively with the County and work on solving this problem in a less drastic way. I would suggest that this is an extremely drastic way to withdraw all of the

growth allocation from the towns and start over again. It may well be if the towns can get together we can come up with some sort of formula that would please every one, or at least please most of the people. But this way in my judgment this affects a transfer of power from the towns to the County. Each of the towns in this County have been autonomous up to this point and they all have a different character, different flavor, different goals, different places to live. They appeal to different people. Some of us would want to live in St. Michaels, others of us would not. The same is true with the other three towns in this County. I suggest this is going to homogenize the towns in this County, it's going to take away their important character and flavor, their individuality. I suggest that it's going to be problematic as far as the Maryland constitution and some state laws and other laws are concerned. Judge North referred

to a state regulation. He apparently interprets it one way, I interpret it another. I suggest that there is a cooperative and reasonable process in place right now and that this bill will remove that process. Again, the town of St. Michaels would like to cooperate with the County as much as we can. We have scheduled meetings right now the second and fourth Tuesday of the month. Given advance notice, I'm sure the commissioners would be happy to reschedule their meeting so they could come to a joint meeting of the towns and County and address what the real problem is and try to work toward a real solution. Thank you very much. I have a letter and documents I would like to submit for the record and a copy for each of you.

MR. FOSTER: Thank you. If you would give that to Mr. Urbanczyk.

JOHN WOLFE: My name is John Wolfe, I'm a resident of St. Michaels. We have a unique

situation in Talbot County, the towns are not autonomous as they would presume. We have a shared sewer responsibility, we have a shared school system responsibility. I don't believe the towns can operate unilaterally in matters of development like this and use of growth allocation becomes primary. I think it's very appropriate for the County and the towns to have a shared responsibility for that issues which certainly affect both of the municipalities and the County. I therefore support the use of growth allocation in the manner which you're suggesting so that we do have that combined discussion, we have a sharing of what are our responsibilities, we come to an agreement, the developer is a part of that, you have a chance for negotiations so that we can find a mutually agreeable situation of which the Elm Street proposal outside of Easton is an excellent example of where when all the parties got involved a much better plan

came out. So I heartily support the 933.

MR. FOSTER: Thank you. Mr. Thompson.

DAVID THOMPSON: Thank you, Mr. President. I am here today on behalf of the commissioners of Oxford. You heard briefly from Kathy Ratcliffe, and Paul Martin is here with her. I had the opportunity --

MR. FOSTER: Mr. Campen is in the hall, so I guess you got --

DAVID THOMPSON: And I was going to tell you I had the opportunity to speak with Sid this morning. I attended the planning commission meeting at which this bill was considered. And the chairman, who probably has the most hands-on experience in the County in terms of the development of the Talbot County critical area plan and the legislation that resulted therefrom, Richard Hutcheson, made a very cogent explanation of the existing law and what it permits. And what he pointed out to those in attendance is that the law in effect

right now contemplates a dialogue with the towns and with the towns planning commissions and the County's planning commission on these growth allocation issues. And he pointed out that the reason that that had not been done to date is because there had been no need to do it. The use of growth allocation acreage had been so minor up to this point that it wasn't necessary. He pointed out, as you all now know, that there is sufficient growth allocation acreage available to accommodate the needs of the town of Easton without the enactment of this bill. It is probably accurate that the town of Oxford has more growth allocation acreage than its current growth area suggests. The town of Oxford would appreciate the opportunity for its planning commission to do its job, that is planning, with the County planning commission. And we believe that the existing legislation is appropriate, that this is an unnecessary step

at this time. Unfortunately what this does is it necessarily brings under the microscope the legal relationships between the towns and the counties. And if the County legislates in a way that many believe violates state law or the state constitution, it necessitates the litigation microscope to resolve that. And then we come up with unintended consequences that none of us really wanted in the first place. The current law does contemplate a dialogue between the planning agencies within the County. That dialogue should be given the opportunity to work without wholesale amendment of the law, which I believe, like Mr. Hixon, will cause other consequences and the unintended consequences that we all have to deal with. Thank you for your time.

MR. FOSTER: Mr. Thompson, are you suggesting that if this bill is defeated that Oxford would voluntarily relinquish some portion of this growth allocation.

DAVID THOMPSON: I am suggesting that Oxford would welcome the opportunity to have its planning commission sit down with the County planning commission and discuss just that circumstance. But Oxford, like the town of St. Michaels, and I'm sure the town of Easton, would like to maintain the autonomy to do its own planning within the town. Your bill, for instance, says that it reaches into the town and gives the County the authority to deal with property inside the towns. I suspect that you will find that legally problematic as we get down the road. You probably don't want to go there. Certainly my municipal clients don't want you to go there. Thank you.

MR. FOSTER: Repeat your name again since it's a new bill.

BETH JONES: My name is Beth Jones and I live at 9005 North St. Michaels Road right outside of St. Michaels and right before Bay Hundred. I'm speaking today as president of

Bay Hundred Foundation, which is part of a seven organization coalition to get the County involved actually in decisions that affect us all. There's a ground swell of support, as I mentioned before, for this bill 933. In fact just over the last week a hearty bunch of about 40 folks went out and collected 1,037 signatures and also stimulated, I believe, as far as I know, 55 e-mails and at least two letters in support of 933. So where is this coming from. Well, I think we have learned a lesson as we have watched the St. Michaels commissioners and the St. Michaels planning commission grapple with a mega development proposal at the north end of town that would affect us all and yet many of us who have signed the petition do not have a voice at the table. And so we look to the County Council to represent us in decisions that will affect us. People have spoken about the sewer implication, the traffic implications, the school

implications, not just for this midland project but for projects of this size throughout the County. We have signers not only from the Bay Hundred and Riverview Terrace and 86 designated St. Michaels residents and then another 70 some who have St. Michaels post office boxes so we're not quite sure yet where they live, but we have people from down the Oxford peninsula who have signed on and a large number of folks from Easton. What we have been hearing is that indeed the way that the County Council has worked with the Easton Town Council in resolving or at least in hearing and considering and improving the Elm Street development that's proposed for 33 and the bypass is a model that we would like to emulate. For the record I would like to give you these petitions.

MR. FOSTER: Thank you. Yes, sir.

ROBY HURLEY: Thank you, Council, my name is Roby Hurley. I'm not a lawyer, I'm a lowly

critical area planner with Maryland Department of Planning. I am a resident but I would like to speak to this issue as a small town guy.

MR. FOSTER: Are you representing the department of planning.

ROBY HURLEY: I am not.

MR. FOSTER: Where do you live, sir?

ROBY HURLEY: Easton. Easton post office, Talbot County. I've been a municipal planner for 13 years with the department of planning. I've worked from Port Deposit to Princess Ann. I currently serve 12 towns on the Mid-shore. Three of those towns are in Talbot County. I would like to give you my thoughts on this bill from the perspective of that municipal Government -- municipal planning. Specifically inconsistency with state regulations or guidance, number one, critical area. The numbers still are misleading even with some of the corrections that are done today. The critical area law, section 8-1809G-4, in

reference to growth allocation, only requires a statement quantifying growth allocation used and remaining, not a wholesale taking of municipal growth allocation. I would also like to point out some of the interjurisdictional cooperation that has taken place between the County and myself representing the three towns. And I refer to a March 29th letter from Dan Cowee to the towns. March 29th, 2000. Once combined, County and town growth allocation usage reaches a specific level, the County may request an additional quantity of acreage that can be used for conservation from RCA. At that time the County may make additional -- may make acreage available for the towns. As Judge North pointed out, there is also reference in the law to interjurisdictional coordination and specifically mandates that for the towns. As the -- your ordinance is currently written, there is coordination existing. And the way it is -- your ordinance is proposed or this 933

basically runs silent or makes the whole ordinance silent and leaves a hole on that process of growth allocation. There's also conflicts with the '92 planning act and general planning principals. The '92 planning act vision states in rural areas growth is directed to existing population centers. There's also a vision saying -- requiring mechanisms -- regulatory mechanisms are stream lined. If you take all those strikeouts as you have listed in 933, it then becomes silent. Thank you.

MR. FOSTER: Thank you. I assume that's everybody. Anybody who was cut off on the first round, want to extend their remarks. Mr. Goetze, I indicated earlier anybody who wants to speak, you need to come forward. If there's anybody who wants to speak after him for the first time, please come up and take the chair.

AL GOETZE: I will be very brief. I am Al Goetze and my address is St. Michaels,

Maryland. I'd like to speak along the lines of approval of this bill. The scenario I would like the Council to think about and remember is this, a group of town citizens from St. Michaels elected to office, charged with the doing the right thing, they -- accordingly to the law and reference the regulations in doing that, and then after saying no to the proposal, which they did, going to court to challenge -- to be challenged about their no and winning. This is the record, is it not. This is what did happen. They were not in favor initially of this development. Then after agonizing over the legal cost for winning, the justifiable prohibitions, mostly of great concern for the decline or trashing of the Miles River industry asset, they caved in to the single purpose profit driven developer land grab. As you all know, I've been involved for a long time in Talbot County, particularly relative to what is happening to Talbot rivers, all of them,

including the Miles. In terms of the commission, rightfully in terms of their defense, they agreed over a three year period to study the waters off of St. Michaels for three years. And the University of Maryland Horn Point laboratory, I think the best authority anyone could ever find, and I was involved as well and assisted in the presentation. And we reported back after three years of study and the final line was that dissolved oxygen in that river today is not capable of sustaining marine life. And also I think when we talk about whether it's marine life or anything that relates to the opportunity for the citizens of this County to make a living, this very definitely relates to the question of whether or not the watermen and the fishing industry can have a product and a possibility of succeeding. Again, I would very much be in support of the bill.

MR. FOSTER: Thank you, Mr. Goetze.

ARNOLD SMITH: This is the first time around.

MR. FOSTER: Yes.

ARNOLD SMITH: Thank you for the opportunity to appear before you. My name is Arnold Smith and I'm a resident of St. Michaels. And until the end of this month I will continue to serve as a member of the planning commission. And my voice was the ~~descending~~ dissenting voice in the planning commission's recent approval of a growth allocation for the midland folks. And because it very much impacts, affects your legislative piece here, I speak primarily to the midland proposal. It was a bad idea when it was proffered, it was dreadfully out of sync with the realities of life in St. Michaels. It was virtually on all four's inconsistent with the comprehensive plan and had some glaring deficiencies in terms of the critical areas program. That was six years ago when this war began. And after waiting for

six years and waiting for improvement, waiting for something else to happen, and having gone through nine successive victories in terms of the town being upheld in rejecting the application, along comes the latest proposal which has been ramrodded through and the one in which I just referenced I was the minority voice. Suffice it to say, the clear evidentiary requirement of having the best example of a critical area -- of a growth allocation award has never met the test in St. Michaels. What has been provided has been minimal on all scores, from the 300-foot buffer which they do not provide, instead going with the legal limit of 100 feet instead of the 300 feet, to all the problems associated with such incredible density, traffic, air pollution, water pollution, the septic situation. All of which were never fully given extra pluses. Thus what they supplied was the minimum instead of giving the maximum. And

this situation continues today. Very little has been accomplished over these six years except the same glaring problems which face us every day in St. Michaels, still are on the table. I had hoped that we would have had a better presentation from midland, but instead we got a minimal presentation. Thank you for your opportunity.

MR. FOSTER: Are you for or against the bill.

ARNOLD SMITH: I'm for your 933.

MR. FOSTER: Okay. Thank you. No other new speakers. Mr. Hixon, you wanted to extend your remarks.

MR. HIXON: Yes, sir. Thank you. I did want to make a few more points. I think land use planning, comprehensive plans, zoning ordinances, all of which the town has in place and has had in place for many decades, all of a sudden I don't know what 933 is going to do to them, but I think they're going to go

substantially off the board. I don't know how the plan is going to plan for the future unless there's going to be a joint town and County comprehensive plan for the town. I just don't how this is going to work. You may have something in your mind and there may be some other bills to come after this, at least on the face of it, and that's all the town has to go by. On the face of it I just can't understand how this is going to work. In case there's any doubt, the town is against this bill and would ask that you postpone this and let us all get together and rethink it. In the letter that I've given you, and it's not my letter, it's a letter signed by President Snyder, the town commissioners, we have referenced and give you copies of a 1976 contract between the town and the Talbot County number two sewer district, which was in existence at that time, which I believe you have assumed. And the 1980 annexation agreement that was referenced

earlier by other speakers. I simply ask that you look at them and give them consideration as to what impact they may have on the County, before we get into a can of worms that is just going to be worse than what it is. The town has been considering -- so much of this seems to be about midlands. The town has been considering proposals from midlands since 1998. So when people say this is being ramrodded through to begin with, nothing is through the town of St. Michaels yet. We are going through with the hearing processes. We have considered now four different plans and we have rejected three of them. Being ramrodded through must mean that on the current plan it began being considered with public hearings that started by the planning commission on September the 24th of this year. And there were -- the public hearing started on that date and there were four nights of public hearing that ended on November the 6th. And there were two more

nights of debate and decision making by the planning commission. The town commissioners started their public hearing today. So nothing is being ramrodded through. Issues of the state road alluded to in the other hearing have been considered. The planning commissions recommendation is 54 pages long containing at least, to my memory, 18 conditions, one of which is no building permit gets issued, no earth gets turned until the County has given written assurance to the developer that it will get sewer. And that written assurance is then given to the town.

MR. FOSTER: Mr. Hixon, if this thing were postponed for a week or a month or a year or whatever, what is it that the town would say to us that they haven't already said to us. They don't support the bill, and I understand their reasons for not supporting the bill, but I mean what new argument would they make, can you proffer it.

MR. HIXON: I would say let's find a better way. Let's look at the growth allocation that we have. If the concern is the town or towns would tie up the growth allocation so that the County could never reach the threshold to get into the second tier, let's talk about that. Let's see what each town has to have and what each town can give up. Let's see about putting it into a pool that can be drawn upon. If getting down to the threshold to get to the second tier is the issue, I'm sure --

MR. FOSTER: I don't think that is the issue. I think the question is whether the County wants to take this back or doesn't want to take it back.

MR. HIXON: That may be. I think that is problematic. And I'm not trying to be -- I'm not trying to be threatening here, I'm trying to be conciliatory. The town would like to find a way where we can work together.

MR. FOSTER: But you can't proffer any particular thing.

MR. HIXON: I can not proffer anything.

MS. HARRINGTON: I would just like to add. After listening to a number of legal presentations and being married to a lawyer, I have legal presentations made at home as well.

MR. DUNCAN: But you overrule him, don't you.

MS. HARRINGTON: Well, we work things out. I believe that this bill, I don't quite understand the ~~human~~ hue and cry. I believe that this bill basically insures that the towns and the County will sit down and work together. Something that, try as we might, has not always happened in the past. I think that that is plain and simple what this is going to do. And I'm surprised that all of you gentlemen are so worried about the fact that -- when all that we propose to do is to make it possible, to make it definitely possible, that the towns and the

County will sit down and talk about this precious commodity of growth allocation before it slips away.

MR. HIXON: And like the planning -- I believe that mechanism is in the Talbot County code as we speak.

MS. HARRINGTON: Thank you, Mr. Hixon.

MR. FOSTER: Thank you very much. And that concludes everybody's extension -- one more.

AUDIENCE: I would like to just echo Mr. Hixon's comments about the comprehensive plan and offer my assistance. I have written quite a few growth allocation ordinances in coordination with Queen Anne's County, with Dorchester County for their towns, and I offer my assistance toward that so that we do not end up with just an empty ordinance. Thank you.

MR. DUNCAN: Mr. Foster, I'd like --

MR. FOSTER: Wait a minute. Is there any other public comment. Okay. The public

hearing is closed. Mr. Duncan.

MR. DUNCAN: Yes, there were several interesting comments made during the presentation, both for and against, and some sort of wetted my appetite to find out who's write and who's wrong. And I would suggest that maybe our County attorney could research that and provide the necessary information. And one -- Judge North presented the fact that we would definitely be in violation of COMAR if we didn't pass this legislation. And then there was other testimony that, no, he read the law wrong. And that's a great interest to me, one, who's right and who's wrong. And the second thing is if in fact we do violate COMAR, what sanctions can be imposed to the County if we violate COMAR. The next thing I think is very interesting, and I don't know the answer, I'm not a lawyer, but in 1976 we're dealing with two documents, contractual documents, 1976 to 1980. Critical law legislation wasn't

passed until '86.

MS. VERDERY: '89.

MR. DUNCAN: '89. Thank you. So this is a number of years after the fact. Is there a statute of limitations on contractual agreements when things completely change. I mean the way of doing business in '76 and '80 was entirely different as it is now in 1989, and how can we as a Government body sign a contractual agreement to permit something to happen when all the rules through the state agency, not from the local agency, the state agency changed the rules as far as the development process is concerned. And so my question is, I guess, one, is there a statute of limitations, and, two, if so, what is the timeframe. And the second question would be, when there's agreements made and there is state legislation that comes down that more or less changes the tenants of the whole agreement, so to speak, where do we stand.

MR. FOSTER: Mr. Duncan, I think what you're talking about is soliciting legal advice. I don't think this is probably the appropriate place to do that. I think we will have our meeting with our attorney about -- I think what you're basically addressing is the enforceability of that agreement in this situation. And I think we need to take our legal advice in executive session first before we make a determination.

MR. DUNCAN: I agree. But those questions were put on the table, Mr. Foster, by the public hearing, and I think any legal advice we get obviously -- we're going to vote on this issue, and I think that the public along with -- is entitled to know are these in fact -- is this true, is the law true, is it not true, is the contractual arrangement true or not true.

MR. FOSTER: Unfortunately all the lawyers in the room can tell you it's not that simple.

People have different interpretations of the same statute or the same regulation, and that's why I think the law allows us to take legal advice and gripe it because there may be many different ways you can go and many different consequences to each of those ways. And in order to formulate a strategy, it's difficult to do that in this context. In any event, the matter before us is bill 933. And what Council -- members of the Council want to make comment on this bill. I darn't try to set it for a vote because somebody may make a motion, so I will wait to hear your pleasure on when we should vote on this. Mr. Carroll, it's your bill, do you want to start.

MR. CARROLL: I have no comment to make at this time. I would like to have a session with Mr. Pullen and I would hope when we reschedule it for a vote there's an opportunity to make comments.

MR. FOSTER: So there's no desire on your

part to schedule this today.

MR. CARROLL: I think we should go ahead and schedule it.

MR. FOSTER: I'm sorry, to vote today.

MR. CARROLL: No, not vote.

MR. FOSTER: Hearing that, I will schedule this for a vote on the 23rd of December at the appropriate hour. And we will have an executive session today and perhaps others with Mr. Pullen regarding the questions Mr. Duncan and other members of the audience have raised. Thank you very much for coming in. We will stand in recess for five minutes to allow the reporter to recover use of his fingers.

(Short break was taken.)

MR. FOSTER: Thank you. We will assume the meeting and move to eligible for vote. There are with some of these bills amendments. Mr. Pullen has indicated that he's prepared to explain each amendment. We have already voted on all of the amendments so far and found them

PUBLIC HEARINGS

Talbot County Council Bills

922, 926, 927, 929, 931 and 933

BEFORE A PANEL

OF

THE STATE OF MARYLAND

CRITICAL AREA COMMISSION

FOR THE

CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: Wednesday, March 24, 2004

Time: 7:00 p.m.

Location: Easton High School
Easton, Maryland

Reported by: David M. Schafer, AA, CCR

Ex. H

E. 1214

LEGAL EXHIBIT

MEMBERS OF THE PANEL:

Dave Blazer, Chair

William Giese

Joseph Jackson

Gary Setzer

Edwin Richards

Marianne Mason, Assistant Attorney General

C-O-N-T-E-N-T-S

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(Meeting recessed 7:25 p.m. to 7:28 p.m.)

TALBOT COUNTY BILL 933

PANEL MEMBER BLAZER: All right. We're going to get started again. Thank you. Thank you. Good to see you all again. It's been so long.

FROM THE FLOOR: Two minutes.

PANEL MEMBER BLAZER: Actually three. Thank you all for being here this evening. We are going to call the public hearing to order.

The purpose of this hearing tonight is to hear public comment on Talbot County Council Bill 933, which withdraws reserves of growth allocation

acreage granted to the municipalities in the original Critical Area Program in Talbot County.

The County approved these changes to their Critical Area Program on December 23, 2003, and they were submitted the Critical Area Commission.

On February 5, 2004, Commission staff determined that the submittal was complete, and on February 27, 2004, Chairman Madden determined that this change was an amendment to Talbot County's Critical Area Program and appointed a panel to hold a public hearing. This hearing is being recorded.

My name is Dave Blazer. I'm the chair of this panel. I'm from Worcester County, the Coastal Bays Watershed.

With me this evening is Bill Giese from Dorchester County; Joe Jackson from Worcester County, the Chesapeake Bay side of the county; Marianne Mason, who is the counsel for the Critical Area Commission, and not a member of the Panel, I might say; Gary Setzer from the Maryland Department

of the Environment; and Ed Richards from Caroline County.

We also have Commission staff present; Ren Serey, the Executive Director; as I mentioned, Marianne Mason; Lisa Hoerger of the Commission staff; and Mary Owens, also of the Commission staff.

Our Chairman, Senator Madden, is here as well, who we introduced before. Again, thank you for being here, Mr. Chairman.

This hearing is conducted in accordance with the provisions of the Annotated Code of Maryland, Natural Resources Article Section 8-18090. This section of the code requires a panel of Commission members to conduct a public hearing in the local jurisdiction submitting the proposed amendment to be its Critical Area Program.

This hearing is part of the Critical Area Commission's duty under State law to evaluate these changes.

The Panel's purpose is to gather information about the proposed amendments to the

County's Critical Area Program.

This panel will not make a decision on Bill 933 tonight. The Panel's role is to hear comments and evaluate the information received tonight and information that may be submitted by members of the public after tonight, until the record of hearing is to be closed.

The order of proceedings; we will have a representative of the County, Michael Pullen, will speak and then we'll offer the Towns an opportunity to give presentations; we'll open the floor to any elected officials who would like to make comments, and then we'll open it up for the general public to provide comments, as well, this evening.

If you wish to speak tonight, please be sure that you have signed up the attendance sheet. We've got a list here that's still on the corner of the stage up here, so make sure you complete that out with your full name and address.

The statements will be recorded this evening.

And speakers should limit their time to about five minutes, if possible.

If there are several speakers from one group in attendance, please choose a spokesperson for your group's comments.

This hearing was advertised in the Star Democrat on March 10, 2004.

The Commission has already received written comments that will be passed on to the Panel members here.

The Panel intends to keep the record open until Monday, April 5, 2004, until the close of business on that Monday.

Written comments will be accepted up until that time, and you should send those comments to the Critical Area Commission at 1804 West Street, Suite 100, Annapolis Maryland 21410.

As part of the Panel's duty to gather information about proposed amendments, the Panel may ask the Critical Area Commission staff to investigate any pertinent issue further and to

provide the Panel with written reports or memorandum. The Panel may also seek guidance and recommendations from other resource agencies, including Maryland Department of Natural Resources and Maryland Department of the Environment. The Panel may also seek the advice of legal counsel.

This panel will meet to discuss the proposed program amendment on Wednesday April 7, 2004, and the morning of the Critical Area Commission's regularly scheduled monthly meeting at the Department of Housing and Community Development in Crownsville, Maryland. The Panel may need to schedule one or more additional meetings, and the Panel will announce any further meetings on that April 7th date when we meet.

The Critical Area Commission will consider the proposed amendments to the Talbot County Critical Area Program at a future meeting. Those meetings are held the first Wednesday of each month at the Department of Housing and Community Development Building in Crownsville, Maryland.

This Panel will provide recommendations to the full Commission concerning Talbot County Bill 933.

At this point we will ask Michael Pullen with Talbot County to give a presentation. Mr. Pullen.

MR. PULLEN: Thank you, Mr. Chairman and members of the Panel. My name is Michael Pullen. I am the County attorney for Talbot County. And thank you for the opportunity to speak to you this evening.

I'd like to talk briefly about Talbot County's Critical Area. We have 600 miles of shoreline. And to make that real, if we were to drive down I-95 south, when you travel 600 miles you'd be in Charleston, South Carolina. So we've got a tremendous amount of shoreline in the county.

We have over 51,000 acres of land in the Resource Conservation Area and nearly 40 percent of the county is in the Critical Area.

Now, our program was adopted in 1989, and

there was growth allocation given to the towns at that time in accordance with the maps that were adopted, and the maps anticipated four-year reviews.

Since that time no reviews have taken place. The maps became outdated. And the Town of Easton has now used all of its growth allocation it was originally allocated in 1989. Oxford and St. Michaels have not.

Bill 933 repeals those outdated 1989 maps and it makes the process that has already been adopted, which I'll discuss in a minute, for supplemental awards of growth allocation to municipalities applicable to all the municipalities in the county.

Talbot's process for awarding supplemental growth allocation was enacted in April of 2000. It was Bill 762. What that bill did was established that process for supplemental awards of growth allocation. At that time it was directed primarily to the Town of Easton, which had used all of its growth allocation and needed this process,

and this process was adopted and worked on in conjunction with the town at the time. And now this process has been in place since 2000. It has been approved by the Critical Area Commission.

This is Bill's 762 process. The process starts with an application filed in the town planning office. That application gets routed over to the County planning office and also to the Town Planning Commission.

The Town Planning Commission -- from the County planning office goes to the County Planning Commission. They schedule a joint hearing. That's the first of two public hearings on the application. The idea is that both Planning Commissions receive a common platform of factual information from which to make their decisions.

The separate -- the Planning Commissions meet separately and make separate recommendations; The town Planning Commission to the Town Council, the County Planning Commission to the County Council.

After receipt of those recommendations the two councils, the Town and the County Council, schedule a second public hearing. This is a joint public hearing at which the public is invited to attend and provide testimony and information.

The respective councils then deliberate separately and each make findings of fact and take a vote, and the result on the application requires the joint approval of both the Town and the County Council.

The County's role in that process is equal to the Town, and the process requires interjurisdictional cooperation and collaboration. And the result of that process is, of course, subject to the Critical Area Commission's review and approval.

In summary, Bill 762, which was adopted in 2000, creates that process to accommodate the growth needs of municipalities. That process is actually required by COMAR, which I'll discuss in a moment. But to date Bill 762 has worked well and

has a proven track record of success.

The first application to be approved using that process was the Cook's Hope. That was 36 acres within the Town of Easton.

The second application to be approved was Easton Village, only recently approved, and also approved by the Critical Area Commission for 156 acres, also within the Town of Easton.

The Easton Village project resulted in an net improvement, a net gain in the nonpoint-source pollution from that site, so at the end of that process, which began somewhat contentiously between various citizen groups and the developer and the Town, it ended collaboratively with approval the developer was happy with and the Town and the County and the citizen groups were apparently pleased with. So the County believes that that process worked very well and collaboratively and ended up with a very good project that has been approved by the Critical Area Commission.

This is the COMAR regulation that I

alluded to earlier in my comments, and it says it requires counties, when planning future expansion of Intensely Developed and Limited Development Areas, the counties, in coordination with affected municipalities, shall -- mandatory -- establish a process to accommodate the growth needs of the municipalities.

This is Judge North's testimony before the Talbot County Council when they were considering whether to enact Bill 933. Judge North brought this particular COMAR reg to the County's attention during the course of his testimony and indicated that that COMAR regulation dictates that it is the responsibility of the County to work with municipalities to accommodate municipal growth. So unless you do this, unless you adopt Bill 933, you are not complying with what the law requires you to.

The point I think that Judge North was making is that COMAR requires a process. Counties are required to establish that process. And that process is designed to accommodate the growth needs

of the municipalities. Simply writing a blank check to the municipalities is not a process and doesn't comply with that COMAR requirement. That process is established by Bill 762. And Bill 933 makes that process apply equally to all the municipalities within the County.

Currently what has happened, since Easton exhausted their growth allocation, St. Michaels and the Town of Oxford have not, there were really two separate ways for municipalities to obtain and award growth allocation in Talbot County. If you were a person in the Town of Easton you would be required to apply under the procedures of Bill 762 and follow that joint review process. If, on the other hand, you were from -- you were in St. Michaels or Oxford, you would not. Those decisions would be made exclusively by the respective Town Councils of those two jurisdictions.

The County believes that COMAR requires that joint review process, or at least permits the County to adopt it as a local option. And in this

case the County has done that with the view towards promoting this interjurisdictional cooperation, with the idea that the protection of the Chesapeake Bay is a universal ethic, that the large amount of shoreline in the County, the large amount of land in the Critical Area in the county made the County's land-use policies, give them a greater effect on the overall health of the Chesapeake Bay than any particular municipality's land-use policies simply because of the difference in size of the respective jurisdictions.

We think that State law gives the counties the primary responsibility under the 5 percent calculation formula and under the COMAR reg that we just talked about, gives the counties the primary responsibility to set this process up and, likewise, requires counties to remain a part of that process rather than simply writing a blank check to the municipalities.

Environmental protection by its nature is collaborative. The State of Maryland has entered

into the Chesapeake Bay Compact with the states of Virginia, West Virginia, Pennsylvania, New York, Delaware, District of Columbia. If those states can cooperate as they are required to do to protect and promote the health of the bay, the County believes that we and our municipal neighbors who are interdependent because of our physical proximity and location can do the same and that, in order to protect the bay, that we are required to do that.

So the County would ask for your approval of 933 as a measure that's designed to promote and enhance the Chesapeake Bay protection.

I'd be happy to answer any questions that the Panel may have.

PANEL MEMBER JACKSON: Any questions from the Panel members?

PANEL MEMBER SETZER: I do.

PANEL MEMBER BLAZER: Okay.

PANEL MEMBER SETZER: Mr. Pullen, you talked about 933 establishing a process.

FROM THE FLOOR: We can't hear you.

PANEL MEMBER SETZER: You talk about 933 establishing a process for the County to deal with the growth allocation.

Under the initial program that was adopted by the County, you had a process that was established, basically a four-year review process. That, in your mind, that doesn't satisfy the COMAR requirement for the County to establish a process?

MR. PULLEN: No, sir. I think that that four-year review requirement was a comprehensive requirement for the entire program to make changes, to fine-tune the program, the substance of the program, to bring it in line with evolving notions of environmental protection, evolving technologies, evolving land-use policies. So I don't think that four-year review requirement was necessarily a process to award growth allocation to the Town.

Initially what the County did was to simply write a blank check, in effect, and give the decision exclusively to the town.

It's almost like herding the cats, I

guess. If you are trying to enforce consistent rules and regulations and polices across the board, I think that the ability for a municipality to act unilaterally impairs the effectiveness of those policies.

So the County believes that it has the obligation to participate in the process.

PANEL MEMBER SETZER: Thank you.

PANEL MEMBER BLAZER: Yes, sir.

PANEL MEMBER RICHARDS: Is it on?

FROM THE FLOOR: No.

PANEL MEMBER RICHARDS: Well, we're going to get some feedback, I guess.

Mr. Pullen, I had some problems getting through all of the whereases there were so many of them in this bill, which led me to believe that you were trying to say something important in the whereases that were not included in the top part of the bill. In reading them I felt that you were indicating that you and the Council were indicating that there were problems created by the 1989 maps

and the allocation. And you've identify a couple of them in the whereases.

You also indicated that you felt that there was a potential of an even bigger problem down the road.

Was this part of the discussion when the bill was adopted by the Council? And have I correctly identified the whereases?

MR. PULLEN: Yes, you have, Mr. Richards. Since drafting that legislation, I have -- and I drafted it, so I can tell you that the whereas clauses were really the product of my own analysis. I think that some of those whereas clauses were probably ill-conceived and probably -- the problems that were addressed could be addressed in other ways. But at the time of the legis -- at the time it was drafted, those were perceived to be real problems. But since then, on reflection, some of those problems can be addressed without adopting 933.

But the fact remains that the policy that

933 promotes, I think, is consistent and is actually required by the COMAR reg that we discussed and is consistent with sound principles of environmental protection.

PANEL MEMBER RICHARDS: But you also mention whereases, the comprehensive planning process requirements of Article 66B. Do you have an alternate set of growth maps as a result of that process?

MR. PULLEN: We do, and I have copies which I'm going to make available to the Panel as exhibits.

The County and the towns are currently -- the County is currently nearing the end of its comprehensive planning process for a comprehensive update. I think some of the towns are closer to the end -- and perhaps have reached the end -- than the County. But in that process the County planning staff and the towns' planning staff, it's my understanding, have worked closely together to redefine the growth areas around the towns. And

those maps, as I indicated, will be made available to you. And they are -- I think when you compare them with the 1989 maps that Bill 933 repeals you will see quite a difference, quite a change in thinking from then to now and the town boundaries have changed and they'll be useful.

PANEL MEMBER RICHARDS: Thank you.

PANEL MEMBER JACKSON: At the end of the process on Bill 762, when you have the final findings by both the municipality and the County government, let's just say the findings are not concurrent. Who has the tie breaker in that?

MR. PULLEN: Well, if -- let me restate your question so I'm sure I understand it. If, for example, the Town imposes a condition and the County imposes a different condition?

PANEL MEMBER JACKSON: That is one set. Let's just say that you have conceptual approval by the Town but County does not or has other conditions that the Town doesn't agree on.

MR. PULLEN: Well, the developer is

subject to the joint review of both the Town and the County; therefore, if the conditions were different but supplemental, I believe the developer would be required to comply with all of the conditions.

If the conditions were different and inconsistent, that would be a problem. And I don't think that -- well, that's never occurred thus far. The problem that that might create would be a situation where a developer, in complying with one set of conditions, by definition couldn't comply with the other. I would hope that the process wouldn't create that dilemma for the developer. It is possible.

I think each particular case would have to be assessed on its own merit, depending on the type of conditions and the type of facts that were produced in the record. It is a problem potentially but not necessarily a fatal one.

PANEL MEMBER JACKSON: But it has not been addressed as far as this bill is concerned?

MR. PULLEN: 933?

PANEL MEMBER JACKSON: Yes.

MR. PULLEN: No. 933 doesn't address that situation because 933 operates by default because it removes the growth allocation from the 1989 maps from other towns. 762 then comes into play automatically. So 933 doesn't itself deal with that process.

PANEL MEMBER JACKSON: Okay.

PANEL MEMBER BLAZER: Thank you.

MR. PULLEN: Mr. Chairman, if I may, I would like to yield the balance of the County's presentation at this point to a person who needs no introduction to the Panel, the Honorable John C. North.

JUDGE NORTH: Good evening, Mr. Chairman, ladies and gentlemen. I'll lower the microphone a bit. Welcome to Talbot County.

PANEL MEMBER BLAZER: Thank you.

JUDGE NORTH: It's a pleasure to see familiar faces.

You have already observed on the screen

Basic responsibilities for growth allocation is the county, subject to the approval of the Critical Area Commission. Respectfully, Harry Hughes.

Thank you, ladies and gentlemen. I'll submit these if I may. Thank you.

PANEL MEMBER BLAZER: Thank you, Judge North. Thank you.

Are there any representatives of the towns that would like to make a presentation? If you'd come up and identify yourself and who you are with, please.

MR. HICKSON: Thank you. My name is Michael Hickson. I'm attorney for the Town of St. Michaels, and I would like to respond.

First of all, the Town would oppose Bill 933.

Mr. Pullen, the County attorney, took you 600 miles down Route 95 to Charleston. I would like to take you, instead, a couple of hundred years back, to 1804, when the village people of St.

Michaels decided that their interests were not exactly the same as those of the county as a whole and they decided to incorporate.

And I think there is the crux of the problem. Some people like to live with lots of land around them and they have one perspective. Other people like to live with lots of people around them and they have a different perspective.

The interests of the County and the interest of the Town are not the same.

The difficulty that the Town has with 933 is that it takes back all of the growth allocation that was previously reserved for the counties and puts it completely in the control of the county; that's to say, the county has the last word.

St. Michaels would not mind if the growth allocation were taken back and put in a common pool. But the difficulty here is not just the taking back of the reserve, but the fact that it then throws the process -- it throws the current process for the awarding of growth allocation out which has been

totally within the control of the town, subject to all the criteria of its laws and its local program which was approved by the Critical Area Commission, and instead sets up a different process for what the County calls supplemental growth allocation, in which the County, in effect, carries on a dual process.

It may be carried on in the same rooms with the members of the St. Michaels town bodies, but in effect it's an entirely separate decision making process. While on the one hand the Town officials look at the Town's laws, the Town's Comprehensive Plan, the Town's local program, if you look at the County program, the County officials are looking at things that are completely different. They are looking at the County's Comprehensive Plan, which does not control the Town under State law. And they are looking at other things that are not a part of the Town's decision-making process and the Town's concerns.

Judge North took a considerable amount of

time reading letters about one particular COMAR provision. And I was thinking to myself, why all these letters about the same thing; he doeth protest too much.

I would commend the panel and the Commission to a careful reading of COMAR 27.01.02.06A2, and I'll quote. "When planning future expansion of intensely developed and Limited Development Areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the affected municipalities.

All we are talking about here is creating a process. We are not talking about sitting in on the judgment.

And, secondly, we are talking about creating a process in coordination with the town; that is, the process of establishing the procedures should be done in coordination with the town.

And, thirdly, it says that it should be done to accommodate the Town's needs.

Now, I've prepared a memorandum and supplied a copy of it to your counsel and other counsel, and I'll submit an original tonight with copies, and I've also prepared written testimony that I'll submit tonight that goes into some of the details, but I want to hit some of the high points. Some of it is legalese and legal oriented. I want to hit the high points of the important facts and I want to focus on this section. That was my intent from the beginning.

Coordination, cooperation, and accommodation. I don't see any of these things in here which, in effect, throws out the current process and throws the towns into a joint decision-making process in which the counties do what the State law, in my opinion, does not permit and what the village people in 1804 wanted to avoid.

The process of the arriving at Bill 933 goes something like this. In 1997 the Town of St. Michaels had never received an application for growth allocation at all. In that year for the

first time it received an application from Midland, a developer that wanted to do a substantial development in Talbot -- in the Town. During that process Midland submitted successive Applications which the Town successively denied, which were successively litigated. There were in all six Circuit Court cases, two of which went to the Court of Appeals. All of this was very highly publicized in the local newspaper.

Three of those Applications were completed, the three cases litigated; all the while the Town is denying growth allocation applications and all the while the County does absolutely nothing but let the Town swing in the breeze and spend more than a million dollars in legal fees, consultants' Fees, time, conducting procedures, participating in litigation to defend its position.

Seeing that nothing was going to happen, the Town took ahold of reality and initiated a nonbinding mediation process with a professional mediator who is, in fact, the head of the department

in land use at the University of Virginia. And Doctor Collins mediated between a group of citizen representatives and the developer all during the summer of, I believe it was 2002, to come up with a rough consensus. Not everybody was in agreement, but they came up with some general principles, one of which was a traditional neighborhood development plan would be preferable to a cookie cutter, old style development, it would fit better with the Town. And there were some environmental discussions, be assured.

After that mediation process, the Town then conducted a public workshop with the developer. And at the close of the public workshop the Town announced some principles of what it would want to see in a development, including traditional neighborhood development, taking care of the shoreline and some other things, open spaces. And a as a result of that the developer submitted his forth application.

(Change audiotape)

This was in the fall of 2003. At that time the application process commenced. The Town Planning Commission received the Application and commenced its public hearing in September of 2003. Those public hearings were heavily participated in by citizens and noncitizens alike; those public hearings ended, I believe, on November 6, 2003, and a written fifty-some page decision was issued, I believe on November 24 of 2003.

Now, what the Town didn't know at that time and, in fact, didn't know until today, that on October 29, 2003, the County representatives had contacted the staff at the Critical Area Commission and, in fact, it advised them of the existence of County Bill 933, predicted when it would be introduced, when a hearing would be conducted on it, when it would be adopted and when it would be ready for the State Critical Area Commission.

No contact, no consultation, no request for input, no advice even that there was a problem from the County to any of the towns in this county.

Subsequent to that there were additional contacts by County representatives with the State Critical Area Commission, and they are in my legal memo and my prepared testimony. Those contacts started, as I said, October 29, 2003, and go into November and December, all relating to either Bill 933 or the Easton and Midland projects.

Now, I submit to you that 933 has its very existence based upon the County's opposition to the Midland Application and the project known as Miles Point, because none of this even started until it appeared that the Town was going to consider, seriously consider granting growth allocation.

As you may know -- let me back up. The fourth Application, which is known as Miles Point II, included 72 acres that was annexed to the Town in 1980 pursuant to an Annexation Agreement, but it also included 18 acres outside of the town that was annexed in the fall of 2003. So, according to State law, the Town cannot change the zoning of land that is newly annexed for five years without the Town's

express permission. That's contained in Article 23A, Section 9C of the Maryland Code.

The Town requested that the County relinquish the zoning control so that this 18 acres could be zoned to fit in with the proposed Miles Point II project. And on December 16, I believe it was, the County refused that request.

The County also -- I should back up. There was a Planning Commission hearing on 933, I believe it was on Octob -- November 2. I testified for the Town. I said at that time that there had been no input, no dialogue. And I asked that there simply be dialogue, that we step back, let us know what the problem is and see if we can't find a better solution.

The Planning Commission of Talbot County opined to the County commissioners that 933 was not necessary.

But the Bill went forward and there was a public hearing on, I believe it was December 16. I testified at that hearing on behalf of the Town. At

that time, on that very day, during that very hearing, a new version of 933 was brought out. Now, we were told at that time that there were no substantive changes, and the County Council voted to that effect. But at very least there was a whole new set of whereas clauses.

Again I asked that we step back, that we have a dialogue, let us know what the problem is, we'll be happy to sit down, talk about it, try to work it out. What the County Council did on that date was -- and I'm certain now that it was the 16 of December, because they voted to postpone the vote on that particular legislation for a week. And, in fact, they did postpone it. On December 23 they voted and passed that bill. Again, no dialog, no contact, no nothing.

But as a result of the County refusing to relinquish it's five-year control over that 18 acres that was newly annexed, the developer withdrew it's fourth application known as Miles Point II, redrew it, left out the 18 acres that was annexed, scaled

it down to only the 72 acres that had been in town since 1980 pursuant to an Annexation Agreement that described R1 zoning and, in fact, that's what the Town -- that's what was agreed to in that Agreement, R1 zoning. So it's not like anybody thought this land wasn't going to be developed. But, anyway, they scaled down the development. It's now called Miles Point III, it's 72 acres, it's a TND, and it's submitted to the Town in late December or early January of this year.

It's very similar to the previous project, except it's smaller, that's all; less units, same features, same environmental stuff, good stuff, really. I mean, we beat each other to death and came out with a pretty good plan.

It's processed, the Planning Commission holds it's hearings and so forth. I mean, we are really up to date. As far as 933, that's the end of it; no consultation, no requests, no accommodation into establishing a new process, and that's what that -- I really commend you to read it. It's not

talking about participating down the road in future decisions on applications, it's talking about process.

And I want to talk about the process that 933 throws us into. One of your members asked about it, and I couldn't see which one from the back, but they were good questions, because this supplemental growth allocation process is not the same as what we have been dealing with, what we've been going through all this time when the County let us goes through at our expense and then yanks it away from us.

It's two separate processes, as I said, that occur at the same time in the same room with different people looking at different laws.

In the end, in my opinion, if the County Council doesn't agree to grant growth allocation, it doesn't happen. If either side -- if the County says no, there is no growth allocation; if the Town says no, there is no growth allocation.

But the interesting thing in here is that

the County in this process, in the County plan it says that the County Council has complete discretion. In other words, they can ignore all the rules and say no.

PANEL MEMBER BLAZER: We're going to have to kind of wind it up.

MR. HICKSON: Okay, I'll try to do that.

Counsel for the County pointed to Easton Village. That's what was happening in Easton Village. I've attached the Easton Village decision to my memorandum of law. It shows that there's a dual process, it shows they can ignore it each other. In the end the developer for Easton Village to make it happen went to the County and said what do you want. And what the County wanted was improvements on Glebe Road, which I'm told exceed a million dollars. Glebe Road is at least a mile and a half from the subject project and, in my opinion, has nothing to do with it.

That's how -- that's the definition of

cooperation, that's the definition of coordination, is the way I've explained to you, totally ignoring us, going to the Critical Area Commission behind our back, yank -- making us twist in the wind when they could have rescued us at that time, and now the yanking away from us when we want to go through with it. That's not my definition of cooperation. And if they can't see it then, how are they going to cooperate in the future? We don't have the same interest.

And State law, in Article 66B, gives us control in planning and zoning. The County does not have control in incorporated municipalities, and that's what this is all about. Thank you.

PANEL MEMBER BLAZER: Thank you.

MR. HICKSON: I will submit by material.

PANEL MEMBER BLAZER: Okay.

MR. HICKSON: I will also submit a letter that I have from Senator Coulburn.

PANEL MEMBER BLAZER: Okay.

MR. HICKSON: And a schedule showing that

84 percent of our town, 84 percent of the undeveloped land in our town is in the Critical Area; 68 percent of the town as a whole is in the Critical Area.

PANEL MEMBER BLAZER: I think we have some questions from the panel members.

MR. HICKSON: Yes, absolutely.

PANEL MEMBER RICHARDS: With your re-reading of the COMAR regulation, I take it that you challenge Judge North's reading of that particular section.

MR. HICKSON: I disagree with his interpretation. And I commend you to read it.

PANEL MEMBER RICHARDS: What do you think of his statements that the County abrogated its responsibility by making the allocation in 1989?

MR. HICKSON: I don't agree with that. Every award of growth allocation by a local jurisdiction goes to the State Critical Area Commission. The purpose is not to re-decide the case, but oversight to make sure that the local

jurisdictions are applying the criteria, not necessarily that you agree with them on the fact that they are applying the law.

I think there is already a dual process here. It's not the same process, but it's a dual process. We don't need three processes.

PANEL MEMBER RICHARDS: Also, Judge North read the letter from Governor Hughes. And if I heard correctly, Governor Hughes' letter said that Governor Hughes felt that the County has the right to withdraw the allocation. Do you agree with that statement?

MR. HICKSON: I think that's a confused area of the law. I think that while the Critical Area laws have been in effect for well over a decade, getting toward two decades, there is a lot of it that is confusing. I will be frank to admit that I had a great deal of time figuring it all out when I had to deal with this because in my town we are dealing with the Zoning Ordinance, a separate local program, the Subdivision Ordinance, the State

regs, the State law, and you are trying to figure out what all that means. And sometimes, frankly, it just -- it's not always consistent.

I don't necessarily -- I don't know what the answer to that question is, frankly. But if they get it back, if you will, I think it then becomes a common pool that every jurisdiction in this County can draw on by granting growth allocation. I don't think anybody owns it.

I think that the -- the determination of how much growth allocation in Talbot County as a whole is, is obviously based on 5 percent of the Critical Area in the County. But it would be inconsistent with not only the critical area laws but some other laws in this state if most of the growth allocation were not granted and used in and around the municipalities. Otherwise, we would be perpetuating sprawl, we would have long, long sewer and water lines, and that's the opposite of what Smart Growth and another initiative that was signed by our current governor in this past October, and

it's quoted in my brief but I don't remember what he's calling it, Priority Places or something like that, those two programs, the same thing with different names, attempt to get most development in and around municipalities for environmental reasons and for economic reasons, in my opinion.

So they may take it back. But if they take it back, it becomes part of a common pool, in my opinion.

PANEL MEMBER RICHARDS: Thank you.

PANEL MEMBER BLAZER: Any other questions? Great. Thank you Mr. Hickson.

Are there any other town representatives?

MR. FORD: I'm John Ford. I'm the president of the Easton Town Council.

Easton is unique among the municipalities in Talbot County in that it has used all of its originally allocated growth allocation for approved developments and has also so gone through a cooperative process of review with the County Council in order to get additional growth allocation

acres approved.

Perhaps the most notable growth allocation award is the most recent one where Easton and Talbot County reviewed and ultimately approved the growth allocation request for the Elm Street development on Ratcliff Farm.

The end product of that review process is something I believe this community can be proud of and will serve as a benchmark for future development. There will be a well-designed, environmentally sensitive PUD of very high quality, along with a number of its actions that will benefit the community both on site and off.

I do not believe, however, that the process used to get to that final approval should serve as a model for future applications. The Town and County Councils did hold joint public hearings on two occasions to consider growth allocation for this project, but the project actually moved forward through a series of individual separate negotiations at several levels.

I think the argument could be made that this project made it through the review process mainly because of the persistence and flexibility of the developer and because of the individual efforts of some elected officials and the efforts of the Talbot Preservation Alliance and the Talbot River Protection Association.

One of the things that the Easton Town Council will be focusing on through the review and update of our Zoning Ordinance is the development of a clearer understanding of what is expected from future developers.

I feel that with the process followed for the Elm Street project we moved in an opposite direction. I suspect that any developer looking at the two-and-a-half-year review of that project would wonder what exactly was expected from the Town and the County.

I'm not suggesting that negotiations with developers can be or should be completely eliminated, but those negotiations should have a

basis from which to begin.

I do not believe that Bill 933 moves us closer to a clearer definition of what is expected from development. In its present form it merely adds another separate level of review, with no guarantee that what a municipality wants will be allowed to occur.

Cooperative planning between the County and the municipalities is essential and it should occur throughout the planning process, not only at the very end of that process. Thank you.

PANEL MEMBER BLAZER: Thank you, Mr. Ford. Any questions? (No response)

Any other town representatives? Good evening.

MR. KEHOE: Good evening. My name is Christopher Kehoe. I'm the Town attorney for Easton. I know you have a long agenda and a long hearing tonight, and I'll be as brief as possible.

First, for the record, I would like to adopt the arguments made by Mr. Hickson on behalf of

the Town of St. Michaels with regard to the argument he makes, and very ably, in his memorandum that Maryland zoning law codified in Article 66B and Article 11E of the Maryland Constitution would prohibit Talbot County or any other county from exercising planning and zoning authority within the boundaries of a municipality, as would be an inevitable consequence if Bill 933 becomes law.

Secondly, I listened with a great deal of interest and respect, of course, to Judge North's comments about what I'm going to characterize here as the original intent of the members of the Critical Area Commission with regard to growth allocation, and I was struck by the fact that the arrangement that's now under challenge here by the County; namely, the allocation of specific acreages back in 1989 to Easton, to St. Michaels and to Oxford, was approved by the very same Commission that these people, individuals were members of at the time.

And I think the Commission today has to

put this into the context of that this is a change from a previously approved arrangement that has been in existence for a number of years.

Easton has used all of its growth allocation, so in one sense we have and we'll deal with in the future the supplemental procedures that Mr. Pullen has outlined. They have worked for Easton and the County in the past. Mr. Ford has suggested, and I certainly agree with him, that they perhaps are not the best model for a way to proceed in the future; nonetheless, they do function for the Town and the County at this point. However, simply because they work for Easton -- Easton has used up it's growth allocation -- it's not a justification for the removal of the growth allocation allotments that have been made to Oxford and St. Michaels.

And with that I will simply submit some written comments and leave you in peace for the evening. Thank you very much.

PANEL MEMBER BLAZER: Thank you, Mr. Kehoe. Any other town representatives?

MR. CAMPEN: Good evening. My name is Sid Campen. I'm here on behalf of the Commissioners of Oxford, of which I'm president.

I would like to address several factual issues that have been raised with you and others about the 750 or so hearty souls that make up the Town of Oxford, perhaps the smallest jurisdiction that is affected by the Critical Areas mandate and 933.

If you look at the map of Oxford you will see that practically all of Oxford is within the Critical Area. I can show you that map. There is probably 5 acres that may not be in the Critical Area.

So 933 really affects Oxford in a rather unique way, because it says to Oxford that all additional growth that will take place within the corporate limits of Oxford will be under 933 and the County will determine whether Oxford will get growth allocation or not.

We've heard a lot tonight about

cooperation and all that is supposed to take place and it may have worked in the earlier bill with the Town of Easton.

There is an opinion or a feeling that the people of Oxford have no appetite for growth. And that may be partially true with respect to extra territorial growth, annexation, expansion of the corporate limits of Oxford. But as a Commissioner I can tell you that growth is inevitable and there is not one part hearty soul in Oxford that disfavors infill growth within that town. And the reason for that is because Oxford has very limited sources of revenue and without some growth we're going to have considerable problems in maintaining the infrastructure that is being provided for the people of Oxford.

And contrary to the belief of a lot of people, Oxford is not comprised of all wealthy people who have just moved here. There are a number of people who have lived in Oxford all their lives, some of them quite old, in their nineties, who are

struggling to pay the taxes that are increased every year so that we can meet our obligations.

There is a critical need in Oxford to see infill expansion within the Town of Oxford, and therein is our problem with 933. We feel that the County Council should have given some consideration to the infill needs of the various towns, particularly Oxford, because we have no ability to expand or to infill in that town without growth allocation. That is significant, because if we are left with the, if you will, coming to the table with our hat in our hand and asking this Council to provide us with growth allocation, we don't know whether we are going to get it or not.

We say, well, the Council is as interested in growth allocation and good Smart Growth as anyone. I suggest to you that no member of this Council or a council of recent memory has been a resident of the Town of Oxford or, for that matter, the Town of St. Michaels.

Consider, if you will, the needs of a

town to govern itself; its Planning and Zoning Commission, it's appeals board, its government that will be run by people who -- it will be controlled by people who have no particular interest in the Town.

People in Oxford are members of Talbot County, but the Commissioners of Talbot County aren't necessarily members of the boards and the committees in the Town of Oxford.

Consider, if you will, that the needs of that small town, the budgetary needs, the wastewater treatment needs, all the other things that we are required to maintain are determined by a council that has no particular interest or, indeed, is not responsible to the people of Oxford or St. Michaels or the towns that they have no part of.

Our concern is jurisdictional and the results, the practical result of what 933 does. We have no quarrel with, nor do we contest the right of the County to take back whatever growth allocation it designated in 1986.

I disagree with my brother who spoke a little earlier. I think that the County Council did, in fact, adopt the original 1989, rather, growth allocation consistent with COMAR, as has been stated by Judge North. It was done then. They have now elected to undo that.

What we ask is that they simply undo the portion outside of the territorial limits of the corporate Town of Oxford, leaving in the areas for infill.

I found it very interesting that the justification for 933 has sort of taken full circle. At first it was to help Easton. Then I read something about, well, Oxford and St. Michaels hold a pocket veto in that if they don't use their growth allocation, then the County cannot get to the 90 percent mark in order to trigger the balance of the twelve hundred acres that it might need for future growth.

Well, consider, if you will, that if the needs -- if the County needs 90 percent in order to

figure the balance of the twelve hundred acre growth allocation that it may wish to hold in a bank or whatever it wants to do, that leaves 10 percent. Ten percent of twelve hundred acres is 125 acres.

Our problem with the County is that all they needed to do was come to us or invite us to come to them and say, look, what are your infill needs, what will you need in the future, in the immediate future, in the next three to five to ten years; and, yes, if you need 20 acres or 30 acres or St. Michaels may need 20 or 30 or 50 or 75, whatever it was, they could have reached that threshold; 125 acres would have provided Oxford and St. Michaels, I suspect, with whatever the infill needs may be in the not too distant future.

We also have a problem in that we were told very specifically in 1989, you have, Oxford, 190 acres of growth allocation and that's all you're going to get, use it wisely. And I dare say Oxford has. We have used 15 acres, I think.

You cannot say that the towns have

squandered or used the growth allocation that they had or that they were allotted unwisely. That is certainly not the case.

We would ask that you reconsider 933 in that it has not taken into consideration the needs of the town, particularly the infill needs, and it does do violence to Article 66B and Article 23, which give the towns zoning authority, 66B does and 23A, gives the towns exclusive jurisdiction over planning and zoning. This bill conflicts with that significantly.

Thank you.

PANEL MEMBER BLAZER: Thank you, Mr. Campen. Another town representative.

MR. THOMPSON: Mr. Chairman, my name is Dave Thompson. I represent the Town of Oxford and the Town of Trappe. I will be very brief.

The Town of Trappe, as you know, has no Critical Area within it at this time, has no Critical Area plan. But as you also may know if you've looked at a map, the Critical Area is 800

feet from the borders of the Town of Trappe. The town's existing sewer facility utilizes as a discharge point a tributary stream.

Trappe is very interested in issues of municipal growth. We have had a substantial annexation within the last year. We are still dealing with the legal issues that pertain to that.

The fundamental problem that both the Town of Oxford and the Town of Trappe have with Bill 933 is its failure to take into account Article 66B and Article 23A. Other speakers made the point, so I will not dwell on it.

But municipalities in the State of Maryland have the same home rule that counties have in the State of Maryland. Municipalities, especially in the area of planning and zoning, have exclusive jurisdiction.

Municipalities grow only two ways; by infill, as Mr. Campen talked about, and by annexation.

Article 23A, Section 9, defines the

relationship between the County and The town as it relates to annexation. It allows the County five -- it allows what I call a transition period of five years by which the County has the right to veto a change of use that is a change from the existing County Comprehensive Plan.

But once land is annexed, it becomes a part of the town. Each of the towns that have Critical Area; Easton, the Town of Oxford and the Town of St. Michaels, have Critical Area plans approved by the Critical Areas Commission, approved by the very gentlemen that Judge North quoted. All of those plans have provisions for the granting of growth allocation and have provisions for review by the Critical Area Commission.

It is my opinion that the way the law works when you read those provisions together, as a judge would do, as a court would do, that once land becomes annexed, subject to the annexation provisions of Article 23A, the town has exclusive zoning control. If that land happens to bear a

Critical Area land-use classification of RCA, therefore making it potential growth allocation conversion land, that the town, without the express consent of the county government, could not authorize a dwelling density of greater than one per 20 for five years. But other than the five-year transition period, the zoning control is exclusively within the towns.

And what Bill 933 purports to do is to give the County the ultimate veto power of land-use classification changes, RCA changes --

(Change audiotape)

-- RCA conversions within the towns.

We don't believe that that will survive judicial review, and we believe, in an exercise of global view, the right thing for the Commission to do is to not approve Bill 933 to the extent that it purports to apply within town boundaries.

I don't think there is any question that the County has the authority to say we're going to change that pre-map growth allocation area. That's

fine. That's County jurisdiction. They can do that. That doesn't change the fundamental right of the town to go through an annexation process, and consistent with 66B, consistent with 23A, to rezone that land, subject to the five-year transition period.

The other thing I would point out and I would offer for the record are a copy of the minutes of Talbot County Planning Commission.

We are fortunate to have a Planning Commission that are very active, they understand these principles, they work hard and they looked at Bill 933. They recognized that it was unnecessary, they recommended to the County Council that they withdraw 933 and that they permit -- and there be some discussions among the towns. You all may or may not have seen some of the tense correspondence that has passed back and forth among Town representatives. That tension is a reflection of the fact that there has been absolutely no dialogue, zero, none, no cooperative effort between the county

government and the towns in coming up with a cooperative approach to the growth management and growth allocation issues.

I think everyone would agree at this point that that discussion, that dialogue between the planning officials of the towns, between the elected officials of the towns would have been preferable.

So we would ask you to not approve this amendment.

I would adopt the legal memorandum that Michael Hickson submitted on behalf of the Town of St. Michaels on behalf of the Town of Oxford, and would offer for the record a copy of the Planning Commission minutes.

PANEL MEMBER BLAZER: Thank you, Mr. Thompson.

MR. THOMPSON: Thank you.

PANEL MEMBER BLAZER: Any other town representatives? (No response)

Any elected officials who would like to

make comments? (No response) I see movement in the back, but nobody is coming forward. Okay. No elected officials. Okay. Thank you.

The Maryland Department of Planning, I think, has a representative here.

MR. DUKET: How are you doing, Mr. Chairman, ladies and gentlemen of the panel, staff, counselor. For the record, I'm Larry Duket of the Maryland Department of Planning.

And I know what's going through your heads; here comes State Planning again.

But I want you all to think about the Critical Area law, but I want you to think about a little bit more than the Critical Area law.

I've been involved in State growth planning for nearly 30 years now. And if I had a couple hours to explain it all, you'd be amazed at how well all of our growth and environmental protection and funding laws fit together to form a pretty good growth strategy for Maryland.

I'm going to go ahead and read this

statement rather than just speak extemporaneously, just to get this over with.

The Maryland Department of Planning appreciates the opportunity to offer comments on Council Bill 933.

The Bill would create a significant change in the manner in which Talbot County addresses the growth allocation needs of incorporated municipalities, or towns as they've been referred to tonight.

The bill is of significant interest to this department because it comes at a time when the State is committing its planning functions, its regulatory programs, its funding, its technical assistance and its capital programming in furtherance of directing growth towards both county designated growth areas and incorporated municipalities, which we now call County and Municipal Smart Growth and Priority Funding Areas, if you will.

With the current governor's Priority and

Places initiative, this department is committed to participate in the debate on issues fundamental to the implementation of a sound growth strategy for Maryland.

The growth allocation process was principally created to allow county and municipal governments to reconcile the comprehensive planning, zoning and capital programs with the new resource conservation rules of the Critical Area law.

The RCA category limits development to only one dwelling unit per 20 acres. From a land-use planning perspective it's unusual and economically inefficient to have land within municipalities relegated to one dwelling unit per 20 acres standard. Yet the Critical Area RCA had this effect on farm and forest lands not yet having public water and sewer that were located within municipalities, within municipal growth boundaries and on adjacent lands eligible for municipal annexation.

Municipal governments in particular when

the law was being written were given assurances in the Critical Area law that their need for growth allocation would be accommodated.

Under Council Bill 933 specific amounts of growth allocation reserved for towns would be deleted from the Talbot County Critical Area program and consequently the County will have approval authority over all future growth allocation requests in town. This would occur through the supplemental growth allocation process that is now part of the County's program.

This process was really originally created for narrower purposes through Council Bill 762, the supplemental growth allocation process, and was approved as a refinement by the Commission, I believe circa 2000.

Looking back on it, it seems unlikely that in 2000 the Commission would have treated such a significant change to the growth allocation process as a mere refinement were it not for the retention at that time of specific language giving

allocations to the town.

Under Council Bill 933, the County and a town with an applicant seeking growth allocation would use a joint hearing process to ostensibly assure that both municipal and county planning and growth issues are considered. And, as a matter of fact, this department supports the use of tools and processes that promote interjurisdictional coordination and cooperation, and appreciates that this is the primary goal of Council Bill 933.

Our concern, however, is that 933, by striking reserve amounts of allocation to each town, places the County as the final decision maker for all municipal requests for growth allocation.

Now, the County's process for accommodating the needs of municipalities for growth allocation should not operate as a blank check for towns. That's not what we are saying; that is, we do not believe that the rule calls for municipalities to always get what they purport to need.

But Council Bill 933 effectively makes the supplemental growth allocation process the primary and only process, and contains no decision-making criteria or standards to account for or accommodate municipal growth needs. Not even the municipal Comprehensive Plan or the municipal zoning map, nor a municipal Critical Area Program, nor a growth allocation map prepared by the town is relevant under the terms of Council Bill 933.

Council Bill 933 can result in the denial of a specific bona fide, good-faith request for growth allocation which meets the accounting and locational criteria of the Critical Area law. It appears that the Commission's growth allocation policy is consistent with Town planning and zoning laws and the Critical Area programs. It's difficult, if a denial should occur in such a situation, how that process accommodates the growth allocation needs of the towns.

Now I'm going to throw you a curve ball here because I want to talk about the Regional

District Act just for a second just to clarify something.

Under the Regional District Act certain incorporated municipalities in Prince George's and Montgomery Counties are under the zoning authority of their respective counties because these municipalities have never been given the authority by the General Assembly to exercise their own zoning powers. That set aside, the concept of county control over municipal land-use decisions is not contemplated in Maryland's planning and zoning law. County and municipal planning and zoning programs are created on equal, separate and, at times, competitive footings. No mystery.

And the General Assembly has been careful to address county-municipal relationships in writing Maryland's planning, growth and environmental laws and, in doing so, uniformly the legislature has both preserved the sanctity of municipal land-use decisions and created laws that embody preferences for continued growth in municipalities that plan and

zone for growth.

Even in that case where municipal annexation of land previously under county jurisdiction occurs the General Assembly has created a pretty clear rule that says that the county can control the zoning the municipal wants to put on there for five years, but after five years there is no longer any county control over municipal land use or zoning.

Now, when the Critical Area law was being drafted there was a lot of legitimate concern that was voiced over the application of the RCA category to farm and forest land that was either within municipal boundaries or at its edges where growth and expansion were planned. Such concerns were based on property interests, public infrastructure investments, long-range capital plans and professional land planning principles, but these concerns were answered very clearly by the creation of the growth allocation law.

The concerns of municipalities in

particular were addressed by the rule that the counties shall have a process to accommodate the growth allocation needs of municipalities.

Now, in hindsight the issue of county control over municipal growth allocation should have been raised in the context of Council Bill 762; however, given that 762 retains specific allocations for each town, perhaps the issue was not as well defined as now presented in the context of Council Bill 933.

We also recognize the many approved programs in other counties with similar practice. We think these programs need to be revisited. Perhaps this can be evaluated during the six-year review process or perhaps it needs to be evaluated sooner if municipalities report to you they are not being accommodated.

Now, much has changed since the first generation of the Critical Area programs. The Commission and local governments know more, they have greater experience with much of the detail and

technical nature of the Critical Area law and the criteria. And also since the adoption of the Critical Area law many new State laws have been enacted; the 1992 Planning Act, which applies to all State agencies and promotes eight different visions or goals for growth in the State; Forest Conservation Act, Priority Funding Areas, Rural Legacy, Smart Codes, on and on it goes. If you look at the details of each of these laws you will find that they favor growth directed to county-designated growth areas and incorporated municipalities. Indeed, these new laws reflect the same spirit as the Critical Area's growth allocation rule. Growth within muni that plan and zone for it should be accommodated.

The Maryland Department of Planning offers its assistance to the County, several towns and the Critical Area Commission to work to resolve issues that show that municipal needs for growth allocation are accommodated.

I thank you for your attention. If

there's any questions, I'll be glad to try to answer them.

PANEL MEMBER BLAZER: Thank you, Mr. Duket, we appreciate it.

MR. DUKET: Would it be alright to -- I'll give this to the staff.

PANEL MEMBER BLAZER: Okay. We'll move on to the general public comments. I've got -- I have most of the names. If you didn't sign up, there's still one over here. We can take names as we are going through.

We're just going to go first come, first served with this. Come up to the front, identify yourself and if you are with any particular organization and approximately where you live. First, Edward Doyle. Mr. Doyle.

MR. DOYLE: Mr. Chairman, I'm coming up -- I'm coming down with a cold. It's very difficult to speak, so I'd prefer to wait and see if other comments need clarification, then I'll speak then.

ORIGINAL

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

CRC-SALOMON
Baltimore, Maryland
Phone (410) 821-4888 Fax (410) 821-4889

ALL-STATE LEGAL
EXHIBIT
I

We have another very important issue coming up in front of the Commission right now, Talbot County Bill Number 933, growth allocation procedures. We had a panel that looked into this extensively. Ren is going to give the panel report. And then I will again ask for public comment if anybody wishes to have it.

MR. SEREY: This amendment to the Talbot County Critical Area Program is County Bill 933. As the chairman explained, the panel conducted a public hearing, met on the bill and discussed it several times, and met again this morning. The staff report that went out and the panel report that went out also included a copy of the bill.

In 1989 the Talbot County Council approved the County's Critical Area Program and submitted that to the Commission. The Commission approved that program. The program included what the County called preservation of growth allocation to the towns of St. Michael's, Easton and Oxford. The County used the method of

providing the growth allocation acres to the towns. There were no conditions placed on the use of those acres. That was in the 1989 Critical Areas Program. The County gave the town of Easton 155 acres, town of St. Michael's 245 acres, and the town of Oxford 195 acres. There were maps attached to the Critical Area Program, three maps that showed the potential areas for annexation outside of the towns.

The understanding was that the growth allocation would be used by the towns both within their current boundaries, and the understanding was in annexed areas. As Lisa explained on one of the other previous items -- I was going to say this morning, it seems like this morning, the town of Easton used all of its growth allocation and in 2000 the County instituted a new process which they called their supplemental growth allocation process, and that is a process that involved joint hearings by the County Council and town of Easton and joint approval of growth

allocations.

That process has been used recently for the Easton Village and Ratcliffe growth allocations that you may remember from a couple months ago, I think that was January that the Commission approved those. It's also been used for the Cooke's Hope growth allocation in Easton.

Easton used their growth allocation. Oxford has only used about 15 acres of its growth allocation. And St. Michael's has used approximately 21 acres for the Strausburg growth allocation. And that is, as Lisa explained earlier, a refinement that this Commission approved in October of 2000.

Council Bill 933 prefaces the action that the County took with a lot of explanation about the use of growth allocation. What the bill does is it removes that growth allocation that has been unused by the town and has it revert back to the County. And what the County intends is that the process that they used when

Easton ran out of growth allocation, that is the joint process, the supplemental process, the County informs us that that would be the process now after the growth allocation unused by the towns is removed and reverted back to the County.

There are a lot of planning, growth management clauses that are in the preface to the bill, in the whereas clauses, and you have all that information. It discusses the fact that it was done in 1989 and things have changed. Growth management has changed, that the original county program required a four-year review of the County program in addition to a review of the growth allocation maps and the growth needs of the towns. That review was not done. It has been done now in the form of Bill 933, removing the growth allocation.

The original county total of growth allocation was 2,554 acres. And the County has a process for using a portion of that in the RCA as is set out in the Critical Area law and is

concerned, among other things, that its process for using the growth allocation in the RCA will be compromised unless it regains control of all of the growth allocation that has since been unused.

If you look in your staff report or panel report, on page 2 in the middle, you'll see some of those reasons that the County set out in addition to the ones that I've just described.

As I said, this action, Bill 933, will remove the growth allocation and revert back to the County. In addition, and I think Lisa also described this earlier, it will undo a previously approved growth allocation, and that's the Strausburg growth allocation that this Commission approved as a refinement in October of last year. The reason it would remove that growth allocation is because the bill contains a clause that says if any growth allocation is unutilized, and the County goes on to define unutilized, then by the effective date of the bill, which was I think

February of this year, then that growth allocation also reverts back to the County.

And included in the definition of unutilized is the provision that any growth allocation awarded for which substantial construction has not started based on a valid building permit, that is also affected by the bill and reverts back to the County.

There could be other growth allocations in addition to the Strausburg. We have talked to the towns of Easton and Oxford regarding their previously approved growth allocations, and our understanding is that there are a few lots that are still undeveloped for which there are no building permits yet that could also be affected by this bill. But the Strausburg growth allocation approved in October is obviously affected.

At the panel's request the staff looked into growth allocations and growth allocation systems in use by the other counties, and we

summarized for the panel that generally those growth allocation procedures of the counties fall into three categories. And I'm on Page 4 of your panel report. One category is where the County simply gave the growth allocation to the towns for their use, and that was the process that Talbot County used.

Another selection of programs, another category of growth allocation used is where a county simply identifies a number of acres for a town's use, growth allocation, but then awards that growth allocation on an individual project basis when the town requests it.

And the third category is a coordinated process where both entities make the decisions together. If you look at the bottom of Page 4 you'll see some information that we've been talking about quite a bit today in regard to the other amendments. Here you'll find about three quarters of the way down a quote from the Critical Area law that provides you the standards

for review of a proposed amendment. Those standards are that the Commission must determine or that the program amendments must meet the goals of the Critical Area law, and they are set out at the bottom of page 4, as well as the provisions of the criteria. That is what the panel discussed at length in its meetings and again today.

That's all I have in summary of the bill. Are there any questions regarding the process or what the bill does?

CHAIRMAN MADDEN: Thank you very much. Now we'll allow brief public comment, if anybody chooses to do so. We're allocating a time to the County to come up and address us, and then we'll allow members of the public to address us briefly also.

MR. POLLEN: Thank you, my name is Michael Pollen. I am the Talbot County attorney and I would like to read to you a letter that was addressed to Senator Madden on April 22nd which

contained the County's comments on the subcommittee's review of Bill 933 that had occurred on April 19th.

Dear Senator Madden: During the Critical Area Commission Subcommittee Review on April 19, 2004 of Talbot County's proposed changes to its local program, several members commented on the need for more information to fully understand the various bills' language. I am respectfully submitting this letter to respond to those questions and I will address my comments in the order in which the discussion occurred.

Consistency. The subcommittee initially posed the question whether Bill 933 was consistent with existing Critical Area Commission policies and other approved programs. The first part of the discussion articulated the correct standard by which to judge consistency. The discussion involved approvals of the program for Caroline County, Saint Mary's County, Wicomico County, Queen Anne's County, which all

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demonstrate that the Critical Area Commission has approved as a matter of policy different approaches to county municipal growth allocation. Bill 933 falls within the parameters of the previously approved programs and policies of the Critical Area Commission. This is the correct standard and the correct conclusion.

Comparison of Bill 933 to inconsistent provisions of existing municipal programs based on the 1989 ordinance that is being repealed by 933 is not the correct approach to determine consistency. By definition, a program amendment is a change to a program and it will necessarily be different than existing elements of the current program.

In the case of Bill 933, Talbot County municipality has adopted their own local programs based on the 1989 ordinance that gave them specific amounts of growth allocation. Bill 933 changes that. And any existing elements of approved local programs inconsistent with Bill

933 are irrelevant to whether Bill 933 should be approved.

If proposed amendments are compared with inconsistent existing program elements for consistency, no amendment would ever be consistent, and therefore, no amendment would be approved.

I'm sure the subcommittee's intention, based on Ms. Mason's legal advice in considering consistency, does not include consideration of existing elements of the municipal Critical Area programs that were premised on the 1989 ordinance that are being changed by Bill 933.

Municipal reliance. Some of the discussion centered upon expectations of various municipalities premised on the 1989 award of the growth allocation acreage. This is not an appropriate consideration in evaluating Bill 933. Maryland law is quite clear that absent vested rights, which Bill 933 specifically does not impair, zoning laws may be changed by local

government and a property owner, or in this case, a municipality, has no legal right to rely on a preexisting law or any assumption that preexisting law would continue as originally enacted.

There was some discussion about various projects that were pending, and one in particular, Cooke's Hope, was the subject of the next paragraph.

Cooke's Hope. One topic of discussion was the effect of Bill 933 on the Critical Area Commission's previous approval of the Cooke's Hope project. Talbot County Council has already approved its Cooke's Hope project utilizing the procedures adopted under Bill 762. Bill 762 is the bill that was approved by this Commission in 2000 that established a joint review process with the municipalities and the County in which the applicant submits the application to the municipality; it's forwarded to the County; there's a joint review at the Planning Commission

level; there is a joint meeting of the town and the county planning commissions. They separately confer and form separate recommendations to their respective bodies. That is followed by a joint meeting between the town council and the County Council to review the application. They then separately confer among themselves and come up with individual recommendations for approval or not. Both, under Bill 762, both the town and the County must approve the project.

Now, that procedure has been successfully used with the town of Easton on several occasions. The town of Easton has no longer any growth allocation, as Ren Serey indicated.

Back to the letter. One topic of discussion was the effect of Bill 933 on the Critical Area Commission's previous approval of the Cooke's Hope project. The Talbot County Council has already approved the Cooke's Hope project utilizing the procedures adopted under

Bill 762. Bill 933 does not affect that approval. This is readily apparent from the language of the bill itself on page 6, line 216, which states, growth allocation awarded by any town that remains unutilized by the effective date of the ordinance shall revert to the County. Growth allocation awarded by the County prior to or after the effective date of the ordinance shall be deducted from the total growth allocation allocated to the County under section 8-1808(1)(B).

So that project has been through the joint review process and approved, and Bill 933 would have no effect on that project.

I want to skip ahead in the letter to discussion of Bill 762. Other parts of the discussion noted that Bill 762 was premised on the assumption that it pertained to supplemental awards of growth allocation after the use of allocated acreage under the 1981 maps. When Bill 762 was enacted, and that was in 2002 -- or

excuse me, 2000, there was no intention to repeal the 1980 maps. That does not forever enshrine those maps and place them beyond the police power of a future council. The premises or assumptions upon which Bill 762 was enacted do not bear on whether Bill 933 is consistent with the standards and the criteria the Critical Area Commission is required to consider under Natural Resources Article Section 8-1809(J).

Bill 762 is the County-created procedure required by COMAR to accommodate the growth needs of municipalities. COMAR has a specific criteria that says when planning future expansion of limited development and intensely developed area, counties, in coordination with affected municipalities, shall establish procedures to accommodate the growth needs of municipalities.

So COMAR requires the specifically -- that the counties establish this procedure specifically, and that's what Bill 762 did. That's already been approved by the Commission

and utilized with the town of Easton.

Bill 933 simply takes that existing procedure and applies it uniformly throughout the County to all of the towns, including St. Michael's, including the town of Oxford.

Bill 762 is the County-created procedure required by COMAR to accommodate needs of municipalities. Bill 762 was drafted by the town attorneys for the town of Easton and circulated for comment to the town attorneys and town commissioners for the town of Oxford and St. Michael's prior to introduction by the County Council.

The comments offered by the town attorney for the town of St. Michael's, the only comments received were incorporated into the bill. Enactment of Bill 762 was in coordination with affected municipalities, as required by COMAR.

They then go on to discuss other coordination between the County and the

municipalities because that was one of the criteria, one of the elements in the criteria. On the planning level Talbot County has coordinated directly with each municipality to establish growth boundaries around each of the affected municipalities. This effort has resulted in coordinated maps showing common plans between the County and each municipality for growth areas around the town. Examination of those maps shows quite clearly the coordinated result of that county municipal effort to accommodate the growth needs of municipalities.

These maps are the definitive reference point from which to evaluate county municipal cooperation regarding growth boundaries of municipalities and county accommodation of growth needs. The matching plans between the County and each of the effective municipalities shows a level of cooperative effort that speaks for itself. Any claim that there was not adequate political coordination between the town and

county elected officials in connection with enactment of Bill 933 --

CHAIRMAN MADDEN: I'm going to ask you to summarize because your time is expiring.

Mr. POLLEN: Mr. Chairman, it's the County's position that this -- and as Mr. Serey explained in his comments, many counties throughout the state have adopted Critical Area policies that do not give specific acreage growth allocations to municipalities. Those county-wide programs have been previously approved by this Commission.

Bill 933 is within the state-delegated power of the County Council to enact. We're a charter county. We have the obligation to develop our own program, delegate it not only under our charter, but under the Critical Area law. This policy has been previously promoted by other counties and approved by the Critical Area Commission. And we believe that it represents not only good environmental policy, but it's well

within the prerogative of the County Council to adopt that policy being consistent with the goals and criteria of the Critical Area Commission.

It's really designed to enhance and protect the environment of the Chesapeake Bay and protect its future. So we would urge that the Critical Area Commission adopt this as a program amendment to Talbot County's local program.

CHAIRMAN MADDEN: Thank you for your comments? Any member of the public that would like to speak to us briefly on Talbot County Bill 933?

MR. HICKSON: My name is Michael Hickson, I'm the attorney for the town of St. Michael's. The town opposes 933. The towns of Easton and Oxford appeared at the local county hearing and also opposed this bill.

We opposed it for several reasons. First, we think it's different than other situations that you have addressed because in this situation you're yanking back or the County

is attempting to yank back reserved acreage that was originally given to the town and that the town's programs were based on. They have been functioning all these years, and the towns did not receive any complaint from the County that anything wasn't working well until we received notice of this bill.

I testified at the local panel hearing. We found evidence in the record here that the County manager contacted Mr. Serey of this office on October the 29th, 2003 to inform him that the bill was in process and that he could expect it to be up here for processing at the Critical Area Commission in January of 2004. This bill was not introduced to the public until some time in November of 2003, and the towns were not contacted about it and the problem was not raised with the towns before the bill was introduced to the public.

So there has been no coordination. There's been no cooperation, and the effect of

the bill will, as I said, yank back reserved acreage and in my view run contrary to the way that the state Critical Area laws and policies are supposed to work, and that is they're supposed to work in an organized and coordinated fashion. Not to say that every county has to work the same way, but by suddenly yanking back these bills you have towns that in fact don't have them; they can't function at all in terms of Critical Area.

CHAIRMAN MADDEN: Your time is expiring. Please summarize.

MR. HICKSON: We agree with what the panel discussed this morning, that in effect it will undo some decisions that the Critical Area Commission had made, that it's inconsistent with the existing town programs that exist in three municipalities in the town and there's been no cooperation or coordination in bringing this bill forward. So we oppose it.

CHAIRMAN MADDEN: Thank you. Does

anybody else want to make any public comment?

MR. ALSPACH: Thank you again. My name is Tom Alspach. I'm speaking on behalf of the Public Preservation Alliance. I would not agree with Mr. Hickson that the towns cannot function with Bill 933. The purpose of Bill 933 is to ensure that both the County and town and their respective populaces equally have a stake in the Critical Area, have their views taken into account in the grand growth allocation.

The grand growth allocation in a town like St. Michael's or Oxford affects all the residents of the County who utilize the Miles River, the Tred Avon River, Choptank River, et cetera. What this process is intended to do is to establish a joint review procedure whereby both jurisdictions participate in that review. Nothing is being taken away. The only two instances that this process has already been used with regard to the town of Easton, and in both instances the growth allocation requests were

approved.

If you look at a map, some of you who were at the public hearing for the panel, remember I showed you what St. Michael's looks like now. It looks like a big bar bell, a chunk of lead here and a chunk of lead here and a skinny bar that joins the two together. That's what St. Michael's looks like now because they annexed a piece of property three-quarters of a mile out to the country by way of annexing a roadbed. That piece of annexed property is out in the middle of the county on a county river surrounded by county residents, yet the residents of the County had no say whatsoever when growth allocation for this annexation was considered.

Given the fact that they will be directly impacted by it, by annexations like in the future, this procedure would ensure that their concerns are taken into account as well as those of people living in the town. By the way, in response to a question that was asked, I think

by Mr. Jackson at the panel hearing, the question was raised doesn't this give the County a veto and it can prevent any growth allocation whatsoever. No, it doesn't. The law requires the counties to accommodate the growth needs of the town. If the County were arbitrarily denying growth allocation pursuant to this procedure, the town would have relief available to it because the County would not be accommodating its need for growth. So that fear or concern is misplaced. I would urge you to approve this proposed program amendment. It does nothing but assure that all parties affected by growth allocation will be heard in the process.

CHAIRMAN MADDEN: Anything else? I'll turn it over to panel chair for additional comments and recommendations.

MR. BLAZER: I guess a couple things while we're passing out the panel recommendations and report. We only had three people I think speak here. But the night of our panel we were

there for a good two and a half, three hours, had quite a few people talk similar to the other St. Michael's hearing. And a lot was presented and a lot was discussed, and basically some of the issues that we had to deal with and that we focused on were basically -- we wanted to apply the specific sections in the critical areas law. We heard all kinds of things about planning and smart growth and wastewater treatment and some of the problems with the Miles River, you know, we needed to focus on the Critical Area provisions in the criteria and the law that we had. So that's what we tried to focus on in our panel discussions.

So, you know, with that, we also looked at the effect of Bill 933 on other Critical Area programs, program amendments, program refinements, what the Critical Area COMAR section said, so we had several meetings, a lot of discussion, a lot of debate as we went through, and I also want to thank the panel members,

because I think the debate and the discussion was very healthy and I appreciate all of your input on those.

A couple other introductory remarks. In its review of Bill 933, the panel wanted to encourage the County and towns to work together on specific changes on the growth allocation procedures that are going to affect all of them. You heard a couple people talk about process things and I think that's one of the things that we'd like to see as this develops over time.

The panel believed that the time was particularly appropriate for this kind of cooperative effort and the analysis given that the County has engaged in its comprehensive review of its program.

The panel also believes that the supplemental growth allocation process of Bill 762 that I believe Mr. Pollen talked a little bit about which is incorporated in the County code may be a desirable growth allocation process,

however, as presently drafted, Bill 933 really doesn't harmonize or come in line with the supplemental growth allocation process of the County code. There were some inconsistencies that the panel was uncomfortable with in our determination of our recommendation.

I'd like to move on behalf of the panel to deny approval of Talbot County Bill 933 as an amendment to the County's Critical Area program and to invite the County to work with the Commission and its staff to develop new growth allocation provisions that will be compatible with the state Critical Area Act and its criteria.

There are two major bases for the motion. They are: If we accept Bill 933, we would negate at least one previous Commission action of approving a local program change, and that's the refinement to the St. Michael's program for the Strausburg growth allocation we approved back in October 2003. And the second

basis was accepted Bill 933 would create conflicts between the County program and several of the approved municipal programs that the Commission has agreed to. The municipal programs have their own approved growth allocation procedures premised on the growth allocation reserves provided by the County. The conflict that Bill 933 would create was contrary to the Commission's oversight responsibility to ensure that local programs are implemented in a consistent and uniform manner. So that's our recommendation.

CHAIRMAN MADDEN: Do we have a motion for denial of Talbot County Bill 933? Is there a second?

COMMISSIONER: Second.

CHAIRMAN MADDEN: Any discussion? Yes, Barbara?

SPEAKER: I would like to clarify something. It's my understanding that the goals of Bill 933 are consistent with the state

delegation to the County, but the draftmanship is creating some inconsistency, so with appropriate draftmanship the goals could be realized; is that correct?

MS. MASON: The process that the County has said that they intend to use, that is the joint process through Bill 762, the panel believed was definitely in line with or appropriate under the state law and criteria, but the actual wording of the bill which is what the panel had to look at created the problem for this Commission of negating the Commission action.

SPEAKER: So it's basically an inartful drafting as opposed to a noncompliance -- the goals are not noncompliant, the draftsmanship --

CHAIRMAN MADDEN: Denial is articulated in the motion. If we stick to the motion rather than try to read something else into it. Any other discussion?

MS. ENNIS: It seems to me when we look at this issue, the thing that's most inconsistent

is that it will repeal an action that the Commission has already approved, both the town and the County approved and that the Commission approved.

CHAIRMAN MADDEN: The town approved. The Commission --

MS. ENNIS: It didn't have to go through the County?

CHAIRMAN MADDEN: Correct.

MS. ENNIS: If that were corrected, would we still be opposed to this?

CHAIRMAN MADDEN: I think again, we have to look at the motion. The motion cites two issues. The basis for the motion is the first paragraph, accepting 933 would negate at least one previous Commission action and, number two, would create conflicts between the County program and several approved municipal programs. That's what we're basing this motion on. Any other discussion? If not, we have a motion in front of us for denial. All those in favor say aye.

(All said aye.)

CHAIRMAN MADDEN: Opposed nay?

Motion for denial is approved. Thank you again, all panel members and Commission members.

(Proceedings concluded at 5:00 p.m.)

Critical Area Commission

PANEL REPORT
May 5, 2004

APPLICANT: Talbot County

PROPOSAL: County Council Bill 933
Review and Reallocation of Growth Allocation for the Towns

COMMISSION ACTION: Vote

COMMISSION PANEL: Dave Blazer (Chairman), Bill Giese, Joe Jackson, Ed Richards and Gary Setzer

PANEL RECOMMENDATION: Pending Panel Discussion

STAFF: Ren Serey

APPLICABLE LAW/ REGULATIONS: Natural Resources Article §8-1809 (h)

DISCUSSION:

The Talbot County Council submitted Bill #933 for approval by the Commission. The Bill's stated purpose is "to review and reallocate the number of reserved acres of growth allocation allocated among the [Talbot County] towns." Previously, the County had set aside a specified number of acres of growth allocation for use by the Towns of Easton, St. Michaels, and Oxford. The County's original Critical Area Ordinance, adopted in 1989, reserved 155 acres for the Town of Easton, 195 acres for the Town of Oxford, and 245 acres for the Town of St. Michaels. The 1989 Talbot County Critical Area Program ordinance included three maps of the Towns and surrounding areas. These maps identified potential areas for annexation or rezoning. The Ordinance also specified that the number of reserved acres should be reviewed by June 1, 1993 for possible reallocation, and at least every four years thereafter. These reviews have not taken place.

As of today, Easton has used more than its original allotment of 155 acres of growth allocation. Easton has awarded 183.762 acres (including 28.762 acres of supplemental growth allocation, awarded under the County's "supplemental" growth allocation process, discussed below). This total includes 36.42 acres associated with the Cooke's Hope Project, which has been approved by the Town, but not yet reviewed by the Commission. The Town also

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requested an additional 156 acres of supplemental growth allocation from the County. The request for supplemental growth allocation was approved, and those projects are moving forward.

Oxford has awarded 15.223 acres of the original 195 acres allotted by the County.

Of the 245 acres allotted to St. Michaels, the Town has awarded 21.00 acres for the Strausburg Subdivision, which was approved by the Commission as a refinement to the Town's Program in October 2003. The Town has also recently approved the use of 70.92 acres of growth allocation for the Miles Point III Project, which is currently under review by the Commission.

Talbot County Bill 933 repeals the ordinance provisions that allocated specific numbers of growth allocation acres to the Towns.

Bill 933 states that the withdrawal of growth allocation from the municipalities is part of the County's comprehensive review of its local Critical Area Program. The Bill also states that this action is necessary because, among other things:

- The original awards of growth allocation to the towns have "no continued validity for any planning and zoning purpose;"
- The original awards are "inconsistent with current principles of proper planning and the land use goals and policies in the existing and draft Talbot County Comprehensive Plans;" and
- "Growth in and around the towns affects not only the particular town, but also the County as a whole, and the County should, therefore, have some ability to protect the County's legitimate interests as they are affected by development in the critical area, as contemplated by State law when it gave this control to the counties under the Chesapeake Bay Critical Area Protection Program..."

In Bill 933, Talbot County proposes to amend its zoning code to delete all provisions relating to the reservation of growth allocation acreage for the Towns. This includes acreage already awarded by a Town, unless the growth allocation has resulted in "actual physical commencement of some significant and visible construction... pursuant to a validly issued building permit." (Section 2 of Bill 933). It is the County's intent that growth allocation awarded by a Town that has not resulted in physical commencement of some significant and visible construction pursuant to a validly issued building permit shall revert to the County.

Commission staff understands that at this time there are two, and possibly three, growth allocation projects in Talbot municipalities for which growth allocation has been awarded by a Town, but under Bill 933, would be considered unutilized and accordingly would revert to the County. First is the Strausburg Subdivision in St. Michaels, which involved 21.00 acres of growth allocation to change the Critical Area designation from Resource Conservation Area

(RCA) to Limited Development Area (LDA) for a ten lot residential subdivision. The Commission approved this growth allocation request as a refinement to St. Michaels' Critical Area Program on October 1, 2003. Second is the Miles Point III application, which the Town approved for 70.92 acres of growth allocation in January 2004. The Town has submitted this growth allocation request to the Commission, and the Commission is currently reviewing it.

Third, it is possible that Bill 933 may affect the Cooke's Hope Project in Easton. For this project, the Town of Easton used a combination of the original "reserved" growth allocation acreage and some supplemental growth allocation that it received from the County under the process of Bill 762. Thus, the Cooke's Hope project was reviewed through the County's supplemental growth allocation process. The Town of Easton recently sent this growth allocation to the Commission, but it has not yet been reviewed or approved by the Commission, and therefore, has not resulted in physical commencement of some significant and visible construction pursuant to a validly issued building permit

In accordance with §27.01.02.06.A(2) of COMAR, "Counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities." Although Bill 933 removes provisions pertaining to the reservation of growth allocation acreage for the Towns from the County Code, the Bill does not itself set forth a process for the County's Towns to obtain future growth allocation acreage. For that process, the County has informed the Commission that it will use other parts of §190-109 of the County Code which address how the use of growth allocation by the Towns is to be accommodated in the future. County Code Section §190-109 D (9) outlines a joint review and hearing process whereby elected officials from Talbot County and the affected municipality work cooperatively together on projects involving the Town's proposed use of growth allocation. This process, "Procedures for Awarding Supplemental Growth Allocation to Municipalities in Talbot County," was enacted by the County at a time when Easton was close to exhausting its original growth allocation allotment. This process was approved by the Commission as a refinement to Talbot County's Program in June 2000.

A copy of Bill 933 is attached. Within the Bill, **boldface** indicates a heading or defined term; underlining indicates language added to existing law by original bill; ~~strikethrough~~ indicates language deleted from existing law by original bill, and * * * indicates existing law unaffected.

The Panel's discussions to date have focused on the following issues:

- The applicable sections of the Critical Area Law and Criteria governing growth allocation.

- The effect of Bill 933 on other approved Critical Area Programs, program amendments, or program refinements.

- The interpretation of the growth allocation provisions of COMAR 27.01.02.06.A, particularly the provision that states, "When planning future expansion of intensely developed and limited development areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities."

At the Panel's request, Commission staff provided research summarizing the process used by the various Critical Area counties to provide for the use of growth allocation by the municipalities. The various processes appear to fall into three general categories: 1) growth allocation acreage is given by the County to a municipality and the County is not involved in the review and approval process; 2) the County may or may not identify a certain number of acres that are "set aside" for the municipalities, but the County must be consulted, and in some cases, must review the use of growth allocation before the town can use it; and 3) the County participates in a coordinated review process with the municipality, either simultaneously with, or following the Town's review process.

The Panel has considered the information about the various processes and procedures used by the Critical Area counties with regard to municipalities' use of growth allocation. They have discussed the importance of the procedures being clearly set forth in a coordinated manner in the ordinances and programs of the counties and affected municipalities. They have also discussed the significance of amending one local program in such a way that it creates conflicts with other approved programs. At the public hearing on March 24, 2004, and in written comments submitted for the record, the Panel received information from numerous commentors stating their views about the applicability of other State laws, policies, and regulations to the proposed Program amendment from Talbot County. On advice of counsel, the Panel agreed that the Commission's role regarding Bill 933 should be focused on the provisions of the Annotated Code of Maryland §8-1809(j) which state that

> "The Commission shall approve Programs and Program amendments that meet:
> (1) The standards set forth in §8-1808(b)(1) through (3) of this subtitle; and (2) The Criteria adopted by the Commission under §8-1808 of this subtitle."

The goals of the Critical Area law, referenced above are:

1. To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

2. To conserve fish, wildlife, and plant habitat; and

3. To establish land use policies for development in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

The Panel requested information regarding the effect of Bill 933 on other approved Critical Area Programs, program amendments, or program refinements. Commission staff provided this information, and the Panel discussed the information, particularly the approved Programs of Oxford, St. Michaels and Easton. The approved Town programs show that Bill 933 will affect the established growth allocation procedures of St. Michaels and Oxford. Easton is not specifically affected because the Town has already utilized all of its original reserved growth allocation acreage.

In addition to the effect on approved Town programs, Bill 933 will affect the following specific program amendments: the Strausburg Subdivision growth allocation (awarded by the Town of St. Michaels and approved by the Commission in October 2003), the Miles Point III Project growth allocation (awarded by the Town of St. Michaels and currently under review by the Commission) and potentially Cooke's Hope in Easton, depending on the final analysis of how the procedure used affected the 7.66 acres of growth allocation remaining from Easton's original reservation.

The Panel has discussed the meaning of the COMAR provisions relating to "coordination" between counties and affected municipalities. The Panel has acknowledged the various potential interpretations of this term. The Panel believed that the definition in Webster's Dictionary, "to harmonize in a common effort," seems to be a comprehensive and reasonable definition. The Panel seemed to agree that at a minimum "coordination" involves the participation of the affected parties. The Panel has also discussed the effect of Bill 933 on:

- the Strausburg growth allocation;
- the Miles Point III growth allocation;
- established municipal growth allocation processes;
- the effects of Commission actions on prior actions and current procedures.

The Panel will resume its discussion of this matter on May 5, 2004.

Critical Area Commission

SUPPLEMENT TO PANEL REPORT
May 5, 2004

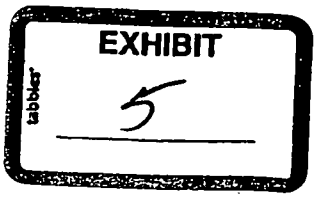
APPLICANT:	Talbot County
PROPOSAL:	Comprehensive Review of Local Program, County Council Bill 933
COMMISSION ACTION:	Vote
PANEL MEMBERS:	Dave Blazer (Chairman), Gary Setzer, Bill Giese, Joe Jackson and Ed Richards
PANEL RECOMMENDATION:	Deny
STAFF:	Ren Serey
APPLICABLE LAW/ REGULATIONS:	Natural Resources 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.



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

Dear Mr. Kinney:

This letter notifies you of action taken by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays. At its regularly scheduled meeting on May 5, 2004 the Critical Area Commission considered County Bill #933, Talbot County's proposed amendment to its local Critical Area program concerning the reallocation of growth allocation reserve acres. Upon the recommendation of the panel of Commission members who conducted a public hearing on County Bill #933, and further upon consideration of the Panel's Report and its Supplement (both attached), statements made by members of the public who attended the Commission's meeting, and discussion among the Commission members, the Commission voted to deny approval of County Bill #933 as an amendment to Talbot County's local Critical Area program. The vote was unanimous, with one member abstaining.

The basis for the Commission's decision, as set out in the Supplement to the Panel Report, was as follows:

> Accepting Bill 933 would negate at least one previous Commission action approving a local program change. This is the refinement to the St. Michaels program for the Strausburg growth allocation approved in October 2003.
>
> Accepting Bill 933 would create conflicts between the County program and several approved municipal programs. The municipal programs have their own approved growth allocation procedures premised on the growth allocation reserves provided by the County. The conflict that Bill 933 would create is contrary to the Commission's oversight responsibility to ensure that local programs are implemented in a consistent and uniform manner.

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The Panel recommended and the Commission fully supported inviting Talbot County to work with the Commission and its staff to develop new growth allocation provisions that will be compatible with the State's Critical Area Act and Criteria. Commission staff are available at your convenience to discuss new growth allocation procedures or to arrange a meeting with the Commission's Program Implementation Subcommittee.

Please contact me if you have questions or need additional information.

Sincerely,

Lisa A. Hoerger

Lisa Hoerger
Natural Resource Planner

cc: Honorable Philip Carey Foster
Mr. R. Andrew Hollis, Talbot County
Mr. Mike Pullen, Talbot County
Ms. Mary Kay Verdery, Talbot County
Ms. Marianne Mason, DNR- AG

IN THE CIRCUIT COURT FOR
TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND	*	
Plaintiff	*	
v.	*	**Case No. 20-C-04-005095**
DEPARTMENT OF NATURAL RESOURCES-CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND COASTAL BAYS, et al.	*	
Defendants	*	

* * * * * * * * * * * * *

MILES POINT PROPERTY, LLC'S AND THE MIDLAND COMPANIES, INC'S MOTION FOR SUMMARY JUDGMENT

Miles Point Property, LLC and The Midland Companies, Inc. (collectively "Miles Point"), by and through their attorneys, Richard A. DeTar, Demetrios G. Kaouris and Miles & Stockbridge, P.C., pursuant to Maryland Rule 2-501 hereby move for summary judgment on the ground that there is no genuine dispute of material fact in this case and Miles Point is entitled to summary judgment as a matter of law. In support hereof, Miles Point states as follows:

This case arises out of Talbot County's (the "County") enactment of Bill 933, pursuant to which it purported to "take back" growth allocation that it had reserved to the Town of St. Michaels and the Town of Oxford, since inception of Talbot County's local critical area program 1986. Both the St. Michaels and the Oxford critical area programs are premised upon the County's commitment of several hundreds of acres of growth allocation to each of the towns.

Because Bill 933 constituted an amendment to the County's critical area program, it had to be approved by the Critical Area Commission for the Chesapeake and the Atlantic Coastal Bays (the "CAC"). The CAC declined to approve Bill 933 as an amendment to the County's

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2003 Legislative Session, Legislative Day No. November 18, 2003

Bill No. 933*

AS AMENDED

Expiration Date: January 22, 2004

Introduced by: Mr. Carroll, Ms. Harrington, Mr. Duncan

A BILL TO REVIEW AND REALLOCATE THE NUMBER OF RESERVED ACRES OF GROWTH ALLOCATION ALLOCATED AMONG THE TOWNS FOR REZONING TO COMPLY WITH THE CHESAPEAKE BAY CRITICAL AREA COMMISSION FOUR-YEAR REVIEW REQUIREMENT

By the Council November 18, 2003

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, December 16, 2003 at 1:30 p.m. at the County Council Chambers, 142 North Harrison Street, Easton, Maryland 21601.

By Order Janice Mans
Secretary

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Ex. 1

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E. 1327

A BILL TO REVIEW AND REALLOCATE THE NUMBER OF RESERVED ACRES OF GROWTH ALLOCATION ALLOCATED AMONG THE TOWNS FOR REZONING TO COMPLY WITH THE CHESAPEAKE BAY CRITICAL AREA COMMISSION FOUR-YEAR REVIEW REQUIREMENT

WHEREAS, when Talbot County adopted its Critical Area Program effective August 13, 1989, it adopted three maps showing then anticipated growth areas around the Towns of Easton, St. Michaels, and Oxford, and

WHEREAS, at the time of adoption, § 190-109 D (11) provided that the number of reserved areas allocated among the towns based on those maps for rezoning for growth allocation should be reviewed by June 1, 1993 for possible reallocation, and at least every four years thereafter. None of the four-year reviews have occurred and these maps continue to reflect a prospective look to the future from 1989; and

WHEREAS, the 1989 maps do not reflect current Town boundaries, nor any development during the ensuing 14 years, nor do they represent current planning for growth areas around the towns. Since 1989, the County has awarded 301.771 acres, the Town of Easton has awarded 183.762 acres, St. Michaels has conditionally awarded up to 20 acres, and Oxford has awarded 15. 223 acres of growth allocation; and

WHEREAS, the 1989 projections have no continued validity for any planning or zoning purpose; and

WHEREAS, these 1989 maps have been used to justify "leap-frog" or "pipe-stem" annexation, which is inconsistent with current principles of proper planning and the land use goals and polices in the existing and draft Talbot County Comprehensive Plans; and

WHEREAS, the process created by the 1989 zoning ordinance is both redundant and inconsistent or potentially inconsistent with the Comprehensive Planning Process; the Comprehensive Planning Process required by Art. 66B, Md. Ann. Code, more appropriately accomplishes planning for growth areas around Towns; and

WHEREAS, Talbot County had a total of 2,554 acres of growth allocation under the State formula for calculating the total amount for each county [5% of the total resource conservation area located within the County]; and

WHEREAS, § 8-1808.1 (c) (3), Natural Resources Art., Md. Ann. Code provides, with certain exceptions, no more than one-half of the expansion permitted by growth allocation in the critical area may be located in resource conservation areas (RCA); and

WHEREAS, § 8-1801.1 (c) (5) Natural Resources Art., Md. Ann. Code provides that if Talbot County is unable to utilize a portion of the County's total growth allocation within or adjacent to exiting intensely or limited development areas, then that portion of the growth allocation which cannot be so located may be located in an RCA; and

WHEREAS, Talbot County has followed this requirement of State law by restricting the use of available growth allocation through § 190-109 D. (9) (a) of the Talbot County Code. That section provides that not more than 1,213 acres of land lying within the Critical Areas of the County shall be reclassified from RCA to any other zoning district. [The 1,213 acres is derived from the total acreage available for growth allocation in the entire county by the following formula: (5% of total acres in resource conservation areas, equal to 2,554 acres = total available growth allocation), less 128 acres reserved for reclassification from limited development areas to intensely developed areas, divided by 50%. The calculation is: 2,554 acres minus 128 acres divided by ½ = 1,213 acres.]; and

WHEREAS, the County may not utilize the remaining 50% of available growth allocation [1,213 acres] until the Critical Area Commission grants permission, under the exception provided in § 8-1801.1 (c) (5), cited above, based upon a showing that the County is unable to utilize that portion of its available growth allocation in areas adjacent to limited or intensely developed areas; and

WHEREAS, to trigger release of the withheld 50% of the County's growth allocation, § 190-109 D. (9) (b) provides that when 1,092 acres [90% of 1,213 acres] has been approved for growth allocation by the towns and/or the County, then the County shall request permission from the Maryland Critical Area Commission to double the maximum number of acres that may be reclassified from RCA from 1,213 to 2,426 acres; and

WHEREAS, Section 190-109 D. (9) (a) of the Talbot County Code adopted in 1989 reserved 155 acres of growth allocation for the Town of Easton, 195 acres for the Town of Oxford, 245 acres for the Town of St. Michaels, and 618 acres for Talbot County; and

WHEREAS, the Town of Oxford has allocated only 15.223 acres of growth allocation, and the Town of St. Michaels has conditionally allocated only up to 20 acres of growth allocation. The Town of Oxford has 139.777 acres remaining, and the Town of St. Michaels has 225 acres remaining. Combined, Oxford and St. Michaels have 364.777 acres of growth allocation; and

WHEREAS, the County currently has a total of 316.229 acres of growth allocation. If it grants a pending application for supplemental growth allocation submitted by the Town of Easton for 156 acres, the County will have 160.229 acres of growth allocation; and

WHEREAS, under current law the Town of Oxford, or the Town of St. Michaels, either separately or in combination, could forever block the County from accessing the remaining growth allocation under § 190-109 D. (9) (b), by preventing the total acres utilized to equal or exceed 1,092 acres, the required trigger under § 190-109 D. (9) (b); and

WHEREAS, the Town of Easton has fully allocated the growth allocation reserved to it, and Talbot County has worked, and continues to work, cooperatively with the Town of Easton in approving projects for which the Town has requested supplemental growth allocation; and

WHEREAS, growth in and around the towns affects not only the particular town, but also the County as a whole, and the County should, therefore, have some ability to protect the County's legitimate interests as they are affected by development in the critical area, as contemplated by State law when it gave this control to the counties under the Chesapeake Bay Critical Area Protection Program, § 8-1801, et. seq., Md. Ann. Code; and

WHEREAS, § 8-1809 (g), Natural Resources Art., Md. Ann. Code, requires that Talbot County review its entire critical area program and propose any necessary amendments to its entire program, including local zoning maps, at least every 4 years beginning in 1993 and every 4 years thereafter; and

WHEREAS, Talbot County is currently near completion of such a 4-year review, and as part of that process desires to make the following amendments to the County's critical area program to better reflect the original intent of the State law governing growth allocation, which calculated growth allocation for Talbot County as 5% of the resource conservation area in the County, and gave the County the authority to determine, within the limits imposed by State law and regulations, how that growth allocation would be utilized, and reallocated among the Towns and the County, project by project.

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that Chapter 190, Talbot County Code, "Zoning" shall be and is hereby amended as set forth herein.

Maps 1, 2, and 3, attached, are hereby repealed.

* * *

§ 190-109 D (9)

(a) Not more than 1,213 acres of the Critical Areas of the County, including all land lying within the Critical Area within incorporated towns, shall be reclassified from the Rural Conservation (RC) District (or town zoning districts established for the Resource Conservation Area of the Critical Area) to any other zoning district. ~~Of these 1,213 acres, 155 acres is reserved for the Town of Easton, 195 acres is reserved for the Town of Oxford, 245 acres is reserved for the Town of St. Michaels for growth allocation associated with annexations, and 618 acres is reserved for the County.~~

* * *

§ 190-109 D (10) Reclassification of land within incorporated towns

000508

(a) Not more than 128 acres of the Critical Area of the County, including lands within the incorporated towns, shall be reclassified from a Limited Development Area (LDA) to an Intensely Developed Area (IDA). For purposes of this section, LDA Zoning Districts include Rural Residential (RR), Town Residential (TR) and Village Center (VC) or areas of less than 20 contiguous acres of Limited Commercial (LC), General Commercial (GC) or Limited Industrial (LI). Town zoning districts include all districts classified as LDA. The requested IDA classification shall include areas of 20 or more contiguous acres of LC, GC, LI or town zoning districts established for the IDA of the Critical Area.

(b) In determining whether the twenty-acre threshold has been reached, the contiguous areas of existing commercial and/or industrial zoning districts, whether located in the Critical Area or Non-Critical Area, shall be considered. ~~Of the 128 acres, 24 acres is reserved for the Town of Easton, 44 acres for the Town of Oxford, 24 acres for the Town of St. Michaels for growth allocation or growth allocation associated with annexations, and 36 acres for the County for growth allocation for property outside of the towns and outside of areas shown as possible annexation areas. (See Maps 1, 2 and 3.)EN~~

§ 190-109 D (11)

~~The number of reserved areas allocated among the towns for rezoning in § 190-109D(9) and (10) should be reviewed by the County and Towns by June 1, 1993 for possible reallocation and at least every four years thereafter.~~

* * *

§ 190-109 D (14)

~~Specific annexation requests for property included in the acres reserved for the towns in § 190-109D (9) and (10) above and as shown in Maps 1, 2, and 3, shall be reviewed by the County for consistency with the County Comprehensive Plan and shall be subject to all current ordinances regulating annexations. The County shall not act on rezoning requests adjacent to the towns as shown on Map 1, 2, and 3 until an annexation request for the property has been denied by the town or until 12 months after an annexation request for the property has been submitted to the town, whichever occurs first. If the County approves a rezoning request not associated with an annexation request for property adjacent to the towns as shown on Maps 1, 2 and 3, then the acreage of the property rezoned shall be subtracted from the acres reserved for the Town for annexation in § 190-109D(9) and (10).~~

§ 190-109 D (15)

~~Growth allocation requests for property that has been annexed within five years of the request shall be reviewed by the County for consistency with the County Comprehensive Plan. Growth allocation request(s) for property that has been in the town for more than five years prior to the request does not require review by the County; however, the towns~~

~~shall inform the County of such reclassification to ensure that the total reserved acres, listed above, are not exceeded.~~

§ 190-109 D (16)

~~The location of growth allocation requests within Towns or growth allocation requests associated with annexation requests is not limited to the areas shown in Maps 1, 2 and 3, however, the total acres reserved per town shall not be exceeded.~~

SECTION 2. Effective Date and Severability; legislative intent.

1. Vested Rights: Effective Date of Zoning Text Amendments

This ordinance shall apply to the total growth allocation acreage allocated to the County under § 8-1808.1 (b) Natural Resources Article, Annotated Code of Maryland that remains unutilized on the effective date of this ordinance.

(a) For purposes of this subsection, the term "unutilized" includes the total growth allocation acreage allocated to the County under State law, less growth allocation acreage that (1) has been previously allocated by any town or the County; and, (2) prior to the effective date of this ordinance, has resulted in actual physical commencement of some significant and visible construction; (3) which has been undertaken in good faith, with the intention to carry it through to completion; and, (4) which has occurred pursuant to a validly issued building permit.

(b) For purposes of this subsection, growth allocation acreage allocated to the County does not include growth allocation allocated to the towns under § 8-1808.1 (b) (5% of the total resource conservation area in the town at the time of original approval of the town's critical area program by the Critical Area Commission).

(c) For purposes of this subsection, County growth allocation acreage that has been previously allocated by any town shall first be counted as part of that town's allocation under § 8-1808.1 (b) and, to the extent the town's allocation has been exceeded, growth allocation that has been utilized prior to the effective date of this ordinance shall be deducted against the County's remaining growth allocation. Growth allocation awarded by any town that remains unutilized on the effective date of this ordinance shall revert to the County. Growth allocation awarded by the County, prior to or after the effective date of this ordinance, shall be deducted from the total growth allocation acreage allocated to the County under § 8-1808.1 (b).

2. Severability.

E. 1332

The County Council intends that, if a Court issues a final decision holding that any part of this ordinance, or the application thereof to any person or circumstance, is unconstitutional or

000510

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.

E. 1333

000511

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

E. 1334

000512

§ 190-109. Amendments. [Amended 9-10-1991 by Bill No. 459, effective 11-9-1991; 1-28-1992 by Bill No. 465, effective 3-28-1992; 8-11-1992 by Bill No. 487, effective 10-10-1992; 2-25-1997 by Bill No. 642, effective 4-16-1997; 10-27-1998 by Bill No. 691, effective 12-26-1998; 3-30-1999 by Bill No. 699, effective 5-29-1999; 4-15-2000 by Bill No. 762, effective 6-24-2000; 8-24-2001 by Bill No. 837, effective 10-23-2001]

The provisions of this Chapter 190, Zoning, or the boundaries of any zoning district may be amended by the County Council in accordance with the procedures set forth in this section. For the purposes of this section, amendments are separated into four categories: amendments to the Zoning Ordinance text, amendments to the Official Zoning District Maps excepting properties within the boundaries of the Critical Area where growth allocation is requested, amendments to the Critical Area provisions of this Chapter 190, Zoning, and growth allocation district boundary amendments in the Critical Area.

A. Amendments to the Zoning Ordinance Text.

(1) An amendment to text of this Chapter 190, Zoning, may be initiated by any interested party, the County Council, Planning Commission or Planning Officer.

(2) An application for an amendment to the text of this Chapter 190, Zoning, shall be filed in the Planning Office on the prescribed forms with the accompanying filing fee where applicable.

(3) The application shall first be referred by the County Council to the Planning Officer for an investigation and recommendation.

(a) The Planning Officer shall cause such investigation to be made as he deems necessary.

(b) The Planning Officer may hold such informal public hearings as he deems appropriate.

(c) The Planning Officer shall refer all such amendments to the Planning Commission for their review and subsequent recommendations.

(d) The Planning Officer shall submit his recommendation, the recommendation of the Planning Commission and any pertinent information to the County Council within 60 days of application filing.

(4) After receiving the recommendations of the Planning Officer and Planning Commission concerning a proposal for an amendment to the text of this Chapter 190, Zoning, the Council shall determine whether or not the proposal is suitable to warrant the introduction of legislation. The Council may conduct any informal hearings it deems appropriate in making its determination.

(5) Upon bill (legislation) introduction, the Council shall hold a public hearing in order that interested parties and citizens shall have the opportunity to be heard. The Council shall provide public notice of such hearing in accordance with the provisions set forth in § 190-112.

(6) A complete record shall be kept of the hearing, including the vote of all members of the Council in deciding all questions relating to the proposed amendment.

B. Amendments to the Official Zoning District Maps excepting properties within the boundaries of the Critical Area where growth allocation is requested.

(1) An amendment to the Official Zoning District Maps may be initiated by the County Council, Planning Commission, Planning Officer or by a person with a committed financial, contractual or proprietary interest in the property to be affected by the proposed amendment.

(2) An application for an amendment to the Official Zoning District Maps shall be filed in the Planning Office on the prescribed application forms with the accompanying filing fee where applicable. Each application shall also be accompanied by a plat drawn to scale showing the existing and proposed boundaries and other information the Planning Officer may need in order to locate the amendment on the Official Zoning District Maps. Such plat shall not be required for sectional or comprehensive redistricting.

(3) The application shall first be referred by the Council to the Planning Officer for an investigation and recommendation.

(a) The Planning Officer shall cause such investigation to be made as he deems necessary.

(b) The Planning Officer may hold such informal public hearings as he deems appropriate.

(c) The Planning Officer shall refer all such amendments to the Planning Commission for its review

Ex. 2

and subsequent recommendations.

(d) The Planning Officer shall submit his recommendation, the recommendation of the Planning Commission and any pertinent information to the County Council within 60 days of application filing.

(4) After receiving the recommendations of the Planning Officer and Planning Commission concerning a proposal for an amendment to the Official Zoning District Maps and before approval or denial, the Council shall introduce a bill (legislation) for the proposed amendment and hold a public hearing in order that interested parties and citizens shall have an opportunity to be heard. The Council shall provide public notice of such hearing in accordance with the provisions set forth in § 190-112.

(5) Site visit. The Council shall not approve or disapprove any application for an Official Zoning Map amendment unless and until a site visit has been made by at least a majority of the Council members in order to inspect the physical features of the property and to determine the character of the surrounding area. Such site visit shall not be required for sectional or comprehensive redistricting.

(6) In granting approval for an amendment to the Official Zoning Maps, the Council shall take into consideration findings of fact in each specific case including but not limited to the following:

(a) Consistency with the purposes and intent of the Talbot County Comprehensive Plan;

(b) Compatibility with existing and proposed development and land use in the surrounding area;

(c) Availability of public facilities;

(d) The effects on present and future transportation patterns; and

(e) The effect on population change within the immediate area.

(7) After a review of the applicable findings, the Council may:

(a) Grant the amendment based upon a finding that there was a substantial change in the character of the neighborhood where the property is located; or

(b) Grant the amendment based upon the fact that there was a mistake in the existing zoning classification.

(8) Editor's Note: Former Subsection B(8), providing an exception to the requirement that the Council find either a change in the character of the neighborhood or a mistake in the original zoning to downzone property, as amended, was repealed 12-9-2003 by Bill No. 923, effective 2-7-2004. This bill also redesignated former Subsection B(9) through B(12) as B(8) through B(11), respectively. The fact that an application for a district boundary amendment complies with all the specific requirements and purposes set forth in this chapter shall not be deemed to create a presumption that the proposed district boundary amendment would in fact be compatible with surrounding land uses and is not, in itself, sufficient to require approval.

(9) A complete record shall be kept of the hearing, including the vote of all members of the Council in deciding all questions relating to the proposed amendment.

(10) New application. Following denial of a district boundary amendment for property, either in whole or in part, no application shall be accepted for filing by the County Council within one year from the date of the decision. The Council may allow an applicant to withdraw an application for district boundary amendment at any time, provided that if the request for withdrawal is made after publication of the public notice of hearing, no application for district boundary amendment of all or any part of the property which is subject to the application shall be allowed within one year from the date of the public hearing unless the Council specifies that the time limit shall not apply.

(11) Changing of Official Zoning Maps. The Planning Officer shall change the Official Zoning Maps within 60 days after the adoption of any amendments, in order that said maps shall always be an up-to-date public record of the zoning districts in Talbot County.

C. Amendments to the Critical Area provisions of this Chapter 190, Zoning.

(1) Amendments to the Critical Area provisions in any section of this Chapter 190, Zoning, shall be consistent with Maryland State Critical Area Law and shall be referred to the Chesapeake Bay Critical Area Commission for their review and approval in accordance with § 190-109D(7) of this chapter. Any such request shall not result in permitting uses that would adversely affect any wildlife or plant habitats as a result of the uses' intrinsic nature and potential impact. Specifically, such requests shall not be

granted if they would allow the following development or redevelopment activities in the Critical Area:

(a) Non-maritime heavy industry;

(b) Transportation facilities and utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters (utility transmission facilities do not include power plants);

(c) Permanent sludge handling, storage, and disposal facilities with the exception of those facilities associated with current wastewater treatment operations in Talbot County, and excepting the agricultural or horticultural land applications of sludge (with Maryland state approvals and approved application methods and rates) outside of the shoreline development buffer;

(d) Any development activity that would be detrimental to water quality or fish, wildlife or plant habitats identified in this chapter;

(e) Solid or hazardous waste collection or disposal facilities;

(f) Sanitary landfills; and

(g) Septage storage or holding facilities excepting those facilities on the site of a Talbot County Wastewater Treatment Plant.

(2) An amendment to the Critical Area provisions of this chapter may be initiated by any interested party, the County Council, Planning Commission or Planning Officer.

(3) An application for an amendment to the text of this Chapter 190, Zoning, shall be filed in the Planning Office on the prescribed forms with the accompanying filing fee where applicable.

(4) The application shall first be referred by the County Council to the Planning Officer for an investigation and recommendation.

(a) The Planning Officer shall cause such investigation to be made as he deems necessary.

(b) The Planning Officer may hold such informal public hearings as he deems appropriate.

(c) The Planning Officer shall refer all such amendments to the Planning Commission for their review and subsequent recommendations.

(d) The Planning Officer shall submit his recommendation, the recommendation of the Planning Commission and any pertinent information to the County Council within 60 days of application filing.

(5) After receiving the recommendations of the Planning Officer and Planning Commission concerning a proposal for an amendment to the text of this chapter, the Council shall determine whether or not the proposal is suitable to warrant the introduction of legislation. The Council may conduct any informal hearings they deem appropriate in making its determination.

(6) Upon bill (legislation) introduction, the Council shall hold a public hearing in order that interested parties and citizens shall have the opportunity to be heard. The Council shall provide public notice of such hearing in accordance with the provisions set forth in § 190-112.

(7) A complete record shall be kept of the hearing, including the vote of all members of the Council in deciding all questions relating to the proposed amendment.

D. Growth allocation district boundary amendments in the Critical Area.

(1) Growth allocation district boundary amendments in the Critical Area may be initiated by the County Council, Planning Commission, Planning Officer or by a person with a committed financial, contractual, or proprietary interest in the property to be affected by the proposed amendment.

(2) An application for a growth allocation district boundary amendment shall be filed in the Planning Office on the prescribed application form with the accompanying filing fee, where applicable. Each application shall include a proposed site plan and/or subdivision plat that meets the applicable design standards in Articles X and XII of this chapter. Each application request should make the maximum effort to meet the intent of the Critical Area policies and the applicable design standards. The request should:

(a) Create lots or parcels that maximize the opportunities for clustered development that protect

habitat and agricultural resources;

(b) Locate structures so as to minimize impact on habitat protection areas and agricultural areas;

(c) Provide a minimally disturbed buffer along the shoreline;

(d) Minimize soil erosion and runoff;

(e) Maximize protection of eroding shorelines;

(f) Have a minimal impact or cause an improvement to stormwater, floodplain and stream characteristics;

(g) Minimize impacts on nontidal wetlands;

(h) Maximize protection of plant and wildlife habitats, particularly for threatened and endangered species, plant and wildlife common to the Chesapeake Bay Region, and anadromous fish propagation waters; and

(i) Maximize protection of forests.

(3) The application shall first be referred by the Council to the Planning Officer for an investigation and recommendation.

(a) The Planning Officer shall cause such investigation to be made as he deems necessary.

(b) The Planning Officer may hold such informal public hearings as he deems appropriate.

(c) The Planning Officer shall refer all such amendments to the Planning Commission for their review and subsequent recommendations.

(d) The Planning Officer shall submit his recommendation, the recommendation of the Planning Commission and any pertinent information to the County Council within 60 days of application filing.

(4) Introduction of bill; considerations.

(a) After receiving the recommendation of the Planning Officer and Planning Commission concerning a proposal for a growth allocation district boundary amendment and before approval or denial, the Council shall introduce a bill (legislation) for the proposed amendment and hold a public hearing in order that interested parties and citizens shall have an opportunity to be heard. The Council shall provide public notice of such hearing in accordance with the provisions set forth in § 190-112.

(b) In deciding whether to approve or disapprove an application for a growth allocation district boundary amendment, in addition to the specific requirements and purposes set forth elsewhere in this chapter, the Council may also consider:

[1] Consistency with the purposes and intent of the Talbot County Comprehensive Plan;

[2] Compatibility with existing and proposed development and land use in the surrounding area;

[3] Availability of public facilities;

[4] The effects on present and future transportation patterns;

[5] The effect of population change within the immediate area;

[6] The past, present, and anticipated need for future growth of the County as a whole;

[7] The location, nature, and timing of the proposed growth allocation in relation to the public interest in ordered, efficient, and productive development and land use;

[8] The protection of the public health, safety and welfare.

(c) The fact that an application for a growth allocation district boundary amendment complies with all the specific requirements and purposes set forth in this chapter shall not be deemed to create a presumption that the proposed growth allocation district boundary amendment would in fact be compatible with surrounding land uses, and is not, in itself, sufficient to require approval.

(5) A complete record shall be kept of the hearing including the vote of all members of the Council in deciding all questions relating to the proposed growth allocation district boundary amendment.

(6) Site visit. The Council shall not approve or disapprove any applications for a growth allocation district boundary amendment unless and until a site visit has been made by at least a majority of the Council members in order to inspect the physical features of the property and to determine the character of the surrounding area.

(7) Critical Area Commission approval.

(a) All requests approved by the County Council shall be submitted by the County to the Maryland Critical Area Commission for approval as an amendment to the County's Critical Area Program. By state law, the Commission has 90 days to act on a request. If no action is taken in 90 days, the request will be considered approved. A request approved by the County Council shall take effect 60 days after adoption by the Council, and upon approval by the Critical Area Commission.

(b) If a project receiving growth allocation approval, in accordance with the provisions of this subsection, does not obtain final subdivision recordation or final site plan approval, as appropriate, within two years of the final growth allocation approval, the Critical Area and zoning classifications may revert to the previously designated classifications, upon recommendation of the Planning Officer and approval by the County Council.

(c) Upon receipt of a written request by the property owner or the applicant, a time extension may be granted to the two-year period, upon a recommendation by the Planning Officer and approval by the County Council.

(d) A request denied by the Critical Area Commission may be reconsidered by the County Council. Such a request shall be revised by the applicant to address the reasons for Critical Area Commission denial. The revised request shall be submitted to the Planning Officer for reconsideration by the County Council within 90 days of Critical Area Commission denial. An extension of the ninety-day deadline may be requested for a specific period of time, if the applicant can demonstrate, to the satisfaction of the Planning Officer, circumstances beyond the applicant's control.

(8) Growth allocation district boundary amendment requests for property outside of the towns and outside of areas shown as possible annexation areas should be reviewed by the County on an annual cycle, with requests submitted to the Planning Officer by October 1st of each year.

(9) Awarding of supplemental growth allocation to municipalities in County.

(a) Not more than 1,213 acres of the Critical Areas of the County, including all land lying within the Critical Area within incorporated towns, shall be reclassified from the Rural Conservation (RC) District (or town zoning districts established for the Resource Conservation Area of the Critical Area) to any other zoning district. Of these 1,213 acres, 155 acres is reserved for the Town of Easton, 195 acres is reserved for the Town of Oxford, 245 acres is reserved for the Town of St. Michaels for growth allocation associated with annexations, and 618 acres is reserved for the County.

(b) When 1,092 acres (90% percent of 1,213 acres) has been approved for growth allocation by the towns and/or the County, then the County shall request permission from the Maryland Critical Area Commission to double the maximum number of acres that may be reclassified from the Rural Conservation District (or comparable town districts) from 1,213 to 2,426 acres. Upon Critical Area Commission approval, the County shall reserve acreage for each town.

(c) If the Commission approves the doubling of the number of acres that may be rezoned under this subsection, the County will have its full allocation of 2,554 acres for growth as specified in the County's Critical Area Plan, that is 1,213 acres (original limit) + 1,213 acres (potential additional limit) + 128 acres (amount reserved in Subsection D(10) below = 2,554 acres). The Maryland Critical Area law does not allow for the full 2,426-acre allocation (1,213 + 1,213) at the time of the establishment of this section (August 13, 1989).

(d) Upon request for supplemental growth allocation by any municipal corporation within the County, the County Council may transfer growth allocation to the municipal corporation and may impose such conditions, restrictions, and limitations upon the use of any such

supplemental growth allocation, if any, as the Council may consider appropriate. All such requests shall comply with the following requirements:

[1] Application process. The applicant shall file the application with the municipality. In addition to complying with all municipal requirements, the applicant shall also provide the information required by § 190-109D(2) of this chapter, as amended, and shall also comply with the design standards set forth in § 190-109D(2)(a) through (i) of this chapter, as amended. The municipality shall forward the application to the County Council for consideration and review within five working days.

[2] Staff and Planning Commission review. The planning staff and the Planning Commission shall review the application in accordance with the procedures set forth in § 190-109D(9)(d)[1] through [4], except that municipal and county staff reports shall be forwarded to the Planning Commissions of both jurisdictions, and the planning staff shall schedule a joint hearing on the application before the Planning Commissions of both jurisdictions. The designated Chairperson of each Planning Commission shall co-chair the hearing. Each Planning Commission shall vote separately and make its recommendations to its respective council or commission. Each Planning Commission shall provide a copy of its recommendations to the other jurisdiction.

[3] Council review. The county and municipal councils or commissions shall hold a joint hearing on the application, co-chaired by the designated Chairperson of each council or commission which may be coordinated jointly with the Critical Area Commission. The county and municipal councils or commissions shall make their respective decisions separately as independent entities. The County Council shall evaluate the application in accordance with § 190-109D(4).

[4] Amendments to approved projects. Any amendment to an approved project shall be subject to County Council review and approval for a period of five years following the date of initial approval.

(10) Reclassification of land within incorporated towns.

(a) Not more than 128 acres of the Critical Area of the County, including lands within the incorporated towns, shall be reclassified from a Limited Development Area (LDA) to an Intensely Developed Area (IDA). For purposes of this section, LDA Zoning Districts include Rural Residential (RR), Town Residential (TR) and Village Center (VC) or areas of less than 20 contiguous acres of Limited Commercial (LC), General Commercial (GC) or Limited Industrial (LI). Town zoning districts include all districts classified as LDA. The requested IDA classification shall include areas of 20 or more contiguous acres of LC, GC, LI or town zoning districts established for the IDA of the Critical Area.

(b) In determining whether the twenty-acre threshold has been reached, the contiguous areas of existing commercial and/or industrial zoning districts, whether located in the Critical Area or Non-Critical Area, shall be considered. Of the 128 acres, 24 acres is reserved for the Town of Easton, 44 acres for the Town of Oxford, 24 acres for the Town of St. Michaels for growth allocation or growth allocation associated with annexations, and 36 acres for the County for growth allocation for property outside of the towns and outside of areas shown as possible annexation areas. (See Maps 1, 2 and 3.) Editor's Note: Maps 1, 2 and 3 are included at the end of this chapter.

(11) The number of reserved areas allocated among the towns for rezoning in § 190-109D(9) and (10) should be reviewed by the County and Towns by June 1, 1993 for possible reallocation and at least every four years thereafter.

(12) In any one rezoning review cycle, not more than 100 acres should be approved by the County for reclassification from the Rural Conservation District to any other zoning district. Not more than 20 acres should be reclassified from the Rural Residential, Town Residential, or Village Center Districts or area of less than 20 contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial Districts to establish a total area of 20 or more contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial Districts (including contiguous areas of existing Commercial or Industrial Zoning Districts).

(13) Zoning Map amendments from the LDA Zoning District to another LDA Zoning District or from one

IDA Zoning District to another IDA Zoning District shall not require growth allocation, but shall instead be required to follow the procedures of a Non-Critical Area Zoning Map amendment as prescribed in § 190-109B.

(14) Specific annexation requests for property included in the acres reserved for the towns in § 190-109D (9) and (10) above and as shown in Maps 1, 2, and 3, shall be reviewed by the County for consistency with the County Comprehensive Plan and shall be subject to all current ordinances regulating annexations. The County shall not act on rezoning requests adjacent to the towns as shown on Map 1, 2, and 3 until an annexation request for the property has been denied by the town or until 12 months after an annexation request for the property has been submitted to the town, whichever occurs first. If the County approves a rezoning request not associated with an annexation request for property adjacent to the towns as shown on Maps 1, 2 and 3, then the acreage of the property rezoned shall be subtracted from the acres reserved for the Town for annexation in § 190-109D(9) and (10).

(15) Growth allocation requests for property that has been annexed within five years of the request shall be reviewed by the County for consistency with the County Comprehensive Plan. Growth allocation request(s) for property that has been in the town for more than five years prior to the request does not require review by the County; however, the towns shall inform the County of such reclassification to ensure that the total reserved acres, listed above, are not exceeded.

(16) The location of growth allocation requests within Towns or growth allocation requests associated with annexation requests is not limited to the areas shown in Maps 1, 2 and 3, however, the total acres reserved per town shall not be exceeded.

(17) When considering growth allocation requests from the Rural Conservation District, priority shall be given based on the district requested in the following order: Village Center, Town Residential, Rural Residential, Limited Commercial, General Commercial, Limited Industrial. When considering growth allocation requests from the Rural Residential, Town Residential, or Village Center District, priority shall be given based on the district requested in the following order: Limited Commercial, General Commercial, Limited Industrial.

(18) A growth allocation request for the Rural Residential District should be adjacent to existing Rural Residential, Town Residential, or Village Center Districts. Such requests should not be adjacent to Limited Commercial, General Commercial, or Limited Industrial Districts of any size. Property proposed for the Town Residential District should be adjacent to the Rural Residential, Town Residential, or Village Center Districts or to an area of less than 20 contiguous acres of Limited Commercial, General Commercial, or Limited Industrial Districts, or to any area of Limited Commercial or General Commercial Districts. Property proposed for the Village Center District should be adjacent to an existing Rural Residential, Town Residential, or Village Center District or to any size area of Limited Commercial, General Commercial, or Limited Industrial Districts. For purposes of this section adjacency means at least 25% of the perimeter land boundary of the subject parcel is in common with the referenced zoning district(s). Land boundaries shall be measured at the center line of any rights-of-way.

(19) A growth allocation request to establish a total area of less than 20 contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial Zoning Districts (including contiguous areas of existing commercial or industrial Zoning Districts) shall be adjacent to the Town Residential, Village Center, Limited Commercial, General Commercial, or Limited Industrial District. Such requests should not be adjacent to the Rural Residential District. For purposes of this section, adjacency means at least 25% of the perimeter land boundary of the subject parcel is in common with the referenced zoning district(s). Land boundaries shall be measured at the center line of any rights-of-way.

(20) A growth allocation request to establish a total area of 20 or more contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial Zoning Districts (including contiguous areas of existing commercial or industrial zoning districts) should not be approved unless the proposed development activity is water-dependent, will have substantial economic benefit to Talbot County, and cannot be located within the limits of an incorporated town. Such a request should be located within or adjacent to a Village Center, Limited Commercial, General Commercial or Limited Industrial Districts. For purposes of this section, adjacency means at least 25% of the perimeter land boundary of the subject parcel is in common with the referenced zoning district(s). Land boundaries shall be measured at the center line of any rights-of-way. Such a request should be located so as not

to conflict with the character and purpose of the Rural Conservative District.

(21) Growth allocation for specific uses in the Rural Conservation RC Zone. Specific uses in the Rural Conservation RC Zoning District listed in § 190-19, General Table of Land Use Regulations, are permitted to expand only with the issuance of growth allocation. The process for granting growth allocation for specific Rural Conservation RC uses is as follows: **[Added 12-9-2003 by Bill No. 932, effective 2-7-2004]**

(a) Application for growth allocation shall accompany an application for site plan review and shall be made on forms provided by the Planning Office.

(b) An application shall be submitted to the Planning Office meeting all of the general site plan requirements as stipulated in § 190-92 of this chapter. The application shall indicate the area and number of growth allocation acres requested.

(c) The Planning Officer, or his or her designated representative, shall review the application materials, including the site plan and all attachments, for completeness and, if found to be in order, shall accept the application.

(d) The application shall be submitted by the Planning Officer or his or her designated representative to the Technical Advisory Committee (TAC) for review and comment.

(e) Upon completion of the Technical Advisory Committee review, all comments shall be passed on to the Planning Officer. The Planning Officer or his or her designated representative shall prepare a staff report, which shall accompany the site plan report required under § 190-92 of this chapter and forward to the Planning Commission.

(f) The Planning Commission shall review the application, related materials and the Planning Office staff report for both the site plan and the application for growth allocation at a regular public meeting. Upon favorable approval by the Planning Commission and the Planning Officer, the Planning Officer shall forward the recommendation on the growth allocation request to the County Council.

(g) After receiving the recommendation of the Planning Officer and the Planning Commission concerning a proposal for growth allocation associated with a use expansion in the Rural Conservation RC Zone, the Council shall hold a public hearing in order that interested parties and citizens shall have an opportunity to be heard. The Council shall provide public notice of such hearing in accordance with the provisions set forth in § 190-112 of this chapter.

(h) In deciding whether to approve or disapprove an application for a growth allocation for expansion of specific uses in the Rural Conservation RC Zone as listed in § 190-19 of this chapter, the Council shall consider the following:

[1] Consistency with the purposes and intent of the Talbot County Comprehensive Plan;

[2] Compatibility with existing and proposed development and land use in the surrounding area;

[3] Availability of public facilities;

[4] The effects on present and future transportation patterns;

[5] The effect of population change within the immediate area;

[6] The past, present, and anticipated need for future growth of the County as a whole;

[7] The location, and nature of the proposed use and/or expansion of the use; and

[8] The protection of the public health, safety and welfare.

(i) The fact that an application for a growth allocation complies with all the specific requirements and purposes set forth in this chapter shall not be deemed to create a presumption that the proposed growth allocation would in fact be compatible, and is not, in itself, sufficient to require approval with surrounding land uses.

(j) A complete record shall be kept of the hearing, including the vote of all members of the Council in deciding all questions relating to the proposed growth allocation.

(k) Site visit. The Council shall not approve or disapprove any applications for a growth allocation

unless and until a site visit has been made by at least a majority of the Council members in order to inspect the physical features of the property and to determine the character of the surrounding area.

(l) All requests approved by the County Council shall be submitted by the County to the Maryland Critical Area Commission for approval as an amendment to the County's Critical Area Program. By state law, the Commission has 90 days to act on a request. If no action is taken in 90 days, the request will be considered approved. A request approved by the County Council shall take effect 60 days after adoption by the Council, and upon approval by the Critical Area Commission.

(m) The County Council may reconsider a request denied by the Critical Area Commission. Such a request shall be revised by the applicant to address the reasons for Critical Area Commission denial. The revised request shall be submitted to the Planning Officer for reconsideration by the County Council within 90 days of Critical Area Commission denial. An extension of the ninety-day deadline may be requested for a specific period of time, if the applicant can demonstrate, to the satisfaction of the Planning Officer, circumstances beyond the applicant's control.

§

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made as of this 27th day of May, 1980, by and among TALBOT COUNTY, MARYLAND, a body corporate and politic of the State of Maryland (hereinafter sometimes referred to as "Talbot County"); THE COMMISSIONERS OF ST. MICHAELS, a municipal body corporate of the State of Maryland (hereinafter sometimes referred to as "St. Michaels"); and PERRY CABIN ASSOCIATES, a Maryland limited partnership (hereinafter referred to as "Owner").

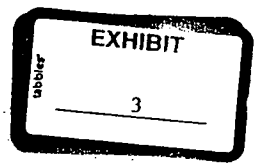
W I T N E S S E T H :

WHEREAS, Owner recently acquired approximately 183.35 acres of land known as Perry Cabin Farm (hereinafter referred to as "Perry Cabin Farm"), which consists of Parcels 2, 3 and 4 as shown on the Plat entitled "FINAL PLAT, PLAT SHOWING A SURVEY OF PERRY CABIN FARM IN AND NEAR THE TOWN OF ST. MICHAELS, TALBOT COUNTY, MARYLAND", dated August, 1977, prepared by J. R. McCrone, Jr., Inc., which Plat is recorded among the Plat Records of Talbot County, Maryland, at Plat Liber 45, folio 8; and

WHEREAS, Parcel 4 (consisting of 12.695 acres) was conveyed to the Chesapeake Bay Maritime Museum, Inc., a charitable institution, as a gift; and

WHEREAS, a part of Parcel 3, consisting of 11.008 acres, as shown on the plat prepared by J. R. McCrone, Jr., Inc., entitled "Perry Cabin Farm and Adjacent Lands", dated April, 1980 and attached hereto as Exhibit "A", was conveyed to Talbot County Maryland, as a gift to be used for recreational purposes; and

WHEREAS, Owner desires to develop the remaining 159.647 acres, as shown on Exhibit "A", (hereinafter referred to as "the Property"), a portion of which lies within the existing boundaries of St. Michaels and the balance outside but contiguous and adjoining the corporate area thereof, and Owner desires that the



part outside of the existing corporate area of St. Michaels be annexed by and become part of St. Michaels; and

WHEREAS, St. Michaels is concerned with the future use and development of Perry Cabin Farm and wishes to exercise control over its use and development through the means of annexing that part of the Property now outside of the existing corporate area of St. Michaels and control its use and development by designating its zoning classification in accordance with St. Michaels Comprehensive Development Plan; and

WHEREAS, Owner desires the Property to be annexed by St. Michaels so as to become a part thereof as long as matters relating to the future development of the Property as hereinafter set forth are first resolved such as, without limitation, zoning, subdivision, utilities and roadways; and

WHEREAS, Talbot County, as the owner thereof, is agreeable to the 11.008 acre parcel being annexed by St. Michaels so as to become a part thereof; and

WHEREAS, Talbot County, by virtue of Section 9 of Article 23A of the Annotated Code of Maryland, must approve the zoning classifications of annexed property which permits a land use substantially different from the use specified in the current and duly adopted master plan of Talbot County; and

WHEREAS, St. Michaels believes that the annexation is desirable and both St. Michaels and Talbot County are agreeable to the proposed development as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the parties to this Annexation Agreement hereby agree as follows:

1. THE ANNEXATION PROPERTY. The Property, the 11.008 acre parcel, and the underlying interest in Talbot Street (subject to the use thereof by the public and maintenance by the State Highway Administration) from the present northern boundary

line of St. Michaels to the Public Road known as Yacht Club Road shall, in accordance with and by virtue of the provisions of Section 19 of Article 23A of the Annotated Code of Maryland, be annexed and become incorporated within the corporate boundaries of St. Michaels in accordance with the terms and conditions of this Annexation Agreement.

2. DEVELOPMENT OF THE PROPERTY. The Property is to be developed substantially in accordance with the Preliminary Plan prepared by Lewis Clarke Associates, Landscape Architecture, Raleigh, North Carolina, dated September 25, 1979, a copy of which is attached hereto as Exhibit "B", ("Preliminary Plan"). The Preliminary Plan shall be implemented as follows:

2.1 The 6.358 acre parcel shown on Exhibit "A", (hereinafter referred to as the "Inn Property") may be developed by the conversion and use of the existing main residence and barn and existing additions thereto into an inn-restaurant. Owner shall construct the Road shown on the Preliminary Plan from Talbot Street to the entrance of the inn-restaurant in accordance with the standards set forth in St. Michaels ordinances. Owner shall, upon completion of the road convey the road to St. Michaels, from which time the road shall be maintained as a part of the public road system of St. Michaels. Furthermore, prior to use of the Inn Property as an inn-restaurant:

(i) Owner shall construct a parking lot or lots and storm drains therefor at Owner's expense in conformity with all applicable requirements of St. Michaels; and

(ii) Owner shall, at its expense, connect the Inn Property to the Talbot County Sanitary District sewer system or use, improve and expand, if necessary, the existing on-site septic systems, subject to approval by the Talbot County Health Department; and

(iii) St. Michaels shall permit Owner, at Owner's expense, to connect the Inn Property to the St. Michaels water system in order to supply water needs for the operation of the inn-restaurant, subject to payment to St. Michael's of usual connection and usage changes at usual rates.

2.2 The Inn Property and the 11.008 acre parcel, now owned by Talbot County, shall, simultaneously with annexation, be considered as two separate subdivided lots pursuant to the Land Subdivision Regulations of St. Michaels. The balance of 153.29 ac. the Property shall be developed in Subdivision Sections not larger than thirty (30) acres in size. A subdivision plan for each Subdivision Section shall be prepared, at Owner's expense, and be submitted to the appropriate authorities of the town of St. Michaels for their consideration and review in accordance with the laws of St. Michaels. No subdivision plans shall be put into effect without compliance with this Annexation Agreement, and all applicable zoning laws and subdivision regulations. Prior to the sale or improvement (by the construction of any structure thereon) of any lot or parcel of real estate in the Property the following conditions must be satisfied for the entire Subdivision Section of which the lot is a part:

(i) Subdivision Plat, with the approval of the Planning Commission of St. Michaels (or the Board of Appeals of St. Michaels) indicated thereon, shall be recorded among the Plat Records of Talbot County.

(ii) Sewer lines, mains and trunks shall be installed, extended to each lot in the Subdivision Section, and connected to the Talbot County Sanitary District Sewer System, at Owner's expense.

(iii) Circulating water lines, mains and trunks shall be installed, extended to each lot in the Subdivision Section, and connected to the St. Michaels water system at

Owner's expense. Such lines, mains, trunks and connections shall be installed in accordance with the specifications of St. Michaels. Additionally, Owner shall, at its expense, install a water line inside the property line of each residential lot to a point where a water meter pit is to be located, construct the water meter pit to accommodate water meters of the type used by St. Michaels, install in each pit a water meter with a shut-off valve, and provide each pit with an appropriate cover. Water mains and trunks shall be extended, in accordance with specifications of St. Michaels, to the boundaries of the Property at Owner's expense, in size and capacity to provide a water supply, at reasonable pressure, to service the Property in its entirety as development is contemplated herein. Upon completion to specifications and acceptance by St. Michaels, the water lines, mains, trunks, pits, valves and meters shall be conveyed to St. Michaels and become a part of the municipal water system.

(iv) Fire hydrants shall be installed, at Owner's expense, of a type specified by St. Michaels in such a manner that no residential dwelling in a Subdivision Section shall be more than 600 feet from a fire hydrant. Upon completion to specifications and acceptance by St. Michaels, the fire hydrants shall be conveyed to St. Michaels and become a part of the municipal water stystem.

(v) All roads and cul de sacs in the Subdivision Section shall be installed and improved, at Owners expense, to the standards and requirements set forth in ordinances of St. Michaels.

(vi) All electric distribution lines and equipment and all telephone lines shall be installed, at Owner's expense, according to the specifications and requirements of the St. Michaels Utilities Commission and the Chesapeake and Potomac Telephone Company of Maryland, respectively.

(vii) All requirements for drainage, street lights (installed in conformity with the requirements of the St. Michaels Utilities Commission) and other improvements required by the St. Michaels Land Subdivision Regulations shall be satisfied at Owner's expense and those improvements shall be conveyed to St. Michaels in a good state of repair.

(viii) The above conditions shall be deemed satisfied as to a Subdivision Section if Owner gives a public works bond or letter of credit as provided in Paragraph 7 of this Annexation Agreement for the Subdivision Section, in form and amount satisfactory to St. Michaels, to insure completion of the above conditions. The amount of the bonds or letters shall be subject to at least a yearly review by a registered engineer, on behalf of St. Michaels, to ascertain whether the amounts of the bonds or letters of credit are adequate to complete the improvements for which they were posted. Upon written recommendation to St. Michaels by the engineer, and upon St. Michaels furnishing a copy of the recommendation to Owner, Owner shall be immediately required to increase the amount of the bonds or letters or shall be permitted to reduce the amount of the bonds or letters of credit, in accordance with the recommendations of the engineer for St. Michaels.

3. CONSTRUCTION. A building permit for any structure shall not be issued by St. Michaels unless all of the following requirements have been met for the Subdivision Section in which the property to which the building permit applies is located:

(a) All requirements of the Building Code, Zoning Ordinance and Subdivision Regulations of St. Michaels are complied with; and

(b) All requirements of Paragraph 2.2 of this Annexation Agreement have been complied with; and

(c) Adequate procedures are established to insure proper maintenance of all designated open spaces in the Subdivi-

sion Section by the owners of the lots in that Subdivision Section.

4. GENERAL. Owner shall reserve easements over and under strips of land 5 feet in width along both sides of all interior single family residential lot lines, except townhouse lots (resulting in 10 foot wide strips) and strips of land 10 feet in width along the outer edges of all residential lots and other parcels 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 Talbott Street (Md. Rt. 33), as now located, and a proportionate number of townhouse units on the west side thereof. Each application shall be considered on its own merits, however, Special Exceptions for Planned Developments are to be granted so long as applications therefor provide for development substantial in accordance with the Preliminary Plan (Exhibit B), subject to such reasonable condition, not in conflict with this Agreement or the laws of St. Michaels, as the St. Michaels' Board of Appeals may require.

(b) Members of the Council for Talbot County hereby consent to the annexation and this Agreement and expressly approve the zoning classification and subdivision of the annexed property under the Zoning Ordinance and Subdivision Regulation of St. Michaels as set forth above, and approve the concept of the development encompassed in this Annexation Agreement, in full knowledge that the zoning classification allows land use substantially different from the use for the land specified in the current and duly adopted master plan of Talbot County.

6. BUILDING PERMITS. St. Michaels agrees to act upon applications for building permits submitted by Owner in the same manner and within the same time periods as it normally acts upon applications for building permits submitted by anyone else in St. Michaels.

7. LETTER OF CREDIT. In lieu of any bonds for public improvements, Owner, at its election, may furnish to St. Michaels an irrevocable letter(s) of credit, in form approved by St. Michaels' attorney, certifying that adequate funds are and will remain available at a sound and reputable banking or financial institution authorized to do business in the State of Maryland; such irrevocable letter(s) of credit to be in effect for the length of time required to complete the public improvements, and in a form to allow St. Michaels to procure the funds irrevocably committed to complete the required public improvements if con-

struction of the improvements shall be in default. If the public improvements are not completed within the time periods established when a letter(s) of credit are provided St. Michaels may, at its option, use the funds provided by the letter(s) of credit and complete the public improvements in accordance with this Agreement.

8. ORDINANCE. The Resolution to be adopted by St. Michaels approving and incorporating this Agreement and implementing the terms hereof shall be in form set forth on Exhibit "C".

9. BINDING EFFECT. This Annexation Agreement shall be recorded among the Land Records of Talbot County, Maryland and all of the terms and conditions hereof shall run with the land and be binding upon and inure to the benefit of the parties hereto, successor owners of record of the land which is the subject of this Agreement, assignees, lessees, and upon any successor municipal authorities of St. Michaels and successor municipalities.

10. ENFORCEABILITY AND SEVERABILITY. This Annexation Agreement shall be enforceable in any court of competent jurisdiction and venue by any of the parties hereto by any appropriate action, at law or in equity, to secure the performance of the covenants herein contained. If any provision of this Annexation Agreement is held invalid, such provision shall be deemed to be excluded herefrom and the invalidity thereof shall not affect any of the other provisions contained herein. It is expressly understood that the zoning classifications hereinabove set forth shall survive this Annexation Agreement.

11. ADDITIONAL INSTRUMENTS. The parties mutually covenant to execute such other and further documents as may be necessary or reasonable to the consummation of the transaction hereunder. Additionally, this Agreement may only be amended or modified by an instrument in writing signed by all of the necessary parties or their successors or assigns.

12. MISCELLANEOUS PROVISIONS.

(a) Owner agrees that it will reimburse St. Michaels for reasonable legal fees incurred in connection with the Annexation Agreement and the execution and consummation thereof. Payment shall be made upon request after annexation has been completed. It is understood by the parties that H. Michael Hickson and Banks & Nason, P.A. is not representing Owner, and that their legal fees are being paid directly by St. Michaels and that this agreement covers only reimbursement to St. Michaels of legal fees paid in connection herewith by it. Additionally, inasmuch as St. Michaels deems it necessary to engage the services of an independent engineer to insure that road construction and utility installation is in accordance with this Agreement and with the specifications provided in the Land Subdivision Regulations, Owner agrees to pay the reasonable cost thereof; provided it shall first receive and approve the contract or agreement with such an engineer and the schedule of fees payable in connection therewith, which approval shall not be unreasonably withheld.

(b) It is the intention of the parties hereto that all questions with respect to the construction of this Annexation Agreement and rights and liabilities of the parties hereunder shall be determined in accordance with the laws of the State of Maryland.

(c) This Annexation Agreement may be executed simultaneously in one or more counterparts, each one of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(d) The paragraph titles contained in this Annexation Agreement are intended only for convenience of reference to the subject matter hereunder and for no other purposes and shall not be considered in any way as limiting, defining,

explaining or otherwise affecting the terms, conditions and provisions hereof.

IN WITNESS WHEREOF, the parties have executed and sealed this Agreement the day and year first above written.

ATTEST:

County Clerk

TALBOT COUNTY MARYLAND

By: Herbert L. Andrew III (SEAL)
President

ATTEST:

Mifford H. Sprecher,
Town Clerk

THE COMMISSIONERS OF ST. MICHAELS

By: Helen K. Plummer (SEAL)
Helen K. Plummer,
President

WITNESS:

PERRY CABIN ASSOCIATES

By: (SEAL)
Harry C. Meyerhoff,
General Partner

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 [illegible 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.

Ex. 4

BONNIE KASTEN: Speak up please so people can hear you.

DAN COWEE: You're dealing with two separate issues. The first one is growth allocation and the growth allocation I've read your information on it, I've read our information on it, and everything that I've seen so far points a finger to the fact that your comprehensive plan, the County's comprehensive plan, our County zoning ordinance and your zoning ordinance all basically dictate that that's an area for future growth, and that's the process that we go through every five to ten years. We go through, we review our comprehensive plans, we locate those areas outside Town boundaries, inside Town boundaries, for future growth. I, I think that's a given. I think you know that's a given. That everything that we read says that's an area to be further developed in one fashion or another. In 19, I, I believe it was 81, there was a zoning change and an annexation for that property and I, I think that you responded to that a minute ago.

GENE HAMILTON: Yeah.

DAN COWEE: At that time I'm sure that there was some controversy within the community over whether that should be annexed or whether it shouldn't be annexed, and I'm sure there was a controversy over the type of development that occurred on it probably. I, I don't know, I was not here at that time but I, I assume that that big of a piece of property being annexed into the Town was controversial. At that time, and you are correct there was an R1 designation applied to that property and if John Doe walked in here today and said "I would like to develop that per the current requirements," you would look at those current requirements under R1. You would also have to look at the overlay zone as Judge North has just discussed, and see whether or not to apply that for an area of future growth. Well the first thing you're going to do is you're going to look at your comprehensive plan. What does that say. It says "future growth." You're going to look at the County's. What does that say. It says "future growth." You're going to look at the County's plan and see that it has been approved by the by the Critical Area Commission and it indicates that growth allocation should be applied to that property at some point in the future. Now when that, when that point is in the future, that's up to you all. I think the second issue -- that's enough on the first

review on this project which I, I think is a smart idea, because being as large as it is, the type of impacts that could potentially happen from it you really need to have that outside expertise to make sure that what the developers are telling you is correct.

RICK MEGAHAN: I, I had a specific question for you, it pertained to the part of the Critical Areas requirement and growth allocation of the Critical Areas that pertain to the phasing, the two year phasing of the submission that is what they give us needs to be what will be accomplished with in a two year time frame and that is what would be approved if this [inaudible word or two]. What's been your experience with that?

DAN COWEE: Most of our growth allocation requests County-wide have been small except for in the city or I, I should say the Town of Easton the Easton Club with a big chunk, well over a hundred acres of growth allocation. In the County we've had smaller thirty acre, some smaller ten acre requests. Lately we haven't had many requests at all. We've even contemplated the possibility of selling it to Anne Arundel County because we know they're a little short, and we're a little long, and we still have well over twenty two hundred acres left. Let me get back to your question again.

RICK MEGAHAN: For instance Easton Club, how was that submitted? Was that submitted in two year increments ?

DAN COWEE: I, I don't know if Easton had that requirement in their ordinance. We do, we have just passed a regulation that says you must reach a final plat approval for a subdivision using growth allocation within a two year period.

JAMES BURNS: So you, the County, has made a conclusion of final plat approval.

DAN COWEE: Correct, correct. We do not have any, we do have an extension allowance I, I had never read until last night how you all were going to do this. I had a number of of comments written in the margin about it being very cumbersome in terms of the review process, because you're going to be looking at these projects on a two year incremental basis.

COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND

Council Meeting

November 18, 2003

1:30 p.m.

County Council Chambers, Easton, Maryland

COUNCIL MEMBERS:
THOMAS DUNCAN, President
PHILIP FOSTER
HOPE HARRINGTON
PETER CARROLL
HILARY SPENCE

Reported by
David C. Corbin

MS. SPENCE: Which one.

SECRETARY: A bill to amend Talbot County Code, Chapter 190 zoning, article 14, administration, section 190-109D, growth allocation, district boundary amendments in the critical area by adding a new paragraph, 21, growth allocation for specific uses in the RC zone to comply with the Chesapeake Bay critical area commission four-year review requirement.

MR. DUNCAN: Who would like to introduce the bill. Ms. Spence, Mrs. Harrington, Mr. Carroll. Mr. Duncan. 933, please.

SECRETARY: A bill to review and reallocate the number of reserved acres of growth allocation allocated among the towns for rezoning in compliance with the requirements of Chapter 190, Talbot County code, zoning, section 190-109D-11.

MR. DUNCAN: Who would like to introduce that bill.

MR. CARROLL: I would like to introduce

that. But this bill differed from all the others. Really needs to go to planning and zoning and have it come back to us. Mr. President, you had a public hearing date of 9 December. I think our next meeting is on December 23rd. And I would like to propose that we have a hearing date of December 23rd for this bill to give planning and zoning an opportunity to review it and come back with their recommendations and appropriate changes.

MR. FOSTER: Merry Christmas towns, we're taking away your present.

MR. DUNCAN: Is that workable.

MR. HOLLIS: Currently scheduled as a Council day, yes, sir.

MS. HARRINGTON: Legislative day.

MR. DUNCAN: Are you introducing the bill.

MR. CARROLL: Yes, I'm introducing. But I want to make sure everybody understood it had to go to planning and zoning and there's a schedule issue and I wanted to get that

included.

MR. FOSTER: Actually they meet, Mr. Carroll, at the beginning of the month, so probably it wouldn't matter.

MR. CARROLL: If they can have it finished sooner, that would be great. But I want to make sure they have adequate time to staff it thoroughly and are comfortable themselves. It is the Christmas season, Mr. Foster, and I wouldn't want to overburden them.

MR. DUNCAN: Mr. Carroll --

MR. FOSTER: You're known for your Christmas spirit, Mr. Carroll.

MR. DUNCAN: Mrs. Harrington?

MS. HARRINGTON: Yes.

MR. FOSTER: No.

MR. DUNCAN: Spence no. Duncan yes.

MS. SPENCE: Is that 932?

MR. FOSTER: 933.

MR. DUNCAN: Let me explain something. We have had a lot of introduction of bills

relating to critical areas, and as you see by the Council, we're all over the place on different bills and so forth. These are very technical bills, they are bills that have to comply or should comply with the critical areas commission and so forth. And none us agree with everything in these bills. I guarantee you that none of us do. However, we have to put a plan before the critical areas. They put us on hold for several times. We're under the gun. Haven't got a plan in and so forth. As distasteful as some of these items are in the bills, there's a lot of items in the particular bills that have to be according to state law and so forth. Even though sometimes we introduce and we vote for bills we don't particularly like, you have to sometimes hold your nose and vote for them. That's where we area with these critical area bills. It's nothing -- it's not the -- it's nothing everybody wants and yet it's something some of

us want in some sections of these particular bills. But we have to get something to the state on this issue.

MR. FOSTER: You need a basin, Mr. Duncan, to wash your hands. I think we should also point out that that's a matter of interpretation, what the critical areas commission can sustain and what it can't, and whether these are required or whether we're going to pass what is required. That's a matter of we might have differing opinions on.

MS. HARRINGTON: And I would like to say I'm not quite sure I totally agree with you, Mr. Duncan. And I almost always do agree with you.

MR. DUNCAN: Oh, my, thank you.

MS. HARRINGTON: But I think that the fact that we have been very deliberate in our consideration of these critical areas bills and that we have tried to stay within the critical areas laws and yet make these bills more user

friendly to the citizens of Talbot County, I think we have accomplished that in great part. So I feel pretty comfortable voting for this legislation.

MR. FOSTER: I don't think these bills are significantly different from the ones we refused, and I guess that's just a difference of opinion we have.

MR. DUNCAN: Again, we're going to have to have a public hearing on these bills.

MR. CARROLL: Mr. President, I propose that we have the public hearing on this last bill on the 23rd of December. It's been brought to my attention that the Council in the past has tended to cancel that meeting just before Christmas, so perhaps we can try to have that hearing on the 16th instead.

MS. SPENCE: Do we have to have a hearing on a Council day. Could we not pick another day.

MR. FOSTER: We have every Tuesday in

December. These bills don't have to go to planning and zoning.

MR. CARROLL: I'm talking about a particular bill.

MR. HOLLIS: Mr. Carroll had asked this particular bill go to planning and zoning.

MR. DUNCAN: That's the 16th at what time, is that in the evening.

MR. HOLLIS: Day meeting.

MR. FOSTER: Couldn't these critical areas bills be done some different day, the 9th or --

MR. HOLLIS: Everything else is still schedule for the 9th for a public hearing.

MR. FOSTER: Okay.

MR. DUNCAN: With the exception of Bill 933.

MR. FOSTER: I think splitting them may be a good idea because they may take a long time each.

MR. DUNCAN: Bill 933 is December 16th at 1:30 p.m.

MS. SPENCE: Excuse me, Mr. Duncan. If we don't meet on the 23rd and we don't meet on the fifth Tuesday, the 30th, that means we're not meeting again until --

MR. FOSTER: The 6th.

MR. HOLLIS: First week in January.

MR. DUNCAN: Why aren't we meeting on the 23rd.

MS. SPENCE: I have a problem with three weeks between meetings. We have such a full plate here with all this legislation and all the issues, I would like to go ahead and meet on the 23rd.

MS. HARRINGTON: I would too.

MR. FOSTER: We can decide that when we get there. Let's see if we have business. Right now all the business that we're doing we have completed through the 16th.

MS. SPENCE: I think you're trying to set the hearing up for --

MR. FOSTER: He agreed to the 16th.

MR. CARROLL: I moved it to the 16th. I had a side bar, it's not going to be perfect but it's going to allow, I think, to talk to the towns a little bit and get input. And there are some legal issues and some planning issues, maps that need to be looked at, pulled out of the comp. plan and we need an update. I think there's enough time by the 16th to do that. If it runs over to the 23rd and we have to have a meeting, so be it. But I would hope I would not want to be the cause that forces us to be here on Christmas Day.

MR. FOSTER: You'll be in Paris anyway, right.

MR. DUNCAN: The next agenda item is public hearing on Bill 920. If the secretary would read the bill.

SECRETARY: Bill No. 920, a bill to amend chapter 190, zoning, of the Talbot County Code, article four, section 190-19, general table of land use regulations, by adding new

MEETING OF A PANEL

OF

THE STATE OF MARYLAND

CRITICAL AREA COMMISSION

FOR THE

CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: May 5, 2004 (Meeting No. 3)

Time: 1:00 p.m.

Location: Department of Housing and Community Development, Crownsville, Maryland

Reported by: Linda A. Crockett

had an opportunity to kind of look for some expertise and guidance in the stormwater management area, and we asked Ken Pensill from MDE to sit in on panel discussions and provide some background in terms of the type of treatment options that are available to us with stormwater management.

The panel also discussed, and discussed it quite heavily this morning, shoreline treatment. We talked about marsh creation versus revetment. There's an existing permit issued by MDE for revetment on part of the property. We talked a lot about whether or not marsh creation would be successful. And all of that discussion was fine, but when it came down to a recommendation, what the panel really looked at was whether or not providing a vegetated shoreline treatment was an appropriate trade-off for a forested, vegetated 100-foot buffer.

We also heard, both during the hearing as well as over the past hour, a lot of concerns

about wastewater treatment. And again, the panel was interested in making sure that we understood the situation as it exists today as well as what was on the horizon for wastewater treatment for Talbot County in the St. Michael's area.

We asked again MDE from the MPDS program to come in and talk to the panel and discuss the issues related to this treatment plant, infiltration, the overflows, and what was being done now and in the future to address the sewage treatment issues.

And I think the panel report that Mary put together kind of puts it in context. MDE has issued a new permit allowing for the increase of the treatment plant to 660,000 gallons per day. They're required to put in biological nutrient reduction. They're required to put together a plan to address the infiltration into the system, which is a big concern and a big part of the overflows that are being experienced. And it's our understanding that the town has qualified the

construction on this property contingent upon appropriate availability of sewage treatment.

So we've looked at the issue; we've talked about the issue, and the agencies that are responsible for dealing with the issue have all been engaged and are working toward a resolution. So we've heard the issue; we've tried to understand the issue, and the agencies responsible for dealing with the issue have all been engaged, and from that point we've moved on. From my notes that's all I have.

If you don't mind, if there's anyone else on the panel that would like to provide other observations before we move forward with the recommendation.

CHAIRMAN MADDEN: I'd be happy to take those. I want to compliment the panel. They have put a lot of time and debate into this. I want to commend the members. Any other panel members?

MR. SETZER: I call for the chairman to

make a recommendation.

What's being distributed now is a supplement to the panel report which is basically the recommendation for a vote. The panel discussed Miles Point III growth allocation request in regard to the consistency of the request with the goals of the Criteria Area Act and the Commission's Criteria required by Natural Resources Article 8-1809(j). As a result of the panel discussions the panel would move for the approval of the growth allocation request with the following conditions; one, that the development shall be set back from the landward edge of tidal waters at least 300 feet. Passive recreation activities may be allowed outside of the 100-foot buffer; two, the 100-foot buffer shall be established. And in establishing the buffer, management measures shall be undertaken to provide forest vegetation that assures the buffer functions set forth in Critical Area Criteria.

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Before final recordation of any subdivision plats or grading of the site, a Buffer Management Plan shall be developed cooperatively with the town and the Commission and the respective staffs. The Buffer Management Plan shall be approved and reviewed by the Commission and may provide for public access; three, in measuring the 300-foot setback and 100-foot buffer, the measurement shall be based on the existing shoreline at the time the Buffer Management Plan is submitted to the Commission; four, a stormwater management plan shall be developed that promotes environmentally sensitive design and explores all opportunities for infiltration and bioretention before utilizing surface water treatment measures. The stormwater management plan shall be developed cooperatively with the town, the Commission, and their staff. The Stormwater Management Plan shall be reviewed and approved by the Commission.

CHAIRMAN MADDEN: Do we have a second?

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COMMISSIONER: Second. Meg Andrews.

MS. ANDREWS: Can you clarify for me, is it the panel's understanding that this enhancement to the wastewater treatment system would have to be in place before the development went forward or there would just have to be a plan for it?

MR. SETZER: It's our understanding that the authorization has been made to increase the capacity of the treatment plant. That also requires the County to develop a plan that addresses the infiltration problems that are resulting in some of the overflows that have been described. We don't have, I guess, an exact timetable for when that plan is going to be constructed or when that plan is going to be in effect.

However, the conditions placed on the development by the town requires that there's capacity for whatever component of the moves forward. So basically they're not

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going to be able to build on the site. And I think that construction isn't just the new housing units, but also I believe to the infrastructure, unless there's the appropriate capacity not only available, but granted to the town to move the construction forward. That's the panel's understanding.

CHAIRMAN MADDEN: Any other discussion or comments?

MR. RICHARDS: Edwin Richards. My understanding in reading the material is that there is a condition that limits the construction to a capacity of the -- very specific, and I can't remember the exact wording, but it basically says they cannot use any septic tanks, no other intermediate system, and they have to have approval, not only capacity, but they have to have approval before they can actually start construction. We looked at it -- or I looked at it and I thought that was very restrictive and I felt dealt with the issue of capacity.

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CHAIRMAN MADDEN: Any other discussion?

MS. SAMORAJCZYK: Who makes that decision?

MR. RICHARDS: It's between the County and the Department of Environment. Anything that the County does has to agree with the regulations being administered by the Department of Environment. And I'm sure after what's gone on in Centreville that that will be tightened up. So I think both County and Department of Environment will be involved.

CHAIRMAN MADDEN: Any other questions or comments?

MS. ENNIS: Is the current capacity of the sewage treatment plant such that on an ordinary day there would be allocation available for this development, or must it be enlarged in order to meet the basic statement that there's allocation available?

MR. SETZER: I don't recall.

MR. RICHARDS: As I recall, the

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statement made by the representative of the Department of Environment was that there is existing capacity that could allow it to move forward. However, the INI issue is one that has been raised in testimony here and I think it's one that's going to be closely investigated before -- there was a statement that there may be a re-evaluation of the capacity of the facility. So at least at this point theoretically there is capacity to move ahead.

But I think that's going to be placed under investigation.

MS. ENNIS: So it could go forward without any of it?

MS. MASON: There wasn't enough for the whole development.

MR. RICHARDS: No. This is a staged development over a number of years. I think there's going to be a lot of work done before any approvals are given.

MR. SETZER: I guess from a panel

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perspective the issue was laid on the table. We asked the agency that was responsible for sewage treatment and discharge permits to come to speak to the panel to at least make sure that we understood the existing condition and prospects for the future, and you have to kind of tread lightly here because of certain jurisdictional areas that it's important for whether or not this project moves forward from an MDE and County perspective in terms of sewage treatment.

We felt, as far as the Commission was concerned, the fact that this issue was being examined, that Ed recalls there was capacity available for portions of the development to go forward. There were controls placed on the development for -- to have capacity available for the further build-out of the development of that sewage treatment plant was being addressed.

MS. ENNIS: I'm very new to this so maybe I don't understand. It sounds like it there's available capacity right now, even though

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there are major problems here, there's no requirement on the County or the town to make those improvements prior to this, or at least the first phase.

MR. RICHARDS: I'll quote two things, one is the statement from the representative of the Department of Environment that said that that was under investigation. And secondly, there was testimony today that there has been money committed at the County level. I believe it was Councilman Carroll who said they are investigating it and it is underway right now as far as the County is concerned.

Also there was some written testimony submitted indicating something like $400,000 had been committed already to begin the process to correct these problems.

MS. MASON: Also in the panel report, going along with what Gary said --

MR. SETZER: Page 7 of the staff report.

MS. MASON: -- which summarizes the

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information that the panel received from the MDE representative. That's the information that the panel received.

MS. ENNIS: I guess my concern is that the permits have been issued. Then you get to the point can the town and the County afford to make the improvements and will those improvements have to be in place before the first part of the development moves forward? And I mean, my concern is that our first charge is to protect the water and the fish and wildlife, and even if we try to be objective and discount emotional appeals of what is said here today and what I'm sure the panel has heard, from a practical standpoint of being involved with government, can we be sure that this sewage treatment plant improvement and expansion is going to take place?

MR. SETZER: I guess that raises the question, do we have the authority to petition --

MS. MASON: That's a very good question, and that's one that the panel discussed with me.

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actually, early on in the process. And the Critical Area Commission has always worked cooperatively with the permitting agencies. And this case the Department of the Environment would be the agency that issues the permits for upgrading or for making sure that the sewage treatment plant is functioning in accordance with the state regulations.

This Commission has no direct authority to require MDE or the town to do anything with regard to its sewage treatment plant, in my opinion. The panel took the initiative and asked for information from the appropriate people at MDE, which I believe is well within their authority to get as much information as they can.

The MDE representative informed them that MDE was in charge and taking care of the sewage treatment plant matters. So I believe that the panel report, as far as it went, really I think states that the panel discharged their duty because they did get information presented

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e public hearing similar to what you heard today, only a lot more of it, that addressed concerns and questions about the current situation in St. Michael's and I think that the panel was right to get additional information.

Beyond that, the panel did not discuss recommending any kind of condition. So I didn't give them advice on that. But my advice would probably be that they should defer to the Department of the Environment on the sewage treatment issue.

MR. SETZER: If it's okay with you I found a fax sheet that MDE provided us.

Fax sheet update, Talbot County region 2 wastewater treatment plant ENR upgrade and expansion. The proposed project involves the upgrade of the existing region 2 St. Michael's wastewater treatment plant with enhanced nutrient removal facilities to achieve total nitrogen for a yearly average of 3 milligrams per with expansion from .5 to .66 million

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gallons per day. Originally the County requested to expand the plant to one million gallons per day and MDE rejected that request as unreasonable growth. The County agreed to go down to .8 million gallons per day. After design was completed at this capacity the County Council changed the expansion to .66 million gallons per day.

The County is initiating the redesign with the new capacity. The schedule design start was February of 2002. Design completion was October of 2003. The design start was January of 2004. Redesign completion is June 2004, with construction start of September 2004 and construction completion by December of 2005. It says the service area is experiencing excessive infiltration and inflow with 1,000 percent variation of flows in some locations that occasionally result in overflow. Maryland Environmental Service has completed a study and identified the areas with excessive infiltration

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and inflow. During their July 22, 2003 meeting the County Council decided to proceed with INI corrections immediately. The corrections are estimated to cost $600,000.

MDE advised the County to apply for MDE and USDA world grants and loans. Also MES's study discovered that some INI was due to house connections, and the County has been advised that some homeowners might be eligible for CPPG funding.

As far as the ENR agreement, the County signed the ENR agreement, which is enhanced nutrient removal. With MDE, the County's meeting with MDE on October 29th, 2003 was to discuss how to proceed with the ENR project at the new capacity of .66 million gallons per day.

CHAIRMAN MADDEN: Do you want to summarize that for us? Any other discussion?

MS. PRETTIMAN: I would like to add on that it's to any entity's benefit that owns a water treatment plant or a septic plant to

upgrade so that -- when they have overflows the MDE comes down very hard on them and fines them. So it would be to their benefit. My question, though, is on the ENR, and I didn't quite hear you. They agreed to go down to 3 with the [illegible]?

MR. SETZER: Right.

MS. PRETTIMAN: Will their capacity go up because they will be running more efficiently then with going down to 3?

MR. SETZER: The impression that I got was that ENR was a function of the .66.

MS. PRETTIMAN: And you don't know what capacity they are right now?

MR. SETZER: I think they're authorized for .5.

CHAIRMAN MADDEN: Commissioner McKay.

MR. McKAY: Thank you. I'm a bit concerned about the area, the 300-foot setback. While I recognize that I think it should be part of this project, and that might be my personal

feeling, I'm concerned that from the 100-foot out to the 300-foot, that that should maintain -- we should maintain a local government or local jurisdiction, kind of working together with the Critical Areas Commission as well as the developer to try to make that work as best as it can for that particular project.

I am very concerned that we're establishing a precedent that would really -- probably is something that's best left to the local jurisdictions to do it as they should, as the legislation says they should. And I just think it's something that should be the locals working with the Critical Area Commission to try to accomplish that. I certainly support the 300-foot setback. I just feel like you're taking away some flexibility with the local jurisdictions in trying to accomplish other benefits as they deal with that area of setbacks.

And I would like to see us revise it to have this -- this particular project to have the

town of St. Michael's work with the Critical Areas Commission to accomplish that setback as best as possible.

CHAIRMAN MADDEN: I would defer over to the panel chairperson because I know they gave a lot of thought to the proposal. I also will ask the counsel to give a historical perspective on whether we've applied 300-foot buffers before. Do you want to give us some thought behind the recommendation?

MR. SETZER: I guess as I mentioned earlier that looking at the intensity of the development and the increase in the imperviousness, we just thought it was important to provide the maximum available setback that the Commission authorized. We didn't discuss really straying from the 300-foot setback, that I can recall. I think right out of the gate the panel started to talk about establishing a 300-foot setback on the development, on the parcel. If anybody on the panel has a different

recollection. That's my recollection.

MR. GILLISS: If the growth allocation request requires this Commission to consider the standards set out in 8-1809(J), and 8-1809(J) directs us to the goals of the program in 8-1808, one of which is to minimize impacts on water quality, then we don't need to foundationally be based upon the regulations which talk about development from RCA to intense development, and the shoulds and the shalls, but instead can rely upon the fact that 8-1808(B)(1) directs us to look at water quality, and one way to protect water quality is to have a 300-foot buffer.

MS. MASON: Following up on what you said, (B)(3), which directs the Commission to look at the number of movement and activity and persons in an area which is also something that the panel discussed very very in-depth with the proposed use of the 100-foot buffer proposed to be a fairly intensive public recreation and access area. The panel's discussions that I

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recall were centered on how much protection for habitat and water quality would that 100-foot buffer actually achieve if it's going to be used for a public park and the need for some additional area to achieve those goals of the program.

CHAIRMAN MADDEN: Any further discussion?

MR. RICHARDS: The commissioner raised a point about the local government participation. That's one of the initiatives that's been very much a concern to me throughout this.

My issue with the 300-foot is it was more procedurally at this point than it is an environmental concern. Although I think ultimately that would be a top concern. But the regulations, to try and paraphrase them, basically says that the local jurisdictions shall use guidelines, and one of the guidelines is it should have a 300-foot setback.

In the submittals that they have they

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to have addressed them, which they're also required to do elsewhere, as I recall. And they gave three reasons. We couldn't buy into any of those reasons as to reasons why they should not have a 300-foot. So basically we said they really did not give the full merit to the "should." And my feeling is that the "should" is a very strong thing that says that they will do it unless there's a compelling reason why they don't or it runs counter to the intent of the program.

And so right off the bat my feeling was and the reason why I didn't address the issue whether there should be something less than 300 feet, it says it should be 300 feet. So it's time to drop it back in their lap.

I agree with you, if they want to come back and say there is a compelling reason why we cannot do it at 300 feet and then I, as an individual, not speaking for the Commission, would be glad to consider it. On a procedural

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standpoint.

On the environmental I think there are some arguments against it. I think that the town was given an opportunity and they didn't do it appropriately. And I have to address some of the testimony because it really bothers me. There was a conflict between the two attorneys, Mr. Hickson and the gentleman from Miles & Stockbridge, which I did not get his name, about the 100-foot buffer and the 300 feet. The gentleman from Miles & Stockbridge says that the developer, or his client, the issue of 300 feet never came up. Which to me undermines anything the town says if that is true, undermines anything the town says about whether or not they dealt with that issue. They got the opportunity. And if that's true, that even goes further in undermining the three points that they gave us.

The other conflict that I have is because in addition to the 300-foot, there's the question of the 100-foot forested buffer. I

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heard the attorney for the town of St. Michael's saying we had to give him something in exchange for putting in the marsh. And what he gave in exchange was the 300 feet plus 100 feet of forested buffer. And why did he give up the 100 feet of forested buffer? Because it would create shade which would make the marsh impractical.

So basically in addressing the issue of how the local government dealt with it, I think that point, to me, was the most critical element in this thing as to why it should be returned with conditions, because that issue was not appropriately addressed by the town. It should be returned to make sure they address it.

And if they want to negotiate something with the developer, then well and good. Personally I have a feeling that if they can come up with a compelling reason, I will listen, but I will listen very critically.

MR. McKAY: I appreciate these comments and I concur with you as long as the feeling here

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is that we're requiring the 300-foot setback because the local jurisdiction did not, in our opinion, fully explore that -- doing that, then that's fine. But I feel very uncomfortable if we are doing it simply because we feel this project -- and I do feel that 300-foot is required here, but simply because we feel it's required and the local jurisdiction has made every effort possible to meet the 300. I want to make sure we don't feel like we're establishing a precedent.

CHAIRMAN MADDEN: This is the conclusion the panel has reached.

MS. SAMORE: I would just like to raise the point that the criteria established, the 300 feet, that it's the minimum, not the maximum, that should be located at least. So it's the minimum requirement in order to meet the goals of the program which is to minimize adverse impacts on water quality. So I think that's a very important point.

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CHAIRMAN MADDEN: Thank you. Are we ready to vote? We have a motion in front of us to approve the Miles Point Growth Allocation Request with four conditions. All those in favor say aye.

(All say aye.)

CHAIRMAN SETZER: Opposed?

MS. ENNIS: Only because of the sewage treatment.

CHAIRMAN MADDEN: The motion is approved.

Next on the agenda is the Talbot County Comprehensive Review Amendments. I'll ask Lisa to come up and give that presentation.

(Recess.)

MS. HOERGER: This has been a long process for us, and the County Commissioners have finally enacted a series of several bills that are doing primarily two things. One is, for those of you that were here in September of 2002, this Commission sent the County a directive to

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correct certain mistakes, conflicts or omissions in their local program. And there were about four of those, three of which have all been corrected either prior to today, will be corrected through the bills today, or in the future. So essentially those items have or will be addressed.

The other primary thrust behind these bills that are in your staff report is part of the County's comprehensive update that's required every six years by each county. Last month we did Anne Arundel County. We just updated them for the third time. This is Talbot County's first comprehensive review. I'll direct you to your staff report. There are six bills that were sent to us by the County. And I'm going to go through each one of them bill by bill.

The first one is Bill 922, and this bill includes specific provisions for the notification of property owners for certain types of development applications before the Office of

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Planning and Zoning. The panel has no changes to this bill. The way that you received it and read it is the way that we propose to accept it.

The second bill is 926, and this is a section in the County's current zoning ordinance where all the definitions are laid out. And they are adding some definitions. A definition for a champion tree forest, preservation plan is a new definition for the County, marsh vegetation, mitigation, and disturbance.

There are two definitions in this bill that the panel, which you will hear later from the panel chair, are proposing to amend. One is the definition of a dwelling unit, and the second is their definition of shoreline development buffer which is their definition of the 100-foot buffer. And there will be one minor change to their definition of development activities.

The next bill is Bill 927. This is the section of the County Zoning Ordinance which lists those uses that are permissible in the

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1 February of this year, then that growth
2 allocation also reverts back to the County.
3 And included in the definition of
4 utilized is the provision that any growth
5 allocation awarded for which substantial
6 construction has not started within two years
7 building permits 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

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1 rized 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 s of the way down a quote from the
21 l Area law that provides you the standards

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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 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

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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

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 [illegible]. This is the right standard and the correct conclusion.

Comparison of Bill 933 to inconsistent provisions of existing municipal programs based on the 1989 ordinance that is being repealed by 933 is not the correct approach to determine consistency. By definition, a program amendment is a change to a program and it will necessarily be different than existing elements of the current program.

In the case of Bill 933, Talbot County municipality has adopted their own local programs based on the 1989 ordinance that gave them specific amounts of growth allocation. Bill 933 changes that. And any existing elements of approved local programs inconsistent with Bill

933 are irrelevant to whether Bill 933 should be approved.

If proposed amendments are compared with inconsistent existing program elements for consistency, no amendment would ever be consistent, and therefore, no amendment would be approved.

I'm sure the subcommittee's intention, based on Ms. Mason's legal advice in considering consistency, does not include consideration of existing elements of the municipal Critical Area programs that were premised on the 1989 ordinance that are being changed by Bill 933.

Municipal reliance. Some of the discussion centered upon expectations of various municipalities premised on the 1989 award of the growth allocation acreage. This is not an appropriate consideration in evaluating Bill 933. Maryland law is quite clear that absent vested rights, which Bill 933 specifically does not impair, zoning laws may be changed by local

government and a property owner, or in this case, a municipality, has no legal right to rely on a preexisting law or any assumption that preexisting law would continue as originally enacted.

There was some discussion about various projects that were pending, and one in particular, Cooke's Hope, was the subject of the next paragraph.

Cooke's Hope. One topic of discussion was the effect of Bill 933 on the Critical Area Commission's previous approval of the Cooke's Hope project. Talbot County Council has already approved its Cooke's Hope project utilizing the procedures adopted under Bill 762. Bill 762 is the bill that was approved by this Commission in 2000 that established a joint review process with the municipalities and the County in which the applicant submits the application to the municipality; it's forwarded to the County; there's a joint review at the Planning Commission

level: there is a joint meeting of the town and the county planning commissions. They separately confer and form separate recommendations to their respective bodies. That is followed by a joint meeting between the town council and the County Council to review the application. They then separately confer among themselves and come up with individual recommendations for approval or not. Both, under Bill 762, both the town and the County must approve the project.

Now, that procedure has been successfully used with the town of Easton on several occasions. The town of Easton has no longer any growth allocation, as Ren Serey indicated.

Back to the letter. One topic of discussion was the effect of Bill 933 on the Critical Area Commission's previous approval of the Cooke's Hope project. The Talbot County Council has already approved the Cooke's Hope project utilizing the procedures adopted under

Bill 762. Bill 933 does not affect that approval. This is readily apparent from the language of the bill itself on page 6, line 216, which states, growth allocation awarded by any town that remains unutilized by the effective date of the ordinance shall revert to the County. Growth allocation awarded by the County prior to or after the effective date of the ordinance shall be deducted from the total growth allocation allocated to the County under section 8-1908 (I)(B).

So that project has been through the joint review process and approved, and Bill 933 would have no effect on that project.

I want to skip ahead in the letter to discussion of Bill 762. Other parts of the discussion noted that Bill 762 was premised on the assumption that it pertained to supplemental awards of growth allocation after the use of allocated acreage under the 1981 maps. When Bill 762 was enacted, and that was in 2002 -- or

use me, 2000, there was no intention to repeal the 1980 maps. That does not forever enshrine those maps and place them beyond the police power of a future council. The premises or assumptions upon which Bill 762 was enacted do not bear on whether Bill 933 is consistent with the standards and the criteria the Critical Area Commission is required to consider under Natural Resources Article Section 8-1809(J).

Bill 762 is the County-created procedure required by COMAR to accommodate the growth needs of municipalities. COMAR has a specific criteria that says when planning future expansion of limited development and intensely developed area, counties, in coordination with affected municipalities, shall establish procedures to accommodate the growth needs of municipalities.

So COMAR requires the specifically -- that the counties establish this procedure ...fically, and that's what Bill 762 did. ...'s already been approved by the Commission

and utilized with the town of Easton.

Bill 933 simply takes that existing procedure and applies it uniformly throughout the County to all of the towns, including St. Michael's, including the town of Oxford.

Bill 762 is the County-created procedure required by COMAR to accommodate needs of municipalities. Bill 762 was drafted by the town attorneys for the town of Easton and circulated for comment to the town attorneys and town commissioners for the town of Oxford and St. Michael's prior to introduction by the County Council.

The comments offered by the town attorney for the town of St. Michael's, the only comments received were incorporated into the bill. Enactment of Bill 762 was in coordination with affected municipalities, as required by COMAR.

They then go on to discuss other coordination between the County and the

municipalities because that was one of the criteria, one of the elements in the criteria. On the planning level Talbot County has coordinated directly with each municipality to establish growth boundaries around each of the affected municipalities. This effort has resulted in coordinated maps showing common plans between the County and each municipality for growth areas around the town. Examination of those maps shows quite clearly the coordinated result of that county municipal effort to accommodate the growth needs of municipalities.

These maps are the definitive reference point from which to evaluate county municipal cooperation regarding growth boundaries of municipalities and county accommodation of growth needs. The matching plans between the County and each of the effective municipalities shows a level of cooperative effort that speaks for itself. Any claim that there was not adequate political coordination between the town and

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county elected officials in connection with enactment of Bill 933 --

CHAIRMAN MADDEN: I'm going to ask you to summarize because your time is expiring.

MR. POLLEN: Mr. Chairman, it's the [illegible] explained in his comments, many counties throughout the state have adopted Critical Area policies that do not give specific acreage growth allocations to municipalities. Those county-wide programs have been previously approved by this Commission.

Bill 933 is within the state-delegated power of the County Council to enact. We're a charter county. We have the obligation to develop our own program, delegate it not only under our charter, but under the Critical Area law. This policy has been previously promoted by other counties and approved by the Critical Area Commission. And we believe that it represents not only good environmental policy, but it's well

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within the prerogative of the County Council to adopt that policy being consistent with the goals and criteria of the Critical Area Commission.

It's really designed to enhance and protect the environment of the Chesapeake Bay and protect its future. So we would urge that the Critical Area Commission adopt this as a program amendment to Talbot County's local program.

CHAIRMAN MADDEN: Thank you for your comments? Any member of the public that would like to speak to us briefly on Talbot County Bill 933?

MR. HICKSON: My name is Michael Hickson, I'm the attorney for the town of St. Michael's. The town opposes 933. The towns of Easton and Oxford appeared at the local county hearing and also opposed this bill.

We opposed it for several reasons. First, we think it's different than other situations that you have addressed because in this situation you're yanking back or the County

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is attempting to yank back reserved acreage that was originally given to the town and that the town's programs were based on. They have been functioning all these years, and the towns did not receive any complaint from the County that [illegible] notice of this bill.

I testified at the local panel hearing. We found evidence in the record here that the County manager contacted Mr. Serey of this office on October the 29th, 2003 to inform him that the bill was in process and that he could expect it to be up here for processing at the Critical Area Commission in January of 2004. This bill was not introduced to the public until some time in November of 2003, and the towns were not contacted about it and the problem was not raised with the towns before the bill was introduced to the public.

So there has been no coordination. There's been no cooperation, and the effect of

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the bill will, as I said, yank back reserved acreage and in my view run contrary to the way that the state Critical Area laws and policies are supposed to work, and that is they're supposed to work in an organized and coordinated fashion. Not to say that every county has to work the same way, but by suddenly yanking back these bills you have towns that in fact don't have them; they can't function at all in terms of Critical Area.

CHAIRMAN MADDEN: Your time is expiring. Please summarize.

MR. HICKSON: We agree with what the panel discussed this morning, that in effect it will undo some decisions that the Critical Area Commission had made, that it's inconsistent with the existing town programs that exist in three municipalities in the town and there's been no cooperation or coordination in bringing this bill forward. So we oppose it.

CHAIRMAN MADDEN: Thank you. Does

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anybody else want to make any public comment?

MR. ALSPACH: Thank you again. My name Tom Alspach. I'm speaking on behalf of the [illegible] Preservation Alliance. I would not agree with Mr. Hickson that the towns cannot function [illegible] ensure that both the County and town and their respective populaces equally have a stake in the Critical Area, have their views taken into account in the grand growth allocation.

The grand growth allocation in a town like St. Michael's or Oxford affects all the residents of the County who utilize the Miles River, the Tred Avon River, Choptank River, et cetera. What this process is intended to do is to establish a joint review procedure whereby both jurisdictions participate in that review. Nothing is being taken away. The only two instances that this process has already been used with regard to the town of Easton, and in both instances the growth allocation requests were

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ved.

If you look at a map, some of you who were at the public hearing for the panel, remember I showed you what St. Michael's looks like now. It looks like a big bar bell, a chunk of lead here and a chunk of lead here and a skinny bar that joins the two together. That's what St. Michael's looks like now because they annexed a piece of property three-quarters of a mile out to the country by way of annexing a roadbed. That piece of annexed property is out in the middle of the county on a county river surrounded by county residents, yet the residents of the County had no say whatsoever when growth allocation for this annexation was considered.

Given the fact that they will be directly impacted by it, by annexations like in the future, this procedure would ensure that their concerns are taken into account as well as [illegible] people living in the town. By the way, [illegible] response to a question that was asked, I think

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by Mr. Jackson at the panel hearing, the question was raised doesn't this give the County a veto and it can prevent any growth allocation whatsoever. No, it doesn't. The law requires the counties to accommodate the growth needs of [illegible] town. If the [illegible] arbitrarily denying growth allocation pursuant to this procedure, the town would have relief available to it because the County would not be accommodating its need for growth. So that fear or concern is misplaced. I would urge you to approve this proposed program amendment. It does nothing but assure that all parties affected by growth allocation will be heard in the process.

CHAIRMAN MADDEN: Anything else? I'll turn it over to panel chair for additional comments and recommendations.

MR. BLAZER: I guess a couple things while we're passing out the panel recommendations and report. We only had three people I think speak here. But the night of our panel we were

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there for a good two and a half, three hours, had quite a few people talk similar to the other St. Michael's hearing. And a lot was presented and a lot was discussed, and basically some of the issues that we had to deal with and that we focused on were basically -- we wanted to apply the specific sections in the critical areas law. We heard all kinds of things about planning and smart growth and wastewater treatment and some of the problems with the Miles River, you know, we needed to focus on the Critical Area provisions in the criteria and the law that we had. So that's what we tried to focus on in our panel discussions.

So, you know, with that, we also looked at the effect of Bill 933 on other Critical Area programs, program amendments, program refinements, what the Critical Area COMAR section said, so we had several meetings, a lot of discussion, a lot of debate as we went through, and I also want to thank the panel members.

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Because I think the debate and the discussion was very healthy and I appreciate all of your input on those.

A couple other introductory remarks. In its review of Bill 933, the panel wanted to [illegible] on specific changes on the growth allocation procedures that are going to affect all of them. You heard a couple people talk about process things and I think that's one of the things that we'd like to see as this develops over time.

The panel believed that the time was particularly appropriate for this kind of cooperative effort and the analysis given that the County has engaged in its comprehensive review of its program.

The panel also believes that the supplemental growth allocation process of Bill 762 that I believe Mr. Pollen talked a little bit about which is incorporated in the County code may be a desirable growth allocation process,

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however, as presently drafted, Bill 933 really doesn't harmonize or come in line with the supplemental growth allocation process of the County code. There were some inconsistencies that the panel was uncomfortable with in our determination of our recommendation.

I'd like to move on behalf of the panel to deny approval of Talbot County Bill 933 as an amendment to the County's Critical Area program and to invite the County to work with the Commission and its staff to develop new growth allocation provisions that will be compatible with the state Critical Area Act and its criteria.

There are two major bases for the motion. They are: If we accept Bill 933, we would negate at least one previous Commission action of approving a local program change, and that's the refinement to the St. Michael's program for the Streusburg growth allocation we approved back in October 2003. And the second

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basis was accepted Bill 933 would create conflicts between the County program and several of the approved municipal programs that the Commission has agreed to. The municipal programs have their own approved growth allocation [illegible] premised on the growth allocation reserves provided by the County. The conflict that Bill 933 would create was contrary to the Commission's oversight responsibility to ensure that local programs are implemented in a consistent and uniform manner. So that's our recommendation.

CHAIRMAN MADDEN: Do we have a motion for denial of Talbot County Bill 933? Is there a second?

COMMISSIONER: Second.

CHAIRMAN MADDEN: Any discussion? Yes, Barbara?

SPEAKER: I would like to clarify something. It's my understanding that the goals of Bill 933 are consistent with the state

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delegation to the County, but the draftmanship is creating some inconsistency, so with appropriate draftmanship the goals could be realized; is that correct?

MS. MASON: The process that the County has said that they intend to use, that is the joint process through Bill 762, the panel believed was definitely in line with or appropriate under the state law and criteria, but the actual wording of the bill which is what the panel had to look at created the problem for this Commission of negating the Commission action.

SPEAKER: So it's basically an inartful drafting as opposed to a noncompliance -- the goals are not noncompliant, the draftsmanship --

CHAIRMAN MADDEN: Denial is articulated in the motion. If we stick to the motion rather than try to read something else into it. Any other discussion?

MS. ENNIS: It seems to me when we look at this issue, the thing that's most inconsistent

is that it will repeal an action that the Commission has already approved, both the town and the County approved and that the Commission approved.

CHAIRMAN MADDEN: The town approved. The Commission --

MS. ENNIS: [illegible]

the County?

CHAIRMAN MADDEN: Correct.

MS. ENNIS: If that were corrected, would we still be opposed to this?

CHAIRMAN MADDEN: I think again, we have to look at the motion. The motion cites two issues. The basis for the motion is the first paragraph, accepting 933 would negate at least one previous Commission action and, number two, would create conflicts between the County program and several approved municipal programs. That's what we're basing this motion on. Any other discussion? If not, we have a motion in front of us for denial. All those in favor say aye.

(All said aye.)

CHAIRMAN MADDEN: Opposed nay?

Motion for denial is approved. Thank you again, all panel members and Commission members.

(Proceedings concluded at 5:00 p.m.)

STATE OF MARYLAND SS:

I, LINDA A. CROCKETT, a Notary Public of the State of Maryland, do hereby certify that these proceedings took place before me at the time and place herein set out, and the proceedings were recorded stenographically by me and this [illegible] is a true record of the proceedings.

I further certify that I am not of counsel to any of the parties nor an employee of counsel nor related to any of the parties nor in any way interested in the outcome of this action.

As witness my hand and notarial seal this 8th day of June, 2004.

My commission expires

December 1, 2004 Notary Public

CIRCUIT COURT
OF TALBOT COUNTY
[illegible]

2005 APR 14 AM 10 29

THE CIRCUIT COURT FOR TALBOT COUNTY

THE MIDLAND COMPANIES, INC. et al	:	
v.	:	Civil # 5088
MARYLAND DEPARTMENT OF NATURAL RESOURCES et al	:	

: : : : :

DECLARATORY JUDGMENT
and
ANCILLARY RELIEF BY WAY OF MANDAMUS

On May 5, 2004, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, an agency of the Department of Natural Resources (the Commission) took action with respect to a "program amendment" requested by the Town of St. Michaels (the Town). Developers interested in the project (plaintiffs) have challenged that action in this proceeding and subsequently filed a motion for summary judgment, which is now before the Court. A similar motion was filed by the Commission. At a hearing on those motions, we allowed intervention of Fogg Cove Homeowners Association, Inc. (on the representation that it is a property owner) and a number of individual residents of St. Michaels, who had also interposed a motion for summary judgment..

The existence of requests for summary judgment by all parties indicates a consensus on the requisite finding with respect to the absence of genuine dispute as to any material fact. Independently of that consensus, we so find.

The cause of action

Unfortunately, before proceeding to the issues involved here, we must first ferret out that which the Court is asked to address or, more properly, what are the cognizable cause(s) of action. The title of that pleading is "Complaint For Judicial Review, Mandamus and For Declaratory Relief." This must be taken as an attempt to satisfy the requirement of Rule 1-301 that "Every pleading and paper filed shall contain . . . a brief descriptive title of

Ex. 7

the pleading or paper which indicates its nature."

The title is then followed by this statement:

> Pursuant to the Courts and Judicial Proceedings Article, Section 3-401 et seq. and 12-201, Annotated Code of Maryland, Petitioners/Plaintiffs, . . . hereby bring this Complaint against the Respondent/Defendant . . . to obtain Judicial Review of a decision of the . . . [Commission], to issue a mandamus concerning action of the . . . [Commission] that Plaintiffs/Respondents believe to be illegal and beyond the scope of the . . . [Commission's] lawful authority and for Declaratory Relief relating to actions which the . . . [Commission] has asserted that it will take against Petitioners/Plaintiffs' interests . . . .

The claims for relief, which by Rule 2-305 "shall contain . . . a demand for judgment for relief sought", wholly ignore matters of mandamus or judicial review. It seeks that this Court:

> A. Declare as unlawful, *ultra vires*, and otherwise not permitted by Maryland law the Conditions on the award of IDA growth allocation for Miles Point III imposed by the Respondent/Defendant . . . [Commission] that *development of the Miles Point III Project shall be set back from the landward edge of tidal waters at least 300'* and that a forest vegetation buffer management plan shall be developed cooperatively with the . . . [Commission] and subject to it further review and approval;
>
> B. Declare that the Conditions imposed by the . . . [Commission] are void and of no lawful force and effect such that the Critical Area Commission's approval of the Town's request to amend its program to use 70.863 acres of growth allocation for the Miles Point III project to change the critical area designation of the property from RCA to IDA remains valid and in effect, but the Conditions of that approval are stricken.
>
> C. Award the Petitioners/Plaintiffs the cost of this case; and
>
> D. Such other and further relief as the Court deems appropriate.[1]

By stipulation of the parties, what we understand to be the here-italicized portion paragraph A, was dismissed, for the reason that "there is no present or actual controversy between the parties with respect to. . . [the condition]."

Apparently unrecognized is the fact that one of the statutes invoked, Courts

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[1] A second count was dismissed by stipulation.

and Judicial Proceedings §12-301 has absolutely no application in this case.[2] Furthermore, Courts Article, §3-409 (b) would preclude any right of declaratory relief if there were any other statutory avenue for review of the action of the Commission.

Because intervenors allege the existence such other avenues of relief, we detour briefly to consider those claims. The first suggestion is that plaintiffs should have filed a request for judicial review under Title 7, Chapter 2, of the Rules. Those provisions provide no *right* of appeal, but by their express terms are applicable only "where judicial review is authorized by statute." We are aware of no statute conferring a right of review or "appeal" from a determination of the Commission. Sensing that result, intervenors propose that the request for judicial review should been directed against the action of the Town. For purposes of brevity, we shall assume, but certainly not decide, the existence of a statute permitting judicial review of the action of the Town, although it was clearly a legislative action. *Cf. Queen Anne's Conservation, Inc. v. County Comm'rs*, 382 Md. 306. The common sense explanation of plaintiffs' failure to seek judicial review of the Town's action is that it has no difference with the Town's action. The obvious and complete legal answer is that any decision rendered in a proceeding in which the Commission is not a party will have absolutely no effect upon its actions. Intervenors' contentions are wholly without merit.

We return to the relief sought by the complaint. Although mandamus is referred to in the title of the complaint, its hoary head is not otherwise raised, even in the claims for relief. Although Courts Article, §3-409 (c) would have permitted its combination with an action for declaratory judgment, such is not the result here, since the complaint does not contain either the verification or the specific claim for relief required by Rule 15-701. *Brack v. Wells*, 184 Md. 86, 89. No cause of action is stated for mandamus.

A similar situation arose in *Redding v. Board of County Comm'rs*, 263 Md. 94, 112, where it was held that the plaintiff could not obtain relief by way of mandamus but that such might be afforded as ancillary relief to a declaratory judgment:

> The *form* of the 'Petition for Injunction, Mandamus and Such Further Relief as to the Court May Seem Proper' . . . gives us some difficulty. The petition is far from a model of careful pleading. Rather, it presents a 'shotgun' approach with the hope of the pleader that one shot will hit his opponent and bring him down. We interpret the petition as an action at law for declaratory relief . . . *i.e.*, to declare the order . . . of the Board of Appeals null and void with ancillary relief by way of injunction or mandamus, if required, pursuant to [former] Maryland Rules BF 40, 41, 42 and 43. It can hardly be an action for a writ of mandamus, as such, pursuant to Rules BE 40-46 [now Rule 15-701] in that (1) the petition was not verified as required by Rule BE 40 c and (2) there is no prayer for relief setting forth

[2] The section deals solely with the right of appeal of final judgments of a circuit court.

the peremptory form of the writ of mandamus sought. See [former] Rule BE 45. Indeed, the prayer for relief *is for declaratory relief* and the relief obtained from the lower court was a declaration that the order . . . was null and void. In its opinion, the lower court suggests that a writ of mandamus *might issue* to compel the Board of Appeals to grant the motion to strike the evidence introduced at the second hearing on behalf of Redding or that the Board be enjoined from attempting to enforce its order . . . , but the fact is that neither a writ of mandamus nor a writ of injunction did issue. Instead, declaratory relief was awarded – properly in our opinion – there being no necessity under the circumstances for issuing writs of mandamus or of injunction. [Italics in original]

Our first declarations will be that this action is solely one for declaratory relief, but that mandamus or injunctive relief may be granted as ancillary relief if it appears that such is necessary under the circumstances.

The action of which plaintiffs complain

As embodied in a letter of May 14, 2004, which is as much about its action as we are going to know absent what might be pure surmise following a page-by-page review of the record, the Commission stated:

Re: Town of St. Michaels Proposed Program Amendment
Miles Point III Growth Allocation Request

This letter notifies you of action by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays on the referenced growth allocation request. On May 5, 2004, at its regular meeting, the Critical Area Commission approved the Town's request to amend its Program to use 70.863 acres of growth allocation for the Miles Point III project to change the Critical Area designation of the property from RCA [Resource Conservation Area] to IDA [Intensely Developed Area]. The approval is subject to the following conditions:

1. The development shall be set back from the landward edge of tidal waters at least 300 feet. Passive recreation activities may allowed outside of the100-foot Buffer.

2. The 100-foot Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in the Critical Area Criteria. Before final recordation of any subdivision plats or grading of the site, a

Buffer Management Plan shall be developed cooperatively with the Town and the Commission and their respective staffs. The Buffer Management Plan shall be reviewed and approved by the Commission. The Buffer Management Plan may provide for public access.

3. In measuring the 300-foot setback and the 100-foot Buffer, the measurement shall be based on the existing shoreline at the time that the Buffer Management Plan is submitted to the Commission.

4. A Stormwater Management Plan shall be developed that promotes environmentally sensitive design and explores all opportunities for infiltration and bioretention before utilizing surface water treatment measures. The Stormwater Management Plan shall be developed cooperatively with the Town and the Commission and their respective staffs. The Stormwater Management Plan shall be reviewed and approved by the Commission.

The Town is required to amend the Town's Criticalt Area Map to show this change within 120 days of receipt of this letter. Please provide a copy of the Town's amended map to the Commission when it becomes available. If you have any questions, please telephone me at .... In closing, I would like to thank you and your staff for your cooperation and assistance over the last several months as the Commission reviewed this proposal.

We have little other guidance, other than a lengthy "Panel Report", dated May 5, 2004, by the Commission's hearing panel, which discusses its investigation and discussion in wide-ranging terms. In a space provided for "Commission Action" appears the single word "Vote"; and "Panel Recommendation" is stated to be "Pending Panel Discussion." These do not represent either ultimate findings of fact (which remained "pending panel discussion") or reasons for any action taken, even to the degree of the Panel's providing specific recommendations. As will be seen, an agency has a duty to provide both findings of fact and reasons for its action.

The law

The basic component of the Critical Area statute (Natural Resources Article, Title 8, Subtitle 18, hereafter cited by "§") is the requirement that each jurisdiction establish a critical area protection program, based upon criteria established by the Commission.

Thereafter, a "program amendment" or a "program refinement"[3] requires approval by the Commission before its application. The latter type of action is not involved here.[4]

A "Program amendment. . . [is] any change to an adopted [Critical Area] program that the Commission determines will result in a use of land or water in the Chesapeake Bay Critical Area . . . in a manner not provided for in the adopted program . . . [and, specifically] includes a change to a zoning map that is not consistent with the method for using the growth allocation contained in an adopted program" (§8-1802 (a) (15)).

In *North v. Kent Island Limited Partnership*, 106 Md. App. 92, Queen Anne's County had determined that the critical area designation of an area on Kent Island should be changed from limited development area (LDA) to intensely developed area (IDA), on the grounds of mistake in the original mapping. As required, approval was sought from the Critical Area Commission. The Commission denied the amendment based upon a finding that there had been no mistake in the mapping. It was held that the Commission lacked authority to deny the amendment on that basis.

Speaking for the Court, Judge Fisher carefully defined the respective rights of the Commission and local governments, at 106:

> The Commission was designed to be an oversight committee. Section 8-1801(b) (2). The original drafting group considered forming the Commission as a permitting agency for all projects in the critical area. The drafting group concluded that such a role was undesirable because the Commission would become tangled in collisions with local agencies and developers over the specifics of particular projects. George W. Liebmann, *The Chesapeake Bay Critical Area Act: The Evolution of a Statute*, The Daily Record, April 20, 1985, at 1. The drafting group also considered constituting the Commission as an appeal board. Because this would impose substantial hearing burdens on the Commission and create a conflict between the Commission and local zoning boards, the group decided against such a provision. The drafting group also considered allowing an appeal directly to the Commission from the permit granting agency. The drafting group rejected this

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[3] "Program refinement" means any change to an adopted program that the Commission determines will result in a use of land or water in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area in a manner consistent with the adopted program . . . [and] includes: 1. A change to a zoning map that is consistent with the development area designation of an adopted program; and 2. The use of the growth allocation in accordance with an adopted program" (§8-1802(a)(16)).

[4] Left to our own devices, we might have concluded that the action here involved might have been more properly regarded as a "program refinement" because "The use of the growth allocation in accordance with an adopted program" is specifically said to be a program refinement by the final sentence of the statute quoted in the preceding footnote. However, the parties seem to agree that this action involves a program *amendment* and we shall do nothing to change that course. *Bowers v. Department of Natural Resources* (Court of Appeals, No. 94 September Term 2003, decided March 14, 2005)

approach because it would either result in duplicative appeals or grant the Commission pendent jurisdiction to address issues which did not fall under its regulations. Because there was a need for the Commission to check upon local permit determinations involving zoning and subdivision, the group drafted a provision granting the Commission the right to intervene at any stage of administrative, judicial, or "other original proceeding concerning project approvals. Section 8-1812.

Based upon this interpretation of the statute, the Court held, at 105:

> The role of the Critical Area Commission is to examine the amendment to determine whether the amendment is consistent with the criteria. In contrast to § 8-1809(h)(2)(i), which requires the local approving authority to make a finding of mistake, § 8-1809(j) provides a separate standard of review to be applied. Section 8-1809(j) provides:
>
> (j) *Standards for approval by Commission.* -- The Commission shall approve programs and program amendments that meet:
>
> (1) The standards set forth in § 8-1808 (b)(1) through (3)[5] of this subtitle; and
>
> (2) The criteria adopted by the Commission under § 8-1808 of this subtitle.[6]

It was just as squarely held, at 106, that "It is not the role of the Commission to reexamine whether there was an actual mistake in the original zoning. To allow the Critical Area Commission to revisit the question of mistake would render meaningless the hearings before the Planning Commission and the County Commissioners. In addition, this would create a state level zoning board, which was not the intention of the General Assembly in establishing the Critical Area Commission."

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[5] Those standards, referred to as "*Goals of program*" are that "A program shall consist of those elements which are necessary or appropriate: (1) To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; (2) To conserve fish, wildlife, and plant habitat; and (3) To establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts."

[6] §8-1808 (e) (1): "The Commission shall adopt by regulation ... criteria for program development and approval, which are necessary or appropriate to achieve the standards stated in subsection (b) of this section." These criteria are contained in Title 27 of COMAR.

Application of *North* to the present case

It was noted in *North* that "There were two ways in which the County could have redesignated the parcel: (1) The County could have redesignated the parcel based on a mistake in the original mapping; or (2) The County could have redesignated the parcel based on the use of the County's growth allocation." 106 Md. App. at 107. The first was involved in that case; this case involves the second method; but we perceive no difference in the applicable legal requirements.

In critical area parlance, "Growth allocation means the number of acres of land in the Chesapeake Bay Critical Area . . . that a local jurisdiction may use to create new intensely developed areas and new limited development areas" (§18-102 (a)(10)). Under §8-1808.1, the allocation is equal to "5 percent of the total resource conservation area in a local jurisdiction . . . at the time of the original approval of the local jurisdiction's program by the Commission, not including tidal wetlands or land owned by the federal government. Subsection (c) of that section provides "guidelines" for use of growth allocation:

> When locating new intensely developed or limited development areas, local jurisdictions shall use the following guidelines:
>
> (1) New intensely developed areas should be located in limited development areas or adjacent to existing intensely developed areas;
>
> (2) New limited development areas should be located adjacent to existing limited development areas or intensely developed areas;
>
> (3) Except as provided in paragraph (5) of this subsection, no more than one-half of the expansion allocated in the criteria of the Commission may be located in resource conservation areas;
>
> (4) New intensely developed or limited development areas to be located in the resource conservation area shall conform to all criteria of the Commission for intensely developed or limited development areas and shall be designated on the comprehensive zoning map submitted by the local jurisdiction as part of its application to the Commission for program approval or at a later date in compliance with § 8-1809(g) of this subtitle; and
>
> (5) . . . if the county is unable to utilize a portion of the growth allocated to the county in paragraphs (1) and (2) of this subsection within or adjacent to existing intensely developed or limited development areas as demonstrated in the local plan approved by the Commission, then that portion of the allocated expansion which cannot be so located may be located in the resource conservation area in addition to the expansion allocated in paragraph (3) of this subsection. A developer shall be required to cluster any development in an area of expansion authorized under this paragraph.

In this case, it is undisputed that the Town of St. Michaels followed all procedures required by its critical area ordinance and found that the use of growth allocation at the Perry Cabin site was consistent with the "guidelines" contained in §18-1808.1 (c) just quoted.. Importantly, as in *North*, use of the guidelines is to be made by "*local jurisdictions*" in connection with "locating new intensely developed or limited development areas." In other words, application of the guidelines is entrusted *solely* to the local jurisdiction. The matter is the more binding in light of the provisions of §8-1808.1, which provides that "in the event of any inconsistency between the criteria [of the Commission] and the provisions of this section, this section shall control."

The result is that stated in *North,*, 106 Md. App. at 107:

> In this case, once the Planning Commission determined that there was a mistake in the original zoning, the program amendment should have been referred to the Critical Area Commission to determine whether it met the criteria. The Commission has jurisdiction to examine the . . . [action of the local jurisdiction] and determine whether the . . . [action] meets the established criteria. The sole issue before the Commission should have been whether the property satisfies the definition of IDA as set forth in the criteria.

In the final analysis, it is difficult to understand just what the Commission did in this case. That is itself a virtually fatal flaw. An agency must prepare findings of fact and conclusions of law that are adequate for judicial review. Although not raised by plaintiff, this is an practical prerequisite to any sort of judicial consideration. It is also a *duty* of the agency. As flatly held by the Court of Appeals in *Baker v. Board of Trustees*, 269 Md. 740 , 747

> As long ago as *Adams v. Board of Trustees*, 215 Md. 188, 195 . . . we reversed, as not supported by the evidence, an action taken by the Board without a finding of fact, or an assignment of reasons for the result reached. Only the circumstance that the record before us makes it clear that the Board could have reasonably reached the result which it did, *Heaps v. Cobb*, . . . 185 Md. at 380 . . . saves this case from a similar fate. To be certain that the teaching *Adams* is not again overlooked, we propose to remand, for appropriate findings of fact, any case which hereafter reaches us in the posture of this one.
>
> This is no more than a recognition of the fundamental right of a party to be apprised of the facts relied upon by the agency, *Blue Bird Cab Co. v. Department of Employment Security*, 251 Md. 458, 466 . . . even in the absence of a statutory provision, is frequently required by a court as an aid to judicial review, 2 Davis, *Administrative Law Treatise*, § 16.05 at 444-49 (1958); 2 Am. Jur. 2d *Administrative Law* § 447 at 256 (1962), and cases cited. *See also* Code (1957, 1971 Repl. Vol.) Art. 41, § 254 which imposes this requirement on those agencies of the State which are subject to our Administrative Procedure Act.

Were this all, we might simply remand the case to the Commission with

instructions to provide the necessary information – not that this would end the matter, but it would at least provide an identifiable context for our consideration. However, it is quite clear here that the Commission felt able – even to the extent of an apparent inconsistency in applying LDA standards to an IDA district – to create standards out of whole cloth. The sole issue before the Commission involves a wholly objective determination, that being whether the amendment proposed by the Town satisfies the definition of IDA as set forth in the applicable criteria. Conjecture as to whether the situation could be made better by the addition of bells and whistles is beyond the authority of the Commission – if it exists at all, it is within the sole province of the Town. To simply remand the case for articulation of its misconceptions would be idle indeed.

What remains is the question of whether the Court should provide ancillary relief at this time. Under Courts Article, §3-411, our declaratory judgment will have "the force and effect of a final judgment or decree." Judgment though it is, it is simply what its name says it is and provides no practical relief whatever in that it provides for no further attention by anyone to the approval sought by the Town. The Commission would hold an unenforceable decision, and the Town would hold an unacted-upon request for approval.

We shall also provide mandatory relief, because (i) "[f]urther relief based on a declaratory judgment or decree may be granted if necessary or proper" upon application and further proceedings under Courts Article §3-412, and there can be no doubt about the facts that further relief would be requested or that is *prima facie* "necessary or proper" under the circumstances of this case; (ii) under authority of *Redding v. Board of County Comm'rs, supra*, mandatory relief is a "necessity under the circumstances"[7]; (iii) mandatory relief is permissible under plaintiffs' request for "other and further relief as the Court deems appropriate"; and (iv) because further delay could only (and, we think, unnecessarily) prolong this matter,

DECLARATORY RELIEF

For reasons stated above, the Court **FINDS AND DECLARES** that:

1. This action is solely one for declaratory relief, but mandamus, injunctive or other mandatory relief may be granted as ancillary relief if it appears that such is necessary under the circumstances.

2. The action of The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the Commission) with respect to the request of the Town of St. Michaels

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[7] and (iii) The *Redding* case involved a hearing and rehearing of charges against a police officer. It was declared that the discharge of the officer after the first hearing was valid and that the re-hearing was unauthorized and void. In short, further mandatory relief would have been without purpose.

for approval of a program amendment was improper and void for the following reasons:

a-The Commission failed to provide findings of fact and a statement of reasons for the result reached.

b-So far as can be gleaned from the record, the Commission considered matters not germane to the single issue of whether the program amendment proposed by the Town of St. Michaels meets the criteria for an Intensely Developed Area.

MANDATORY RELIEF

For reasons stated above, it is **FURTHER ORDERED** that:

3. The Commission is directed to consider and determine, on the basis of the existing record, whether the program amendment proposed by the Town of St. Michaels meets the criteria for an Intensely Developed Area.

4. For purposes of Natural Resources Article §8-1809 (o)(1), the time for decision shall be extended until the first meeting of the Commission which is at least 10 days after its receipt of this Judgment.

5. The Commission is further directed to give full consideration to the legal requirements that (i) the sole issue before the Commission is whether the property satisfies the definition of IDA as set forth in the criteria and (ii) in applying criteria, those contained in §8-1808.1 are controlling in the case of inconsistency with those of the Commission.

6. In order to avoid lack of clarity heretofore discussed, the Commission is further directed to observe the legal requirement that it render its decision in writing and include findings of fact and a statement of reasons for the result reached.

7. The provisions of this Order are without prejudice to any right to subsequent review following action by the Commission.

8. Costs of this proceeding shall be paid by defendants and intervenors.

John W. Sause, Jr.
Chief Judge (ret)
Sitting by Designation

April 11, 2005

COPY

SETTLEMENT AGREEMENT

This Settlement Agreement (also referred to as the "Agreement") is made and entered into this 7th day of September, 2005, by and between: (i) The Midland Companies, Inc., and Miles Point Property, LLC, (collectively, the "MIDLAND PARTIES"), and each of the MIDLAND PARTIES' successors and assigns, divisions, units, officers, agents, servants, representatives, employees and independent contractors; and (ii) The Maryland Department of Natural Resources and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "CRITICAL AREA COMMISSION"), and their successors and assigns, agencies, departments, divisions, units, officers, agents, servants, representatives, employees and contractors.

Definitions

A. The term "PARTIES" shall mean, collectively, the MIDLAND PARTIES and the CRITICAL AREA COMMISSION.

B. The term "CIVIL ACTION" shall mean the lawsuit captioned *The Midland Companies, Inc., et al. v. Maryland Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, et al.*, Case No. 2-C-04-005088 AA, Circuit Court of Maryland for Talbot County, presently on appeal to the Court of Special Appeals of Maryland, where the case is captioned *Maryland Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, et al. v. The Midland Companies, Inc., et al.*, Case No. 308, September Term, 2005.

C. The term "FIRST COMMISSION ACTION" shall mean the action, as referenced in the CIVIL ACTION, taken by the CRITICAL AREA COMMISSION on May 5, 2004, wherein the CRITICAL AREA COMMISSION approved with certain conditions an application

submitted to the CRITICAL AREA COMMISSION by the Commissioners of the Town of St. Michaels, Maryland (the "Town"), to award growth allocation under the Town's Critical Area Program enabling the MIDLAND PARTIES to develop a 72-acre parcel of property known as the Perry Cabin Farm located in the Town and the Critical Area (as defined by Md. Code Ann., Nat. Res. § 8-1807(a)). A copy of the FIRST COMMISSION ACTION is attached as Exhibit A.

D. The term "SECOND COMMISSION ACTION" shall mean the action taken by the CRITICAL AREA COMMISSION on May 4, 2005, wherein the CRITICAL AREA COMMISSION, in compliance with an April 11, 2005 Order of Circuit Court for Talbot County in the CIVIL ACTION, approved the application for growth allocation referenced in paragraph C above. A copy of the SECOND COMMISSION ACTION is attached as Exhibit B.

E. The term "RELEASED CLAIMS" includes any and all claims, demands, damages, actions, causes of action, obligations, debts of whatsoever kind or nature, known or unknown, which arise or may arise, or which arose or may have arisen, as a result of, or in any way growing out of, injuries or damages incurred as a result of either the FIRST COMMISSION ACTION or the SECOND COMMISSION ACTION, whether or not they are contemplated at the present time and whether or not they arise following execution of this Agreement.

Recitals

WHEREAS, on or about February 18, 2004, the Commissioners of the Town of St. Michaels, Maryland (the "Town") approved an award of growth allocation to reclassify a 72-acre parcel of property located on the Miles River and known as the Perry Cabin Farm from Resource Conservation Area to Intense Development Area ("IDA") and also to enable the MIDLAND PARTIES to develop the property pursuant to a specific development plan. In accordance with State of Maryland's Critical Area Law, Md. Code Ann., Nat. Res. ("NR") § 8-1801 *et seq.*, and

the Town's zoning ordinance, the Town forwarded the growth allocation approval to the CRITICAL AREA COMMISSION for final review and approval;

WHEREAS, on May 5, 2004, following a comprehensive review of the MIDLAND PARTIES' growth allocation application for the Perry Cabin Farm as approved by the Town and forwarded to the CRITICAL AREA COMMISSION, the CRITICAL AREA COMMISSION voted to award the request for growth allocation subject to certain conditions as set forth in the FIRST COMMISSION ACTION (Exhibit A). The COMMISSION imposed these conditions because it determined that the request for growth allocation as proposed by the MIDLAND PARTIES and the Town did not meet certain Critical Area Standards and Criteria as referenced at NR § 8-1809(j);

WHEREAS, on June 4, 2004, the MIDLAND PARTIES filed the CIVIL ACTION challenging the legality of the FIRST COMMISSION ACTION;

WHEREAS, on April 11, 2005, the Circuit Court for Talbot County issued an Order in the CIVIL ACTION declaring that the CRITICAL AREA COMMISSION had acted beyond the scope of its authority when it took the FIRST COMMISSION ACTION;

WHEREAS, on May 4, 2005, the CRITICAL AREA COMMISSION took the SECOND COMMISSION ACTION. In so doing, the CRITICAL AREA COMMISSION reiterated that under its interpretation of the Critical Area Law, the Town's growth allocation request for the Perry Cabin Farm did not meet certain Critical Area Standards and Criteria. The CRITICAL AREA COMMISSION, however, explained that, as constrained by the April 11, 2005 Order in the CIVIL ACTION, it was compelled to grant the award of growth allocation. The CRITICAL AREA COMMISSION noted that it disagreed with the April 11, 2005 Order, and that it had filed an appeal thereof;

WHEREAS, on June 6, 2005, the Court of Special Appeals issued an Order enjoining the MIDLAND PARTIES from undertaking any impervious surface construction on the Perry Cabin Farm, pending outcome of the appeal in the CIVIL ACTION;

WHEREAS, during the pendancy of the CIVIL ACTION the MIDLAND PARTIES and staff for the CRITICAL AREA COMMISSION have engaged in detailed discussions regarding site development and landscape and buffer management plans for the Perry Cabin Farm with respect to the property's 100-foot buffer along the Miles River and an extended development setback therefrom. As a result of these discussions, the MIDLAND PARTIES have proposed a revised development plan (the "Approvable Plan"). The staff of the CRITICAL AREA COMMISSION has recommended to the COMMISSION that the Approvable Plan meets the Critical Area Standards and Criteria referenced at NR § 8-1809(j). A copy of the Approvable Plan is attached hereto as Exhibit C; a copy of an illustrated cross-section of the Approvable Plan is attached hereto as Exhibit D; and a copy of an agreed upon planting list for the 100-foot buffer and additional setback within the Approvable Plan is attached hereto as Exhibit E. Exhibits C, D and E are each incorporated herein by reference, and each are made a substantive part of this Agreement;

WHEREAS, the CRITICAL AREA COMMISSION has exercised its independent judgment by applying the Critical Area Standards and Criteria to the Approvable Plan, and has entered this Agreement only after, and as a result of, its determination that this Plan meets with said Standards and Criteria;

WHEREAS, because the MIDLAND PARTIES are willing to pursue development of the Approvable Plan which the CRITICAL AREA COMMISSION has determined meets the Critical Area Standards and Criteria, it is the desire of the PARTIES to end the litigation

involving the FIRST COMMISSION ACTION and the SECOND COMMISSION ACTION which form the basis of the CIVIL ACTION;

WHEREAS, although the MIDLAND PARTIES are willing to develop the Perry Cabin Farm pursuant to the Approvable Plan, the MIDLAND PARTIES are unwilling to dismiss the CIVIL ACTION involving the FIRST COMMISSION ACTION and the SECOND COMMISSION ACTION unless and until the Commissioners of St. Michaels (the "Town Commissioners") also approve the specific form of development set forth in the Approvable Plan so that the MIDLAND PARTIES are certain that they have the requisite approvals from the relevant state and local governmental agencies to proceed with development based upon the Approvable Plan;

WHEREAS, in order to allow adequate time for the Town Commissioners to consider the Approvable Plan before the CIVIL ACTION progresses to the point when it is heard and decided by the Court of Special Appeals, the PARTIES shall file a motion to stay the CIVIL ACTION;

WHEREAS, if the motion to stay is granted by the Court of Special Appeals and the Town Commissioners consider and take action on the Approvable Plan, the PARTIES intend for the following to occur: (a) in the event that the Town Commissioners approve the Approvable Plan, the PARTIES shall file a motion to dismiss the CIVIL ACTION on the basis that the subject matter of the CIVIL ACTION is moot; or (b) in the event that the Town Commissioners reject the Approvable Plan or fail to either approve or reject the Approvable Plan by December 31, 2005, this Settlement Agreement shall automatically terminate and the PARTIES shall resume the CIVIL ACTION through a final judgment;

WHEREAS, Intervenors in the CIVIL ACTION, Fogg Cove Homeowners Association, Inc, et al. ("Fogg Cove"), have declined to join in this Agreement, and intend to pursue their

appeal in the CIVIL ACTION notwithstanding this Agreement. Fogg Cove has represented to the PARTIES that it will not join in a motion to dismiss or in a notice of dismissal of the CIVIL ACTION; and

WHEREAS, the PARTIES agree to move forward with this Agreement notwithstanding Fogg Cove's decision not to join in this Agreement.

NOW THEREFORE, in consideration of the mutual promises and premises hereunder, and other good and valuable consideration, the PARTIES agree as follows:

Agreement Provisions

1. **Recitals.** The Recitals above are incorporated into these Agreement Provisions by reference, and made a substantive part of them.

2. **Critical Area Commission Action.** Based upon the CRITICAL AREA COMMISSION'S determination that the Approvable Plan meets applicable Critical Area Standards and Criteria, and expressly recognizing that the CRITICAL AREA COMMISSION is under no obligation pursuant to this Settlement Agreement to reach this determination, the CRITICAL AREA COMMISSION does, this 7th day of September, 2005:

(A) withdraw both the FIRST COMMISSION ACTION and the SECOND COMMISSION ACTION, subject to the Town's consent to said withdrawals; and

(B) approve the Town's request for growth allocation for the Perry Cabin Farm, conditioned upon the requirement, consented to in advance by the MIDLAND PARTIES, that the MIDLAND PARTIES shall develop, establish and manage the Perry Cabin Farm based upon the buffer, additional setback, buffer plantings and other requirements contained in the Approvable Plan as detailed in Exhibits C, D and E hereto. For purposes of clarity, Exhibit C is intended to illustrate, among other details specified thereon, the following: (1) that vegetative

enhancements within the setback area from mean high tide will have an average width of at least 150' as measured as of the date of commencement of construction of impervious surface in the areas adjacent to the setback; and (2) an absolute minimum setback of impervious surface from mean high tide of 150', also measured as of the date of commencement of construction of impervious surface in the areas adjacent to the setback, with the exception that the CRITICAL AREA COMMISSION approves the location of storm water management ponds within the 150' setback but outside of the 100' Buffer. For further clarity, Exhibit C does not depict the entire 150' setback on the Perry Cabin Farm but is illustrative of the PARTIES' intentions with respect to all of the setback on the Perry Cabin Farm. The tables on the right side of Exhibit C recite the planting requirements agreed to between the PARTIES under this Agreement. The tables on the left side of Exhibit C recite the prior conditions imposed in connection with the FIRST COMMISSION ACTION and the general CRITICAL AREA COMMISSION planting guidelines, both of which are modified under this Agreement for the development on the Perry Cabin Farm. The PARTIES agree that, subsequent to the execution of this Agreement and prior to implementation of a stormwater management plan by the MIDLAND PARTIES on the Perry Cabin Farm, the MIDLAND PARTIES shall present a stormwater management plan for the property to staff of the CRITICAL AREA COMMISSION and that the MIDLAND PARTIES and staff of the CRITICAL AREA COMMISSION will make a good faith effort to develop therefrom a mutually agreeable stormwater management plan. Any changes made by the MIDLAND PARTIES in implementing the Approvable Plan as detailed at Exhibits C, D and E must be approved, in advance, by the Chairman of the CRITICAL AREA COMMISSION.

3. **Midland Action.** The MIDLAND PARTIES shall submit the Approvable Plan to the Town Commissioners in sufficient time that the Town Commissioners may act to either

approve or reject the Approvable Plan by December 31, 2005. If not so expressed by the Town, the Town's approval of the Approvable Plan shall also constitute, for purposes of this Agreement, the Town's consent to the CRITICAL AREA COMMISSION's withdrawals of both the FIRST COMMISSION ACTION and the SECOND COMMISSION ACTION CONSISTENT consistent with paragraph 2.(A) above.

4. **Motion for Stay**. Within seven (7) days of the actions taken by the CRITICAL AREA COMMISSION pursuant to paragraph 2 above, the PARTIES shall file with the Court of Special Appeals a joint motion for a stay (the "Motion for Stay") requesting that the Court of Special Appeals stay the CIVIL ACTION until such time that the Town Commissioners have either approved or disapproved the Approvable Plan, and further until the Court of Special Appeals rules upon a joint motion to dismiss, if filed by the PARTIES pursuant to paragraph 5, below. If the Motion for Stay is denied by the Court of Special Appeals, or if the Court of Special Appeals fails to take action on the Motion for Stay prior to ruling upon the merits of the appeal of the CIVIL ACTION, or if the Motion for Stay is granted by the Court of Special Appeals and later vacated or reversed by the Court of Appeals, the actions taken by the CRITICAL AREA COMMISSION pursuant to paragraph 2 above, and this Agreement, shall be null and void.

5. **Motion To Dismiss**. In the event that the Town Commissioners approve the Approvable Plan, then within ten (10) days of that action the PARTIES shall file with the Court of Special Appeals a joint motion to dismiss the CIVIL ACTION as moot (the "Motion to Dismiss"); however, if the Town Commissioners deny the Approvable Plan, or if the Town Commissioners fail to either approve or reject the Approvable Plan by December 31, 2005, then

the terms of this Settlement Agreement shall automatically terminate and the PARTIES shall resume litigating the CIVIL ACTION.

6. **Denial of Motion to Dismiss.** If the Motion to Dismiss is denied by the Court of Special Appeals, or if the Court of Special Appeals fails to take action on the Motion to Dismiss prior to ruling upon the merits of the appeal of the CIVIL ACTION, or if the Motion to Dismiss is granted by the Court of Special Appeals and later vacated or reversed by the Court of Appeals, the actions taken by the CRITICAL AREA COMMISSION pursuant to paragraph 2 above, and this Agreement, shall be null and void.

7. **Release.** So long as this Agreement does not terminate by operation of paragraph 5 above, and is not rendered null and void by operation of either paragraphs 4 or 6 above, the MIDLAND PARTIES do release, acquit and forever discharge the CRITICAL AREA COMMISSION, and any and all other persons, associations and corporations, whether herein named or referred to or not, who together with the CRITICAL AREA COMMISSION may be jointly or severally liable to either the MIDLAND PARTIES of and from all RELEASED CLAIMS, including any and all claims that were or could have been raised in the CIVIL ACTION.

8. **Indemnification.** So long as this Agreement does not terminate by operation of paragraph 5 above, and is not rendered null and void by operation of either paragraphs 4 or 6 above, the MIDLAND PARTIES will indemnify and hold harmless the CRITICAL AREA COMMISSION against any and all costs and losses, including counsel fees, in any suit or proceeding arising out of the RELEASED CLAIMS brought by or on behalf of any one or more of the MIDLAND PARTIES in which the CRITICAL AREA COMMISSION is named as a party and is brought subsequent to the date of this Agreement. In the event any third party who

is not directed or controlled by the MIDLAND PARTIES initiates any suit or proceedings arising out of or relating to the RELEASED CLAIMS, naming either or both of the MIDLAND PARTIES or the CRITICAL AREA COMMISSION, the named PARTY or PARTIES in any such litigation shall each defend their position at each PARTY's own cost, including, but not limited to, the cost of attorneys' fees.

9. **General Provisions.**

a. **Construction.** Unless the context requires otherwise, singular nouns and pronouns in this Agreement shall be deemed to include the plural, and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.

b. **Merger and Integration.** This Agreement constitutes the entire agreement between the PARTIES and supersedes all other prior oral or written agreements between the PARTIES. It is expressly understood that no amendment, deletion, addition, modification, or waiver of any provision of this Agreement shall be binding or enforceable unless in writing and signed by all PARTIES.

c. **Severability.** Each and every provision of this Agreement is severable. If any term or provision is held to be invalid, void or unenforceable by a court of competent jurisdiction for any reason whatsoever, such ruling shall not affect the validity of the remainder of the Agreement.

d. **Meaning and Effect.** This Agreement has been negotiated by the PARTIES through their respective counsel. The PARTIES attest, by their respective signatures below, that they understand the meaning of this document and the consequences of signing it and acknowledge that each has entered into this Agreement freely and after the opportunity to consult with counsel. The PARTIES accept this Agreement as their free and voluntary act, without

duress, and intend to be legally bound by it. This Agreement is made without any reliance upon any statements or representations by the PARTIES or their representative not contained herein.

e. **Costs.** The PARTIES shall bear all of their own costs and shall be responsible for all or their own attorneys' fees in connection with the CIVIL ACTION and in connection with the negotiation, execution and performance of this Agreement.

f. **Applicable Law.** The performance, construction and enforcement of this Agreement and any documents executed in connection with this Agreement shall be governed by the laws of the State of Maryland, without regard to conflicts of law.

g. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have knowingly and voluntarily signed and sealed this Settlement Agreement.

CRITICAL AREA COMMISSION:

By: _____ (SEAL) 9/7/2005
Martin G. Madden Date
Chairman

_____
Witness

THE MIDLAND COMPANIES, INC.:

By: _____ (SEAL) 9-7-05
George A. Valanos Date
President

_____
Witness

MILES POINT PROPERTY, INC.:

By: _____ (SEAL) 9-7-05
George A. Valanos Date
Managing Member

_____
Witness

bert ... Ehrlich, Jr.
vernor

... S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

May 14, 2004

Ms. Cheryl Thomas, Town Manager
Town of St. Michaels
P. O. Box 206
300 Mill Street
St. Michaels, Maryland 21663-0206

Re: Town of St. Michaels Proposed Program Amendment
Miles Point III Growth Allocation Request

This letter notifies you of action by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays on the referenced growth allocation request. On May 5, 2004, at its regular meeting, the Critical Area Commission approved the Town's request to amend its Program to use 70.863 acres of growth allocation for the Miles Point III project to change the Critical Area designation of the property from RCA to IDA. The approval is subject to the following conditions:

1. The development shall be set back from the landward edge of tidal waters at least 300 feet. Passive recreation activities may be allowed outside of the 100-foot Buffer.

2. The 100-foot Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in the Critical Area Criteria. Before final recordation of any subdivision plats or grading of the site, a Buffer Management Plan shall be developed cooperatively with the Town and the Commission and their respective staffs. The Buffer Management Plan shall be reviewed and approved by the Commission. The Buffer Management Plan may provide for public access.

3. In measuring the 300-foot setback and the100-foot Buffer, the measurement shall be based on the existing shoreline at the time that the Buffer Management Plan is submitted to the Commission.

4. A Stormwater Management Plan shall be developed that promotes environmentally sensitive design and explores all opportunities for infiltration and bioretention before utilizing surface water treatment measures. The Stormwater Management Plan shall be

EXHIBIT A

developed cooperatively with the Town and the Commission and their respective staffs. The Stormwater Management Plan shall be reviewed and approved by the Commission.

The Town is required to amend the Town's Critical Area Map to show this change within 120 days of receipt of this letter. Please provide a copy of the Town's amended map to the Commission when it becomes available. If you have any questions, please telephone me at (410) 260-3480. In closing, I would like to thank you and your staff for your cooperation and assistance over the last several months as the Commission reviewed this proposal.

Sincerely,

Mary R. Owens

Mary R. Owens, Chief
Program Implementation Division

cc: Honorable Robert Snyder, Town of St. Michaels
Mr. Mike Hickson, Town of St. Michaels
Ms. Debbie Renshaw, Town of St. Michaels
Ms. Marianne Mason, DNR-AG

Critical Area Commission
DECISION
MAY 4, 2005

APPLICANT: Town of St. Michaels
(Midland Company, Miles Point III Growth Allocation Request)

On Remand from the Circuit Court for Talbot County, Maryland: *Midland et al. v. Critical Area Commission.*

PANEL RECOMMENDATION: See Panel Report

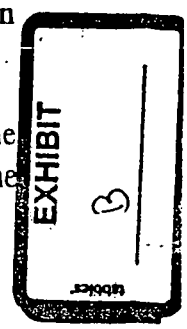
ACTION: Vote

BACKGROUND

The Town Commissioners of St. Michaels awarded 70.863 acres of growth allocation for the Miles Point Project, a residential development of 251 single-family units, 20 townhouses, 8 live/work units, an inn and a public waterfront park area. The Town submitted the request to the Commission for review and approval in 2004 (see the Panel Report of May 5, 2004 for the history of the project). The proposed project is adjacent to an existing IDA property south of the project site. The proposed development is located within the municipal boundaries of St. Michaels, and will be served by public sewer and water. The Town's proposal envisions intense development for the site, with impervious surface levels estimated to increase from the present state (primarily agricultural land at 0% impervious) to over 50% of the site. The developer proposes to dedicate the 100-foot Buffer area to the Town for use as a public park, including "gathering areas" for Town functions such as concerts and civic events.

Having determined in 2004 that the Town's proposed program amendment could "meet" the standards of Natural Resources Article 8-1808(b) (1) through (3) and the Commission's criteria **only** with the conditions to which the approval was subject, the Commission determined to approved the amendment **subject to** the conditions. Accordingly, the Commission approved the Town's request, subject to four conditions, as set forth in the Commission's letter of May 14, 2004, notifying the Town. That letter is part of the record for today's proceedings. These conditions were challenged by the developer. On appeal by the Midland Company, the circuit court for Talbot County granted mandatory relief in the form of an Order directing the Commission to take certain action at today's meeting.

The Circuit Court for Talbot County directed the Commission to take action on the Town of St. Michaels' request for program amendment in the Miles Point III matter at the first meeting which is at least ten days after the Commission's receipt of the Court's



Judgment in Case No. 5088, *Midland Companies, et al, v. Maryland Department of Natural Resources, Critical Area Commission.* The Commission received the Court's Judgment on April 14, 2005, and thus is obligated to act at today's meeting.

The original Panel in this growth allocation program amendment (from 2004) re-convened today, and reviewed the Court's opinion, the Panel Report and Supplemental Report from May of 2004, the Commission's notification to the Town of May 14, 2004, and, given the very limited time available, the original record of the proceedings. These documents, including the full record, were made available to all Commission members today.

The record before the Panel and the full Commission from the time of the original decision (May, 2004) remains the same as the record before the Panel and the Commission today, with the exception of the addition of the circuit court's opinion in the above case. The Commission has read, considered, and discussed the Panel's Report, Findings, and Recommendation dated today, May 4, 2005.

The Commission agrees with the Panel that, in considering an application for a program amendment, including a growth allocation, the Panel and the Commission have the obligation to consider the sections of the Maryland Code and the COMAR criteria adopted under §8-1808, as the General Assembly has directed the Commission to do in Natural Resources Article 8-1809 (i) and (j). Were the Commission able to again consider and determine if the proposed program amendment "meets" these statutory and regulatory criteria (without the challenged conditions), the Commission may very well determine that the amendment must be denied. However, the Commission recognizes that the Circuit Court stated (at page 11 of the April 11, 2005 Opinion) that the only issue for the Commission to consider is "whether the program amendment proposed by the Town of St. Michaels meets the criteria for an Intensely Developed Area." The Commission has no choice but to attempt to comply with the directions in the Circuit Court's Order, and this Decision of the Commission is made under the strictures created by the Circuit Court's Order

The Commission further understands that the Circuit Court's Order of April 11, 2005 requires the Commission to act at today's (May 4, 2005) meeting, despite the fact that the Commission has appealed the circuit court's decision to the Court of Special Appeals. In addition to appealing the circuit court's decision to the Court of Special Appeals, the Commission has sought a stay of the circuit court's order both from the circuit court (no ruling on the Commission's motion) and from the Court of Special Appeals (stay denied, with leave to re-apply). Because the circuit court's order remains in effect, the Commission must act today on a decision with which it disagrees and has appealed.

The Commission has reviewed the Court's Order, and the Commission finds that the Court confined the Commission to a narrow set of considerations, that is: "the Commission is directed to consider and determine, on the basis of the existing record, whether the program amendment proposed by the Town of St. Michaels meets the criteria for an Intensely Developed Area." (Opinion at page 11). From this sentence, the Commission understands that its function is limited to considering the existing record, and to determining whether the program amendment for growth allocation for the Miles Point property, as proposed for development, would meet the criteria for an IDA. (The Commission has ample evidence in the record to support a determination that the Miles Point property, as it currently exists, does not meet the criteria for an Intensely Developed Area, because the property is an undeveloped farm.) Thus, the Commission considered the record and the issue framed for its decision in light of the Court's statement that "the **sole issue** before the Commission is whether the property satisfies the definition of IDA as set forth in the criteria, and in applying criteria, those contained in §8-1808.1 are controlling in the case of inconsistency with those of the Commission." (Opinion at page 11, emphasis added). The constricted legal standard announced by the circuit court renders the Commission's fact-finding a perfunctory exercise.

STATUTE AND CRITERIA

The court's decision restricts the Commission to consider **only** the guidelines for growth allocation listed in Natural Resources Article §8-1808.1 and the Commission's criteria defining an Intensely Developed Area (COMAR 27.01.02.03). The relevant statutory provisions are set forth in the Panel Report, but we will repeat them here. The pertinent provisions of the Code, Natural Resources Article §8-1808.1 (c) are:——

When locating new intensely developed or limited development areas, local jurisdictions shall use the following guidelines:

(1) New intensely developed areas should be located in limited development areas or adjacent to existing intensely developed areas;

***

(4) New intensely developed... areas to be located in the resource conservation area shall conform to all criteria of the Commission for intensely developed....areas and shall be designated on the comprehensive zoning map submitted by the local jurisdiction as part of its application to the Commission for program approval or at a later date.

The "criteria for an Intensely Developed Area" (Opinion at page 11) are found at COMAR 27.01.02.03 A and B:

A. Intensely developed areas are those areas where residential, commercial, institutional, and/or industrial, developed land uses predominate, and where relatively little natural habitat occurs. These areas shall have at least one of the following features:

(1) Housing density equal to or greater than four dwelling units per acre;

(2) Industrial, institutional, or commercial uses are concentrated in the area; or

(3) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre.

B. In addition, these features shall be concentrated in an area of at least 20 adjacent acres, or that entire upland portion of the Critical Area which the boundary of a municipality, whichever is less.

FINDINGS OF FACT AND STATEMENT OF REASONS

As discussed above in this Decision and in the Panel Report, the Commission's findings and recommendations are severely limited by the terms of the Court's order. Given that restriction, the Commission was mindful that it is not able to consider the statutory goals of the Critical Area Program, as required by Natural Resources Article 8-1809, nor is the Commission permitted to determine if the proposed program amendment "meets" those statutory goals or the Commission's criteria promulgated under §8-1808.

Based on the record, and in particular the facts set forth in the Panel Report and the Panel Reports from 2004, the Commission finds that:

(1) The new IDA of Miles Point III will be located adjacent to an existing IDA.

(2) The new IDA (after it is developed) will conform to the Commission's criteria for an intensely developed area and it has been designated on a map submitted by the Town as part of the application for program amendment.

The reasons for these findings are as follows:

(1) The Town stated that the new IDA of Miles Point is adjacent, on the south side, to an existing IDA.

(2) The new IDA will have residential uses predominating, (over 250 units on 70 acres) and will contain relatively little natural habitat, with impervious surface increasing from 0% to over 50%.

(3) The new IDA will have housing density greater than three dwelling units per acre, and the area is served by public water and sewer collection.

(4) The new IDA is greater than 20 acres.

DECISION

On the facts in the record, the sole issue the Commission is directed to consider by the circuit court, i.e. whether the property satisfies the definition of IDA as set forth in the criteria, (See Opinion at page 11) is easily decided. The Commission determines that the Miles Point III property will satisfy the definition of IDA when it is developed as proposed in the Town's requested program amendment. Because this determination appears to be the only one that is available under the circuit court's direction, the program amendment is approved.

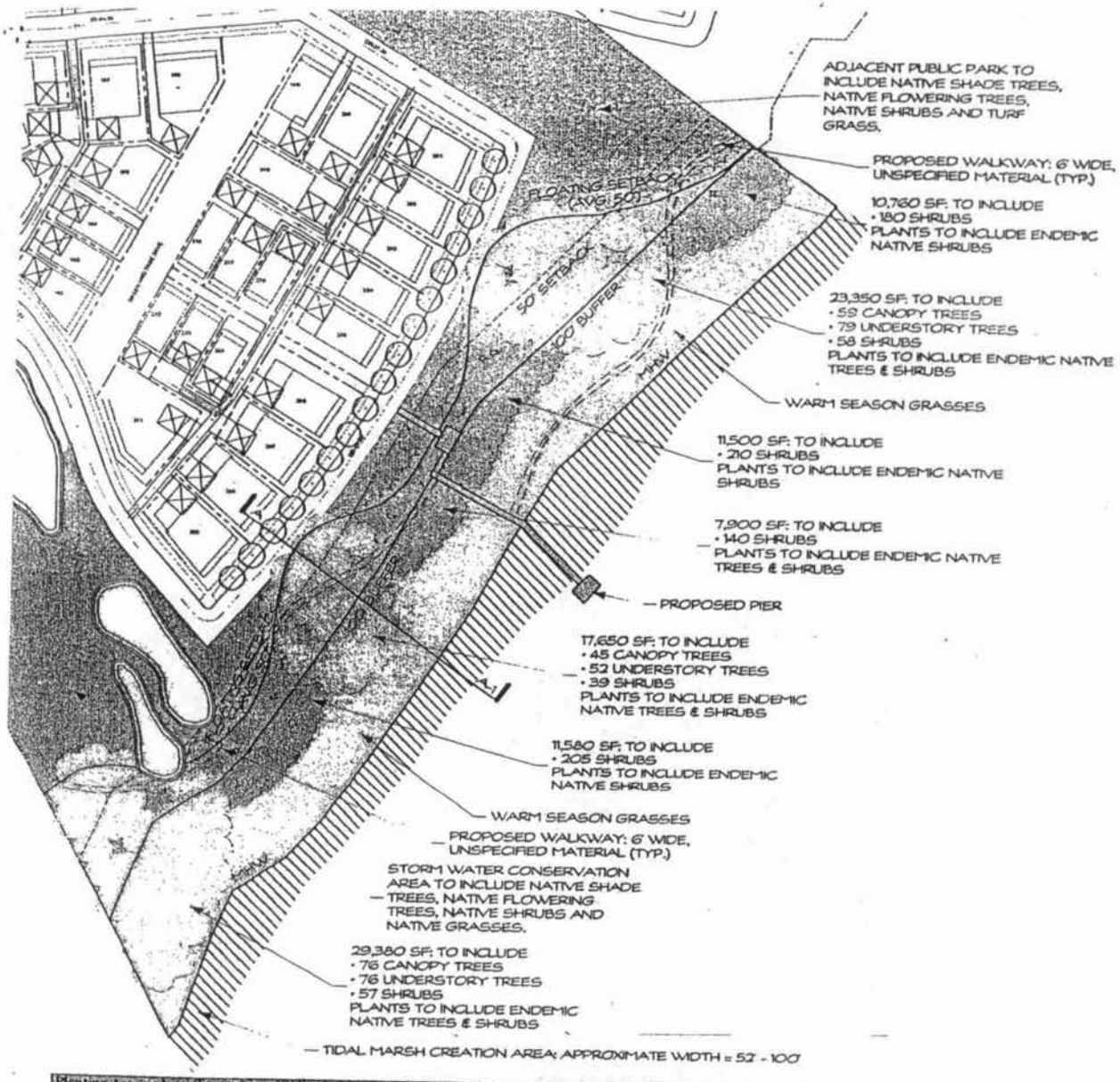
Pursuant to the Court of Special Appeals' May 3, 2005 Order, the Commission intends immediately to seek a stay from the Court of Special Appeals of the effective date of this Decision approving the program amendment. This Decision is therefore stayed, and shall not become effective until such time as the Court of Special Appeals (or such higher court as a stay may be sought from) makes a decision on the Commission's request.

Dated: May 4, 2005

By: Martin G. Madden

Martin G. Madden, Chairman

This Decision was voted on and approved at the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays' regular meeting of May 4, 2005. The vote recorded was 17 in favor and 5 opposed and 1 abstained.



Planting Area	C.A.C. Growth Allocation Condition		
100' Buffer	103,530 sf	Trees, Shrubs	
200' Setback	188,672 sf	Turf Grass	
Tidal Marsh	0 sf		
Total	**292,202 sf**		

Planting Area	Miles Point Agreement in Principle, Sept. 2005		
	Trees & Shrubs	112,120 sf	Canopy Trees, Understory Trees, Shrubs
	Warm Season Grasses	55,800 sf	Warm Season Grasses
	Storm Water Conservation Area	46,160 sf	Trees, Shrubs, Native Grasses
	Public Park	66,894 sf	Trees, Shrubs, Turf Grass
	Tidal Marsh	76,000 sf	Native Grasses
Total	**356,974 sf**		

100' Buffer Plantings	C.A.C. Planting Guidelines*	
*C.A.C. Planting Guidelines	1 Canopy Tree plus 2 Understory Trees or 1 Canopy Tree plus 3 shrubs per each 400 sf within 100' Buffer	
Total 100' Buffer Plantings	259 Trees	
	259 Understory Trees	
	388 Shrubs	
Total Plantings	1,036 Trees & Shrubs	

100' Buffer Plantings	Miles Point Proposed Planting, Sept. 2005 Agreement	
Total 100' Buffer Plantings	180 Canopy Trees	1" Caliper
	207 Understory Trees	1" Caliper
	889 Shrubs	min. 5 gallon container grown
Total Plantings	1,276 Trees & Shrubs	

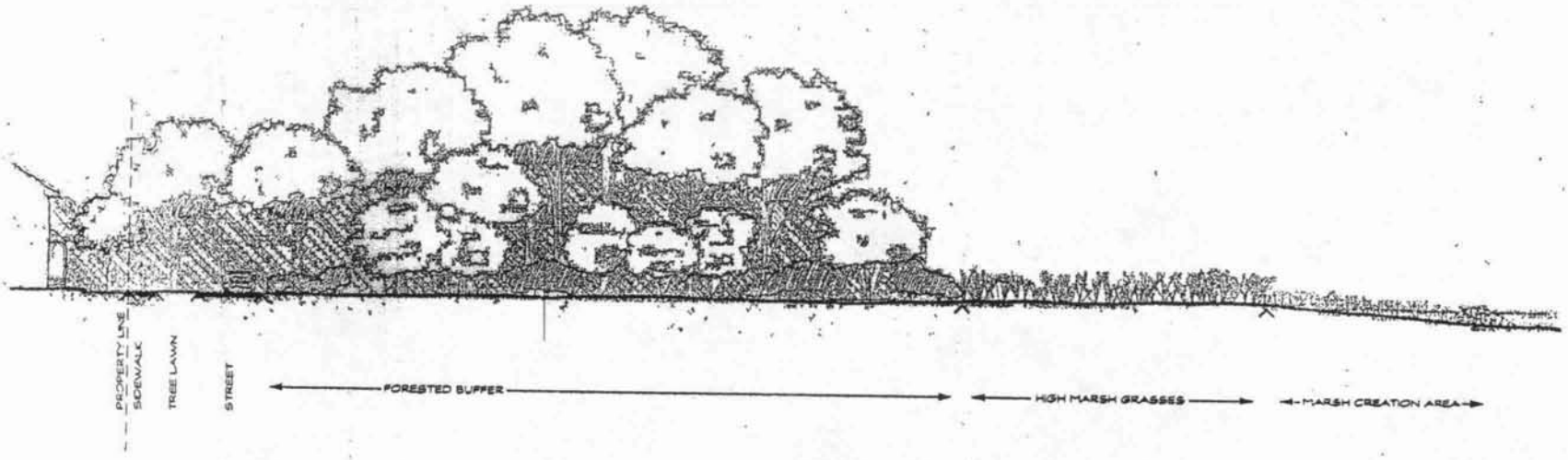
Notes:
- Planting stock size = 1" caliper (avg.)
- Planting rates for seed mix = 35 lb/AC (avg.)

Key:
- 100' Buffer
- 200' Setback/Adjacent Open Spaces & Canopy Trees, Understory Trees, Shrubs
- Shrubs
- Warm Season Grasses
- Tidal Marsh Creation Area

MILES POINT
CONCEPTUAL SHORELINE BUFFER PLAN
SCALE: 1" = 100'
02 SEPTEMBER 2005
GRAHAM LANDSCAPE ARCHITECTURE

E. 1413

EXHIBIT C



A-A1 TYPICAL SECTION 2
Scale: 1" = 20'

EXHIBIT
D

Miles Point: Buffer
Management Plant List
15-Aug-05

Latin Name	Common Name	Size	Light	Moisture	Notes	Habitat Advantages
Trees						
Acer rubrum	Red Maple	20'	sun to light shade	moist, cool acidic		Excellent fall color. Buds, flowers and leaves provide food for many birds and mammals. Chipmunks and squirrels eat seeds and some songbirds use stalks for nest building
Amelanchier arborea	Serviceberry	30'	sun to light shade	moist well drained		Fruit eaten by bluebirds, cardinals, and tanagers. Foliage is used by browsers.
Amelanchier canadensis	Serviceberry	15'	sun to light shade	wet to mod dry		Fruit eaten by bluebirds, cardinals, and tanagers. Foliage is used by browsers.
Carya ovata	Shagbark Hickory	30'	sun to light shade	moist to dry		Leaves are used by browsers. Nuts are also consumed by deer, turkey, foxes, wood ducks, and squirrels.
Cercis canadensis	Red Bud	25'	sun	moist		Great specimen tree but limited in wildlife value – provides color in the landscape.
Chionanthus virginicus	Fringe Tree	15'	sun to light shade	wet to mod dry		Limited wildlife value
Cornus florida	Flowering dogwood	15'	sun to light shade	moist		Fruit is an important food source for songbirds including evening grosbeak, cardinals, robins and cedar waxwings.
Ilex opaca	American Holly	20'	sun to light shade	moist		Used extensively by many songbirds including thrushes, mockingbirds, catbirds, bluebirds and thrashers. Foliage provides cover for songbirds and mammals
Juniperus virginiana	Eastern Red Cedar	30'	sun to light shade	moist		Twigs and foliage are eaten by browsers. Seeds are eaten most extensively by cedar waxwings. Evergreen foliage provides nesting and roosting cover for sparrows, robins, mockingbirds, tunops, and warblers
Magnolia virginiana	Sweetbay Magnolia	15'	sun to part sun	moist to wet		fruit attracts birds; larval food for swallowtails
Nyssa sylvatica	Black Gum	25'	sun to light shade	moist to wet		Fruit is relished by many songbirds. Users include wood ducks, robins, woodpeckers, thrashers, flickers, and mockingbirds.
Quercus alba	White Oak	100'	sun to light shade	moist		Acorns are at the top of the food preference list for wood ducks, pheasants, grackles, jays, nuthatches, thrushes, woodpeckers, rabbits, foxes, squirrels and deer
Quercus palustris	Pin Oak	30'	sun to part sun	moist to dry		Acorns are at the top of the food preference list for wood ducks, pheasants, grackles, jays, nuthatches, thrushes, woodpeckers, rabbits, foxes, squirrels and deer
Quercus phellos	Willow Oak	30'	sun to part sun	moist		Acorns are at the top of the food preference list for wood ducks, pheasants, grackles, jays, nuthatches, thrushes, woodpeckers, rabbits, foxes, squirrels and deer
Quercus rubra	Southern Red Oak	60'	sun to part sun	moist		Acorns are at the top of the food preference list for wood ducks, pheasants, grackles, jays, nuthatches, thrushes, woodpeckers, rabbits, foxes, squirrels and deer
Shrubs						
Aronia arbutifolia	Red Chokeberry	6'	sun to part sun	wet to dry	Plant in clumps	Fruit eaten by grouse, chickadees and other songbirds.
Clethra alnifolia 'summersweet	Summersweet clethra	4'-8'	sun to light shade	moist to wet		Limited wildlife value – Excellent for summer flower, shrub border. Good plant for wet areas with heavy shade.
Hydrangea arborescens	Smooth Hydrangea	4'	sun to light shade	moist to mod dry		
Hydrangea arborescens	Wild Hydrangea	6'	shade to part shade	moist		
Ilex glabra	Inkberry	6'	sun to shade	moist to mod dry		Berries used by a variety of wildlife.
Ilex verticillata	Winterberry	8'	sun to light shade	moist to wet		Used extensively by many songbirds, particularly thrushes, mockingbirds, robins, bluebirds and thrashers.
Itea virginica 'Henry's Garnet'	Virginia Sweetspire	5'	sun to light shade	wet to mod dry		Fruit capsules are used by some songbirds.
Lindera benzoi	Spicebush	6'	shade to part shade	dry to mod wet		Attracts butterflies.
Myrica pennsylvanica	Northern Bayberry	12'	sun to light shade	moist to dry		Fruit is eaten by a variety of birds in small quantities including tree swallows and myrtle warblers.
Rhododendron catawbiense	Catawba rhododendron	8'	sun to shade	moist to mod dry		Limited wildlife value except as browse for deer and winter cover for songbirds.
Rhododendron viscosum	Swamp Azalea	8'	sun to light shade	moist to dry		Limited wildlife value except as browse for deer and winter cover for songbirds.
Rhus aromatica	Aromatic Sumac	6'	sun to part shade	moist to dry		Seeds are eaten by songbirds.
Sambucus canadensis	Elderberry	12'	sun to light shade	moist to wet		Provides fruit for birds and other mammals.
Vaccinium corymbosum	Highbush Blueberry	8'	shade to part shade	mod wet to wet		Used heavily by grouse, scarlet tangler, bluebirds, thrushes and other songbirds.
Viburnum acerifolium	Maple leaf viburnum	4'	sun to shade	moist to dry		Used by grouse, brown thrasher, cedar waxwing, squirrels and deer.
Viburnum dentatum	Arrowood Viburnum	12'	sun to light shade	moist to dry		Used by grouse, brown thrasher, cedar waxwing, squirrels and deer.

E. 1415

EXHIBIT
F

E. 1416

Viburnum nudium	Possum-Haw viburnum	6'	sun to light shade	wet to mod dry		Used by grouse, brown thrasher, cedar waxwing, squirrels and deer.
Marsh Grasses						
Hibiscus moscheutos	Common Rose Mallow	6'	Sun	wet		Attracts butterflies
Juncus roemerianus	Black Rush	5'	Sun to partial shade	wet to moist		
Myrica cerifera	Wax Myrtle					
Myrica pensylvanis						
Rosa rugosa	Rugosa Rose	3'-6'				
Scirpus robustus						
Solidago sempervirens						
Spartina 'alterniflora'						
Spartina 'patens'						
Grasses						
Andropogon glomeratus	Bushy Bluestem					
Andropogon virginicus						Provides wildlife food and cover.
Bontelona curtipendula	Side Oats Grama					
Carex species						Provides wildlife food and cover.
Decanthelium clandestinum	Deer tounge					
Deschampsia cespitosa						Provides wildlife food and cover.
Elymus canadensis	Canada Wild Rye					
Panicum virgatum						Provides food for many sparrow species
Schizachyrium scoparium						Provides food for many sparrow species
Tridens flavus	Purple Top					
Forb Seeds for Grass Mix						
Aster novae-angliae	New England Aster					
Bidens cernua	Nodding Bur Marigold					
Eupatorium maculatum	Spotted Joe-Pye Weed					
Solidago graminifolia	Grass-leaved Goldenrod					
Mimulus ringens	Square-stem Monkey Flower					
Monarda fistulosa	Wild Bergamot					
Polygonum pensylvanicum	Pennsylvanica Smartweed					
Senecio aureus	Golden Ragwort					
Verbena hastata	Blue Vervain					
Veronia novaboracensis	New York Ironweed					

Council suggests St. Michaels deny request

By CHRIS WILLIAMS
Staff Writer

E[illegible]ON — The Talbot County Council unanimously recommended Friday that the St. Michaels Town Commission deny the growth allocation request for the Miles Point development.

"I regard growth allocation as ort of a precious commodity to e used when it's most appropriate and will achieve a significant public benefit," said Councilman Philip Carey Foster. "I on't think this is the place to e it. I think the problems that uld be generated by adding at degree of population to that cation greatly outweigh any nefits that may come out of project."

he St. Michaels Town Commissioners are expected to be a public hearing Tuesday on growth application from the lland Companies to build 312 nes on the 89-acre Miles nt property. The St. Michaels nning Commission has been sidering the application e September and held nuor[illegible]blic hearings before ir[illegible]vorable recommendon[illegible] the proposal last sday.

Michaels Town Manager il Thomas said the commisrs were notified about the ay afternoon county council session at 4 p.m. Thursday Town Commission Presi-Robert Snyder immediateit a letter to the council reing to postpone the meet-

town "is in the midst of h allocation hearings and a decision has not been d in that matter, we are e to attend the workshop ake comments," Snyder "We ask that the council, re, not take a stand with-the information and we at you will consider our s, and the reasons for be worth your consider-these matters."

haels Town Commission esident Phil Dinkel apat the Friday afternoon to restate the town's poat it would not be appro- commissioners to lidland proposal application is still beidered. Councilwoman Hope Harrington also questioned the appropriateness of issuing an opinion before the town commission has made a decision.

> "I'm not convinced that the present plan ... is the wisest use of that growth allocation. You only have it once, it's gone forever after that. I would just ask the commissioners to consider long and hard how they decide to use it and is it in the best interest of the town?"
>
> Councilwoman Hilary Spence

Foster, who made the motion to issue the opinion opposing the Miles Point proposal, said it would not make any sense to wait until after the town commission's decision to wait.

"It wouldn't be any good, obviously, to give them advice after they've already done whatever they decide to do," Foster said.

The county council replied to Snyder with a similar response in writing Friday, saying that the council members had been polled and the consensus was to proceed with the workshop as scheduled.

All five county council members expressed concerns over the scale of the proposed Miles Point project and its potential impact on the environment, traffic and a struggling wastewater treatment plant.

Recognizing that the ultimate authority on growth allocation rests with the town commissioners, Councilwoman Hilary Spence said she agreed with Foster.

"I'm not convinced that the present plan ... is the wisest use of that growth allocation. You only have it once, it's gone forever after that. I would just ask the commissioners to consider long and hard how they decide to use it and is it in the best interest of the town?"

The county council also unanimously voted to send a letter to the St. Michaels Town Commission discussing the recent annexation of the former Hunteman property, a 17-acre piece of waterfront land that is a key component of the Miles Point development. The letter references a June 20 letter from the town commission to the council that said the commissioners had no reason to believe that the council would not relinquish control of the zoning on the Hunteman property if it was annexed.

"There was no reason for the town to assume, then," the council wrote, "what the county council would do if the question were presented, and there is no reason to assume now what the council will decide when it is appropriate to do so."

The Talbot County Planning Commission recently recommended that the county council retain control of the zoning on the Hunteman property for five years, which it may do under Maryland state law. While the move would not prevent the Miles Point development from occurring, it could delay any building on the Hunteman property, which represents 17 acres of the 89-acre project, but comprises the majority of the waterfront land.

Holding up the zoning also would delay any potential shoreline improvements on that part of the property, St. Michaels planning commissioners said Thursday.

Following the workshop, St. Michaels resident Jim Frankos of West Chestnut Street criticized the county council for issuing an opinion without having all the facts.

"It's just a shame that they haven't been able to attend any of the open forums in St. Michaels," said Frankos, who attends most town meetings. "Because all of these issues have been addressed."

The St. Michaels Town Commission is expected to begin the public hearing on the Miles Point growth allocation request at its regular town meeting at 7:30 p.m. in the Chesapeake Bay Maritime Museum's Steamboat Building.

Talbot County Planning Administrc meeting on Friday concerning the growth for the citizens of St. Micha

Growth

ness is minimum versus maximum," Smith said. "You don't get growth allocation unless you've shown that that proposal to be the best example, a superior example of protecting the environmental trust."

One example of the proposal's minimum efforts, Smith said, was the use of a 100-foot buffer instead of a 300-foot buffer, which the Critical Area's growth allocation criteria suggests.

Megahan and Knepper, however, pointed to the shoreline management plan that would be put in place to reduce erosion as well as the stormwater management system throughout the development as examples of overall improvements to the environment.

"There was no habitat identified on this property," Megahan said, "but new habitat is likely to be created. Stormwater management would exist where none

Statue Ex. 9

Douglass memorial there was a good opportunity to craft an official written policy concerning public properties and memorial monuments.

The Frederick Douglass Project stems from a discussion in winter 2002 by staffers, volunteers and board members at the Historical Society of Talbot County of the idea of creating a monument to Douglass in Talbot. In August 2002, a public

TALBOT COUNTY PLANNING COMMISSION
TALBOT COUNTY GOVERNMENT BUILDING
TALBOT COUNTY COUNCIL MEETING ROOM
EASTON, MARYLAND
MINUTES FOR DECEMBER 3, 2003

RECEIVED
MAR 04 2004
CRITICAL AREA COMMISSION

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

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 1st 1/2, once this is used, the second 1,213 can be requested. It is not correct that 128 acres is the only growth allocation acreage that can go to IDA.

- Mr. Philip Dinkle, Commissioner of Town of St. Michaels.

Mr. Dinkle read a letter the Town had written to the Commission. It noted that Bill 933 would deprive its ability to award growth allocation. The Commissioners of St. Michaels requested the Planning Commission to table their consideration of this Bill until their January meeting, in order to give time for more consideration.

- Michael Hickson, Esq., Banks, Nason, & Hickson, P.A., 113 South Baptist St., Salisbury

Mr. Hickson stated that this legislation would very much affect the future of the Town. Almost all the process is complete in regard to the Strausburg property. This legislation would undo all of the work they have done regarding this property. He noted that to take such a drastic, disruptive, radical step as this, is like throwing the baby out with the bathwater. He stated that the Perry Cabin property was annexed in 1980, pursuant to an Annexation Agreement, and in the 1980's they received 245 acres for IDA, now all of a sudden without any consultation or input, the Council has introduced this Bill. He asked

Ex. 10

that the Planning Commission postpone their hearing on this, not make a recommendation to the County at all, and conduct a workshop where this could be discussed. He asked the Planning Commission to allow the Towns to meet with them, to discuss the problems that prompted this Bill. Possibly conduct a workshop. He stated he felt this Bill is contrary to State law. To put the ultimate control of growth allocation totally in the County hands is counter-productive. Good planning dictates that growth occur in and around the current existing Towns. This takes away the autonomy of the individual Towns. The Towns have the right to determine their own destiny. He also asked that the Commission make no recommendation, and schedule some work sessions to address this issue.

Chairman Hutchison noted that when this growth allocation was determined, they felt that all the acreage would be gone by now. He stated there was a mechanism in the Ordinance to have these discussions with the Towns. They haven't done that till now, because we have had plenty of growth allocation. However, on page 190:178, item 11, of the Planning Ordinance addresses this matter, and that this suggested legislation is not needed, if they follow the current Ordinance. He also noted they are wanting to do away with the maps, however item #16 on page 179, which discusses the maps are to be used as guides only, and not definitive, in deciding growth allocation issues. He feels the legislation is unfair, and flawed.

Mr. Hickson said he feels if the Commission simply makes a recommendation, either for or against, then the County Council can still act. He recommended again, that the Commission have work sessions. Chairman Hutchison stated he was not sure the Council would wait that long for a response.

Mr. Dave Thompson noted his recollection is they have 60 days before the Council can move without a comment from the Commission.

Mrs. Makosky noted the population of the Town vs. the population of the County and the responsibility of the County to address the health, safety and welfare of the majority of the citizens. She believed that the County was justified in exercising this power.

Mr. Sewell noted that for years now, they have been saying that the communication between the Town and the County has been cut off, and this is an excellent example.

- Steve Florkewicz, East Morango Street, St. Michaels

He spoke in favor of acceptance of the Bill. He agreed with Mrs. Makosky in that what happens in St. Michaels will affect the County in general, and that the Town Commissioners have chosen to ignore any comment from people out side of the Town, regarding projects such as Miles Point.

➢ David Thompson, Esq., 130 N. Washington St., Easton

Mr. Thompson spoke as a legal representative of Trappe and Oxford, as well as Mr. and Mrs. Strausburg (whose property received growth allocation from the Town of St. Michaels). Mr. Thompson stated that politics has begun to replace planning. He stated there is a rush to bring to the table a Bill, which we already know is flawed. A good piece of legislation requires multiple drafts, good planning, and thorough planning. He recommended that the Commission not make a decision on this Bill, and suggested meetings to discuss this issue.

➢ Barry Gillman, St. Michaels Town Commissioner

Mr. Gillman spoke against this Bill. He stated it seemed that there was a belief that if St. Michaels doesn't do something that no development will occur. This is just not the case. If Bill 933 is directed at the Inn at Perry Cabin Farm, it is not appropriate. There will be no permits unless the infrastructure, including sewage, can handle it.

➢ Mr. Robert Fletcher, 24640 Yacht Club Rd., St. Michaels

Mr. Fletcher stated he attended the St. Michaels Commissioner meetings, and they were not very accepting of the other residents comments, and felt they were intimidating to people that lived in the County. He stated the Miles Point project, or any other project similar, is total lunacy. The issues facing St. Michaels are huge, and should not be rushed into these decisions.

➢ Michael Hickson

He spoke in defense of the St. Michaels Commissioners in regards to their meetings. He also noted that the Commissioners are working with the County in regards to the quality of the sewage treatment for the Town, along with the expansion.

➢ Mr. Robert Amdur, Bozman

He spoke against the level of density as in regards to the Miles Point project, but had no comment directly toward this Bill.

➢ Mike Pullen, Esq., Talbot County Attorney, Washington St., Easton

Mr. Pullen addressed issues regarding Bill 933. Chairman Hutchison noted legislation should be presented before them before it is introduced to Council. This is an exception, and noted they are not in the 60 day comment period, however, Mr. Pullen clarified that they were in the 60 day comment period.

Mr. Pullen indicated that the maps designating the area allocated for town development in the back of the Zoning Ordinance were adopted in 1989 with the requirement and that

they would be reviewed and amended in four years, by 1993, and every four years thereafter. This was apparently intended to coincide with the State law requirement that the local critical area program be reviewed and proposed amendments be forwarded to the state Critical Area Commission for their quadrennial review and approval. None of those four-year reviews have taken place as anticipated. The maps remain a prospective, forward-looking view from 1989. The maps do not reflect the actual growth that has occurred since then, nor the current town boundaries in some instances.

Mr. Pullen stated that by eliminating these maps from the Zoning Ordinance the planning and zoning functions are separated. The planning function is more appropriately performed through the periodic reviews and updates to the Talbot County Comprehensive Plan and not through the Zoning Ordinance.

State law provides that after subtracting 128 acres reserved for reclassification from LDA to IDA the remaining balance may be reclassified from Rural Conservation zoning to any other zoning classification. Half of the 2,426 acre remaining balance, 1,213 acres, has been allocated between the towns of Easton, Oxford, St. Michaels, and the County. When 90% of this first half has been utilized, the County may request dispensation from the Critical Area Commission of the second 1,213 acre allocation.

Under the existing arrangement, if either the Town of Oxford or the Town of St. Michael's elects to not utilize the growth allocation acreage allotted to them in 1989, individually or collectively, it will be impossible for Talbot County to utilize 90% of the first half of the total amount of growth allocation allotment. This will effectively prevent the County from ever being able to request or utilize the above-mentioned dispensation of the second 1,213 acre allocation from the Critical Area Commission.

Mr. Pullen noted that the Town of Easton has utilized all of its allotted growth allocation acreage and that Talbot County has reviewed subsequent individual applications for growth allocation within the Town of Easton in accordance with existing procedures for supplemental growth allocation in the Zoning Ordinance. This has worked well. Withdrawal of the 1989 allocation from the Towns would simply mean that the Towns' and the County's process to award growth allocation would be coordinated, and that no Town could unilaterally award growth allocation. Adopting this procedure county-wide would put all of the municipalities on the same playing field as the Town of Easton. From a policy standpoint uniformity among the Towns and joint participation in the process, including both the Town and the County, is intended to achieve coordination between the jurisdictions involved, which, hopefully, will result in better development, and greater consistency with the goals of the Critical Area Program.

Mrs. Makosky spoke in favor of the Bill. She feels that it is time for the County to use that power, let the bill take place, and then the negotiations will happen.

Mr. Zuehkle stated his view is opposite of Mrs. Makosky.

Mr. Zuehkle moved to recommend to the County Council to withdraw Bill 933 and instead use the review process as outlined in the current Ordinance, Item 11 on Page 190

Section 178, and within that process recognize that the related maps were intended as guides, as opposed to law. Also as stated in Item 16 Page 190 Section 179.

Mr. Sewell seconded.

Mulcahy 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

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

Ex. 11

this bill is not to take away growth allocation from the towns, it does not mean that St. Michaels or Oxford or Easton for that matter will never any longer be able to award growth allocation. It's solely for the purpose of ensuring the County will be a participant in future awards of growth allocations in those communities. In other words, it would put Oxford and St. Michaels on the same footing as Easton is at this point with regard to the need to collaborate with the County when awarding growth allocation. The passage of this bill would not mean by any means that, for example, the midlands project in St. Michaels would not go forward. It does not mean that. What it would mean is that the County would have some ability to participate in negotiations that it should have been included in but has not been included in. That current project proposes to include the construction of 320 dwelling units, a 30 room inn, and 15,000 acres of commercial

space on a piece of property outside of St. Michaels, and proposes to have approximately three or four entrances on to a County road with only one entrance on to Route 33. The County has not been consulted in any fashion with regard to necessary improvements on that County road. More importantly, as some of the members of the Council have alluded to earlier in discussions this afternoon, this project would add a huge amount of volume to the waste water system. The County should be involved in discussions about a result of that magnitude. At the present time the Town of St. Michaels, as I understand it, is engaged in the negotiation of a so-called developers rights and responsibilities agreement with the developer that will set forth the parameters for not just the development but for what contributions the developer will make to the public good. Once again, because of the counties -- because of the impact on the

County, the development of this size, the County should be involved in this project. Now, I just for the record want to note something, I want to read something into the record on the general subject of whether the reallocation of growth allocation is contemplated by existing law. And what this is is a passage from a staff report prepared for the Miles Point project in February 2000, prepared by Mr. Tony Redman of the firm Redman and Johnston on behalf of the Town of St. Michaels. And there's a discussion in this report about what some of the alternatives might be for future use of growth allocation in that area. And Mr. Redman, and I want to make sure the record reflects, Mr. Redman, as many of you know, was very closely involved in the actual drafting of the critical area law. Mr. Redman states, "indeed it is possible that Talbot County could reduce or could take away entirely the amount of growth allocation that

it's just exactly what I said. Everybody is so busy, yet this vote that you take has the responsibility at having both sides of this argument understood so that your decision is not influenced by any one party. I just hope that you will take the time to either postpone your decision, postpone your vote, make sure you've garnished all the information involved, and then make whatever vote you choose to make. You can't vote on something unless you've got all the facts and there can't just be one side of the story. That's all I ask. Thank you.

(Reporter changed paper.)

MR. HIXON: President Foster, members of the County Council, thank you for the opportunity today. As I said earlier, I represent all five of the commissioners of St. Michaels and they are very sorry that they couldn't be here today for this extremely important issue. More than 50 percent of the town of St. Michaels is located in the critical

area. And that's what makes this issue so important to this town of St. Michaels. If we were in the middle of Kansas, it would be a different issue. I respectfully suggest it is even somewhat of a different issue for the town of Easton because it's not so intensely surrounded by water. This is a very important issue, and at least all of the town has to go on is the face of this bill. Looking at the bill itself, it would appear that at the very least the County Council is going to assume a veto power over any development proposal or any planning -- any development proposal that may come forth in the town in the critical area. To this point I respectfully suggest that there has been no indication to the towns as to what the problem is and the invitation to the towns to get together collectively with the County and work on solving this problem in a less drastic way. I would suggest that this is an extremely drastic way to withdraw all of the

growth allocation from the towns and start over again. It may well be if the towns can get together we can come up with some sort of formula that would please every one, or at least please most of the people. But this way in my judgment this affects a transfer of power from the towns to the County. Each of the towns in this County have been autonomous up to this point and they all have a different character, different flavor, different goals, different places to live. They appeal to different people. Some of us would want to live in St. Michaels, others of us would not. The same is true with the other three towns in this County. I suggest this is going to homogenize the towns in this County, it's going to take away their important character and flavor, their individuality. I suggest that it's going to be problematic as far as the Maryland constitution and some state laws and other laws are concerned. Judge North referred

to a state regulation. He apparently interprets it one way, I interpret it another. I suggest that there is a cooperative and reasonable process in place right now and that this bill will remove that process. Again, the town of St. Michaels would like to cooperate with the County as much as we can. We have scheduled meetings right now the second and fourth Tuesday of the month. Given advance notice, I'm sure the commissioners would be happy to reschedule their meeting so they could come to a joint meeting of the towns and County and address what the real problem is and try to work toward a real solution. Thank you very much. I have a letter and documents I would like to submit for the record and a copy for each of you.

MR. FOSTER: Thank you. If you would give that to Mr. Urbanczyk.

JOHN WOLFE: My name is John Wolfe, I'm a resident of St. Michaels. We have a unique

came out. So I heartily support the 933.

MR. FOSTER: Thank you. Mr. Thompson.

DAVID THOMPSON: Thank you, Mr. President. I am here today on behalf of the commissioners of Oxford. You heard briefly from Kathy Ratcliffe, and Paul Martin is here with her. I had the opportunity --

MR. FOSTER: Mr. Campen is in the hall, so I guess you got --

DAVID THOMPSON: And I was going to tell you I had the opportunity to speak with Sid this morning. I attended the planning commission meeting at which this bill was considered. And the chairman, who probably has the most hands-on experience in the County in terms of the development of the Talbot County critical area plan and the legislation that resulted therefrom, Richard Hutcheson, made a very cogent explanation of the existing law and what it permits. And what he pointed out to those in attendance is that the law in effect

right now contemplates a dialogue with the towns and with the towns planning commissions and the County's planning commission on these growth allocation issues. And he pointed out that the reason that that had not been done to date is because there had been no need to do it. The use of growth allocation acreage had been so minor up to this point that it wasn't necessary. He pointed out, as you all now know, that there is sufficient growth allocation acreage available to accommodate the needs of the town of Easton without the enactment of this bill. It is probably accurate that the town of Oxford has more growth allocation acreage than its current growth area suggests. The town of Oxford would appreciate the opportunity for its planning commission to do its job, that is planning, with the County planning commission. And we believe that the existing legislation is appropriate, that this is an unnecessary step

at this time. Unfortunately what this does is it necessarily brings under the microscope the legal relationships between the towns and the counties. And if the County legislates in a way that many believe violates state law or the state constitution, it necessitates the litigation microscope to resolve that. And then we come up with unintended consequences that none of us really wanted in the first place. The current law does contemplate a dialogue between the planning agencies within the County. That dialogue should be given the opportunity to work without wholesale amendment of the law, which I believe, like Mr. Hixon, will cause other consequences and the unintended consequences that we all have to deal with. Thank you for your time.

MR. FOSTER: Mr. Thompson, are you suggesting that if this bill is defeated that Oxford would voluntarily relinquish some portion of this growth allocation.

DAVID THOMPSON: I am suggesting that Oxford would welcome the opportunity to have its planning commission sit down with the County planning commission and discuss just that circumstance. But Oxford, like the town of St. Michaels, and I'm sure the town of Easton, would like to maintain the autonomy to do its own planning within the town. Your bill, for instance, says that it reaches into the town and gives the County the authority to deal with property inside the towns. I suspect that you will find that legally problematic as we get down the road. You probably don't want to go there. Certainly my municipal clients don't want you to go there. Thank you.

MR. FOSTER: Repeat your name again since it's a new bill.

BETH JONES: My name is Beth Jones and I live at 9005 North St. Michaels Road right outside of St. Michaels and right before Bay Hundred. I'm speaking today as president of

basically runs silent or makes the whole ordinance silent and leaves a hole on that process of growth allocation. There's also conflicts with the '92 planning act and general planning principals. The '92 planning act vision states in rural areas growth is directed to existing population centers. There's also a vision saying -- requiring mechanisms -- regulatory mechanisms are stream lined. If you take all those strikeouts as you have listed in 933, it then becomes silent. Thank you.

MR. FOSTER: Thank you. I assume that's everybody. Anybody who was cut off on the first round, want to extend their remarks. Mr. Goetze, I indicated earlier anybody who wants to speak, you need to come forward. If there's anybody who wants to speak after him for the first time, please come up and take the chair.

AL GOETZE: I will be very brief. I am Al Goetze and my address is St. Michaels,

Maryland. I'd like to speak along the lines of approval of this bill. The scenario I would like the Council to think about and remember is this, a group of town citizens from St. Michaels elected to office, charged with the doing the right thing, they -- accordingly to the law and reference the regulations in doing that, and then after saying no to the proposal, which they did, going to court to challenge -- to be challenged about their no and winning. This is the record, is it not. This is what did happen. They were not in favor initially of this development. Then after agonizing over the legal cost for winning, the justifiable prohibitions, mostly of great concern for the decline or trashing of the Miles River industry asset, they caved in to the single purpose profit driven developer land grab. As you all know, I've been involved for a long time in Talbot County, particularly relative to what is happening to Talbot rivers, all of them,

including the Miles. In terms of the commission, rightfully in terms of their defense, they agreed over a three year period to study the waters off of St. Michaels for three years. And the University of Maryland Horn Point laboratory, I think the best authority anyone could ever find, and I was involved as well and assisted in the presentation. And we reported back after three years of study and the final line was that dissolved oxygen in that river today is not capable of sustaining marine life. And also I think when we talk about whether it's marine life or anything that relates to the opportunity for the citizens of this County to make a living, this very definitely relates to the question of whether or not the watermen and the fishing industry can have a product and a possibility of succeeding. Again, I would very much be in support of the bill.

MR. FOSTER: Thank you, Mr. Goetze.

ARNOLD SMITH: This is the first time around.

MR. FOSTER: Yes.

ARNOLD SMITH: Thank you for the opportunity to appear before you. My name is Arnold Smith and I'm a resident of St. Michaels. And until the end of this month I will continue to serve as a member of the planning commission. And my voice was the ~~descending~~ dissenting voice in the planning commission's recent approval of a growth allocation for the midland folks. And because it very much impacts, affects your legislative piece here, I speak primarily to the midland proposal. It was a bad idea when it was proffered, it was dreadfully out of sync with the realities of life in St. Michaels. It was virtually on all four's inconsistent with the comprehensive plan and had some glaring deficiencies in terms of the critical areas program. That was six years ago when this war began. And after waiting for

six years and waiting for improvement, waiting for something else to happen, and having gone through nine successive victories in terms of the town being upheld in rejecting the application, along comes the latest proposal which has been ramrodded through and the one in which I just referenced I was the minority voice. Suffice it to say, the clear evidentiary requirement of having the best example of a critical area -- of a growth allocation award has never met the test in St. Michaels. What has been provided has been minimal on all scores, from the 300-foot buffer which they do not provide, instead going with the legal limit of 100 feet instead of the 300 feet, to all the problems associated with such incredible density, traffic, air pollution, water pollution, the septic situation. All of which were never fully given extra pluses. Thus what they supplied was the minimum instead of giving the maximum. And

this situation continues today. Very little has been accomplished over these six years except the same glaring problems which face us every day in St. Michaels, still are on the table. I had hoped that we would have had a better presentation from midland, but instead we got a minimal presentation. Thank you for your opportunity.

MR. FOSTER: Are you for or against the bill.

ARNOLD SMITH: I'm for your 933.

MR. FOSTER: Okay. Thank you. No other new speakers. Mr. Hixon, you wanted to extend your remarks.

MR. HIXON: Yes, sir. Thank you. I did want to make a few more points. I think land use planning, comprehensive plans, zoning ordinances, all of which the town has in place and has had in place for many decades, all of a sudden I don't know what 933 is going to do to them, but I think they're going to go

MR. HIXON: I would say let's find a better way. Let's look at the growth allocation that we have. If the concern is the town or towns would tie up the growth allocation so that the County could never reach the threshold to get into the second tier, let's talk about that. Let's see what each town has to have and what each town can give up. Let's see about putting it into a pool that can be drawn upon. If getting down to the threshold to get to the second tier is the issue, I'm sure --

MR. FOSTER: I don't think that is the issue. I think the question is whether the County wants to take this back or doesn't want to take it back.

MR. HIXON: That may be. I think that is problematic. And I'm not trying to be -- I'm not trying to be threatening here, I'm trying to be conciliatory. The town would like to find a way where we can work together.

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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

Ex. 12

and to be responsible for. I don't think that was probably a very good way of doing it. I think that was a kind of a Pontius Pilate sort of thing, we'll wash our hands of it, and if anything goes wrong in any of those towns, they won't be able to blame us because we're not the ones that made the decision. This bill really is about power and it's about control. And I guess I'm reacting against this nonsense of a partnership. It isn't a partnership when you grant somebody authority to do something and then you take it back from them. It is a retaking. Reallocation is to retake, and I guess as revenue enhancement is to tax increase. I mean it's just another way of saying the same thing, maybe a prettier way of saying the same thing. What moved me in the letter from St. Michaels, and I'm not sure what, you know, their priorities are, but what moves me in this is the argument of what kind of situation are we setting up here when we

PUBLIC HEARINGS

Talbot County Council Bills

922, 926, 927, 929, 931 and 933

BEFORE A PANEL

OF

THE STATE OF MARYLAND

CRITICAL AREA COMMISSION

FOR THE

CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: Wednesday, March 24, 2004

Time: 7:00 p.m.

Location: Easton High School
Easton, Maryland

Reported by: David M. Schafer, AA, CCR

E. 1445

Ex. 13

PANEL MEMBER JACKSON: Yes.

MR. PULLEN: No. 933 doesn't address that situation because 933 operates by default because it removes the growth allocation from the 1989 maps from other towns. 762 then comes into play automatically. So 933 doesn't itself deal with that process.

PANEL MEMBER JACKSON: Okay.

PANEL MEMBER BLAZER: Thank you.

MR. PULLEN: Mr. Chairman, if I may, I would like to yield the balance of the County's presentation at this point to a person who needs no introduction to the Panel, the Honorable John C. North.

JUDGE NORTH: Good evening, Mr. Chairman, ladies and gentlemen. I'll lower the microphone a bit. Welcome to Talbot County.

PANEL MEMBER BLAZER: Thank you.

JUDGE NORTH: It's a pleasure to see familiar faces.

You have already observed on the screen

This was in the fall of 2003. At that time the application process commenced. The Town Planning Commission received the Application and commenced its public hearing in September of 2003. Those public hearings were heavily participated in by citizens and noncitizens alike; those public hearings ended, I believe, on November 6, 2003, and a written fifty-some page decision was issued, I believe on November 24 of 2003.

Now, what the Town didn't know at that time and, in fact, didn't know until today, that on October 29, 2003, the County representatives had contacted the staff at the Critical Area Commission and, in fact, it advised them of the existence of County Bill 933, predicted when it would be introduced, when a hearing would be conducted on it, when it would be adopted and when it would be ready for the State Critical Area Commission.

No contact, no consultation, no request for input, no advice even that there was a problem from the County to any of the towns in this county.

11 North Washington St.
Easton, MD 21601
(410) 770-8058
e-mail: khaddaway@talbgov.org
fax: (410) 822-8694
web: www.talbgov.org/econdev/econserv.html

OFFICE OF PLANNING & ZONING
Appointed by County Council:
George G. Kinney, *Planning Officer*
Courthouse
11 North Washington St.
Easton, MD 21601
(410) 770-8030
e-mail: gkinney@talbgov.org
web: www.talbgov.org/pz/pz.html

PLANNING & ZONING COMMISSION
Appointed by County Council to 5-year terms:
Richard Hutchison, *Chair (chosen by Commission in Jan., 1-year term)*, 2006
Linda Makoski, 2002; William C. Boicourt, 2004; Robert C. Zuehlke, 2006; John C. North II, 2008.

Meetings: 1st Wednesday, 9:00 a.m.

ZONING ADMINISTRATION
Mary Kay Verdery, *Assistant Planning Officer* (410) 770-8030
e-mail: mverdery@talbgov.org

DEPARTMENT OF PUBLIC WORKS
Appointed by County Council:
Raymond P. Clarke, *County Engineer*
Talbot County Operations Center
605 Port St.
Easton, MD 21601
(410) 770-8170
e-mail: rclarke@talbgov.org
fax: (410) 770-8176
web: www.talbgov.org/pw/publicworks.html

RECYCLING DIVISION
Derrick Brummell, *Coordinator* (410) 770-8168
e-mail: dbrummel@talbgov.org

SANITATION DIVISION
Raymond P. Clarke, *County Engineer* (410) 770-8170
e-mail: rclarke@talbgov.org

ROADS DEPARTMENT
Appointed by County Council
Richard Ball, Jr., *Superintendant* (410) 770-8150
e-mail: rball@talbgov.org
web: www.talbgov.org/pw/publicroad.html

Ex. 14

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

MEMBERS OF THE PANEL:

Gary Setzer, Chair

Judith Evans

Joseph Jackson

Dave Blazer

Edwin Richards

E. 1449

Ex. 15

JUDGE NORTH: Good evening, Mr. Chairman, ladies and gentlemen. Thank you very much for your attendance here this evening.

You have a handful to consider all these facts and suggestions, and I applaud you're industrious application, as witnessed by the note taking that you're engaged in constantly.

I live on Yacht Club Road. My name is John North. I think I forgot to say that, too. I live at the end of Yacht Club Road and have lived there for something like 18 years. My family has owned property on Yacht Club Road for over 50 years, and I've lived in Talbot County all my life.

I learned to swim in the Miles River when I was about three. And since that time, I think it's fair to say that I have spent more time sailing on the Miles and swimming in the Miles, sometimes simultaneously or nearly so, than anyone else in

This project is modified slightly, and the Town again says no, is sustained by the Circuit Court, goes to the Court of Appeals, the Court of Appeals sends it back and said take a better look at things.

About that time the Town ran out of steam, the Town ran out of money, the Town ran out

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of determination.

I applaud the efforts of the Town Council to have attempted so long and so vigorously to ward off what they very accurately perceived as a gross imposition on this entire community.

But after having raised taxes in the Town twice to meet legal expenses exceeding a million dollars, ladies and gentlemen, fending off Mr. Valanos, after doing that they ran out of steam and consequently the Town voted to grant the growth allocation to this project.

Fortunately the County of Talbot, in the form of a County Council, came galloping to the rescue and said this matter should not proceed in this fashion, and consequently they instituted a bill to recover unused growth allocation from all municipalities in the County of Talbot.

I think all the authorities are in agreement that that is perfectly in accord with the COMAR regulations. I don't think there is any real dispute on that point, though there are arguments to

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be made about it.

So we are in a situation now where the

DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT

THIS DEVELOPER'S RIGHTS AND RESPONSIBILITIES AGREEMENT ("Agreement") is made and entered into this 16th day of February, 2004, by and between THE MIDLAND COMPANIES, INC. ("Midland"); ST. MICHAELS POINT, L.L.C. ("Point"); MILES POINT PROPERTY, LLC ("Miles"); TND DEVELOPMENT, INC. ("TND Inc."); and THE COMMISSIONERS OF ST. MICHAELS ("Town").

Section 1: RECITALS

This Agreement is entered into based upon the following facts and/or understandings:

1.1 When used in these Recitals, each of the terms defined in Section 2 of this Agreement shall have the meaning given to it therein.

1.2 The General Assembly of the State of Maryland adopted Section 13.01 of Article 66B ("Development Agreement Statute"), which authorizes each municipality possessing zoning powers pursuant to Article 66B to enact an ordinance designating and empowering a public principal to enter into a development rights and responsibilities agreements with persons having legal or equitable interests in real property, to provide that the laws, rules, regulations, and policies governing the use, density, or intensity of such real property shall be the laws, rules, regulations, and policies in force at the time the parties execute such agreements, subject to certain limitations.

1.3 In accordance with the Development Agreement Statute, and partially in response to a request from the Developer to the Town, the Town adopted Ordinance No. 290 ("Enabling Ordinance"), establishing rules, procedures and requirements for consideration of development rights and responsibilities agreements ("DRRAs").

1.4 The parties to this Agreement named herein as a Developer, being Midland, Miles, Point and TND, jointly and severally warrant and represent to the Town that the following matters and facts are true and correct:

1.4.1 The representations contained in this Agreement relevant to a determination of who has a legal and/or equitable interest in the Perry Cabin Land and/or the Hunteman Property, as hereinafter described.

1.4.2 The matters and facts, contained in this Agreement relevant to a determination of who has a legal and/or equitable interest in the Perry Cabin Land and/or the Hunteman Property, as hereinafter described.

1.4.3 Point has not retained for itself, or assigned or otherwise conveyed to anyone other than Miles, any interest in (a) the Contract of Sale for the Perry Cabin Land, between Point as purchaser and Perry Cabin Associates Limited Partnership as seller, (referred to in Section 2 of this Agreement) or (b) any interest in the Perry Cabin Land.

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 as a lien party coupled with an interest, for the purpose of and with the right, pursuant to and in accordance with the terms and procedures of the Maryland Code, Real Property Article, Title 14 (Miscellaneous Rules), Subtitle 2 (Maryland Contract Lien Act), or its successor, as amended from time-to-time, to establish, enforce, foreclose on and collect on a lien against the land and improvements of each subdivision lot of the Subject Property for which an assessment has been rendered for its proportionate share (in the same proportion as assessments are normally rendered to lot Owners by the HOA) of the costs incurred by the Town for the inspection, repair, maintenance, re-construction, and/or replacement of the Non-Structural Shoreline Stabilization, pursuant to Section 10.3.3 of this Agreement, and for which assessment payment has not been timely paid in full to the Town or its collection agent, for the unpaid balance of such assessment together with late charges, interest, and all costs of collection. No property shall be sold pursuant to the Maryland Contract Lien Act unless such a bill (or a portion thereof), late charges relating thereto, interest thereon or collection costs relating thereto, have remained unpaid for a period of at least six (6) months after the due date for such assessment.

10.3.3.8 At the conclusion of the ten (10) year period described in Section 10.3.3.3 of this Agreement, the Developer or Owners through the HOA, shall, at their own expense, turn over the Non-Structural Shoreline Stabilization in good and healthy condition to the Town, after which the care and condition of the Non-Structural Shoreline Stabilization shall be at the sole expense of the Town.

10.3.3.9 The contents of this Section 10.3.3 (Non-Structural Shoreline Stabilization) shall be included in the Declaration to the satisfaction of the Town attorney, which Declaration the Town shall have the right to review and amend for such purpose before it is recorded in the County Land Records by the Developer.

10.3.3.10 The provisions of this Section 10.3.3 (Non-Structural Shoreline Stabilization) shall survive any transfer of title to the Subject Property, even if the Town should become the owner of some or all of the Shoreline.

10.4 Duty To Pay Consideration To The Town.

E. 1453

10.4.1 Each payment or duty indicated on the Schedule Of Consideration To The Town (**Exhibit** 10), intended to be paid or performed for the Town, shall be paid or performed in accordance with the terms stated on the Schedule Of Consideration To The Town,

to enforce the assessment, lien and collection rights of the HOA against the Owners, to which rights the Owners hereby consent.

10.3.3.7.4 In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall be irrevocably designated a third party beneficiary, coupled with an interest, for the purpose of and with the right, pursuant to and in accordance with the terms and procedures of the Maryland Code, Real Property Article, Title 14 (Miscellaneous Rules), Subtitle 2 (Maryland Contract Lien Act), or its successor, as amended from time-to-time, to establish, enforce, foreclose on and collect on a lien against the land and improvements of each subdivision lot of the Subject Property for which an assessment has been rendered for its proportionate share (in the same proportion as assessments are normally rendered to lot Owners by the HOA) of the costs incurred by the Town for the inspection, repair, maintenance, re-construction, and/or replacement of the Non-Structural Shoreline Stabilization, pursuant to Section 10.3.3 of this Agreement, and for which assessment payment has not been timely paid in full to the Town or its collection agent, for the unpaid balance of such assessment together with late charges, interest, and all costs of collection. No property shall be sold pursuant to the Maryland Contract Lien Act unless such a bill (or a portion thereof), late charges relating thereto, interest thereon or collection costs relating thereto, have remained unpaid for a period of at least six (6) months after the due date for such assessment.

10.3.3.8 At the conclusion of the ten (10) year period described in Section 10.3.3.3 of this Agreement, the Developer or Owners through the HOA, shall, at their own expense, turn over the Non-Structural Shoreline Stabilization in good and healthy condition to the Town, after which the care and condition of the Non-Structural Shoreline Stabilization shall be at the sole expense of the Town.

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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.

E. 1454

10.4.1 Each payment or duty indicated on the Schedule Of Consideration To The Town (**Exhibit** 10), intended to be paid or performed for the Town, shall be paid or performed in accordance with the terms stated on the Schedule Of Consideration To The Town.

including: (1) the amount of the payment to the Town or nature of performance for the Town; (2) when the payment or performance is due to the Town; and (3) who is responsible for such payment or performance to the Town.

10.4.2 As indicated on the Schedule Of Consideration To The Town, when a payment is [illegible] of an Owner or the agent of an Owner, and [illegible] the Developer, and the time when the payment is due is based on an occurrence or status relating to the particular lot or parcel of the Subject Property on which a dwelling unit or a live/work unit (a "Unit") is intended to be located according to the Development Plan, the person(s) who is the Owner(s) of the lot, parcel or Unit at the time the occurrence or status relating to that lot, parcel or Unit triggers the duty to pay shall be the person(s) who has the duty to make the payment to the Town.

10.4.3 If a one-time per-unit payment, or annual per unit payment, as described in the Schedule Of Consideration To The Town (Exhibit 10), relating to a particular Unit of the Development Plan for the Subject Property, is due and payable to the Town at the time an Owner takes title to a Unit or lot on which such Unit is intended to be located, or if such a payment relating to a particular Unit becomes due and payable to the Town while the Owner has title to that Unit or lot on which such Unit is intended to be located, that Owner, and its successors in title to that Unit shall be liable to the Town for such payment.

10.4.4 If a lump-sum payment or performance required by the Developer to the Town under this Agreement, that does not relate to a particular lot, parcel or Unit of the Development Plan for the Subject Property, has not been satisfied at the time a Developer Assignee acquires the rights and duties of the Developer of the Subject Property pursuant to this Agreement, such Developer Assignee, and its successors in interest shall be liable for such payment or performance.

10.5. Annual Unit Payments - Collection And Liens. The Developers shall form the HOA and shall adopt and record among the County Land Records a Declaration of Covenants, Restrictions and Conditions relating to all of the Subject Property, at the same time as the final subdivision plat for the Subject Property is recorded among the County Land Records, which Declaration of Covenants, Restrictions and Conditions shall be subject to the review and approval of the Town attorney for consistency with the terms of this Agreement prior to the recording thereof, and which Declaration shall provide as follows:

10.5.1 The Owners of each Unit shall be liable to the Town for the timely payment of thirty (30) consecutive Annual Unit Payments relating to that particular Unit, as are specified in this Agreement and Exhibit 10 (Schedule Of Consideration to The Town) to this Agreement, each of which payments shall be due and payable on July 1 of each year, beginning on July 1 next following the date on which the occupancy permit is issued by the Town for such Unit.

10.5.2 The dollar amount of the Annual Unit Payment due from the Owners of each Unit shall be adjusted in the even numbered years, in accordance with the terms of this

Agreement and Exhibit 10, based on the change in the C.P.I. from April 2004 to April of the last even-numbered year prior to the due date of the Annual Unit Payment.

10.5.3 The Annual Unit Payments may be billed to the Owners 75 days before they are due and payable, provided that the due date is indicated on the bill.

10.5.4 An Annual Unit Payment that has not been paid in full and received by the Town or its billing authority on or before the later of 30 days after the date of the bill, or July 31 of the year for which the Annual Unit Payment applies, shall bear late charges and interest to the extent permitted by law on the unpaid balance of an Annual Unit Payment, which shall be payable beginning on July 1 of the year for which the Annual Unit Payment applies. The late charges shall be at the same rate, and on all other terms, that were in effect at the St. Michaels Bank, or its successor, on the first banking day of April of the year in which the Annual Unit Payment is due, for its consumer loan customers. The interest payable on such unpaid balance of the Annual Unit Payment shall be at prime rate plus two (2.0) percent; prime rate being the interest rate in effect at the St. Michaels Bank, or its successor, on the first banking day of April of the year in which the Annual Unit Payment is due, for its commercial customers. If any of these late charges or interest rates exceed the amount permitted by applicable law relating to the annual Unit Payments, then such charges and amounts shall be reduced to the maximum amount permitted by law.

10.5.5 At the sole discretion of the Town, upon written instruction by resolution of a majority of the Town Commissioners, which instruction may be rescinded and renewed by the Town Commissioners from time-to-time, the HOA shall have the duty to bill to and collect from the Unit Owners the Annual Unit Payments that are due to be paid by the Unit Owners to the Town. Such instruction from the Town to the HOA shall continue in effect, from year to year, unless and until rescinded. If the Town does not authorize the HOA to bill and collect the Annual Unit Payments, then the Town may perform such billing and collection itself, or delegate such duties to a third person.

10.5.5.1 The HOA shall promptly furnish to the Town a copy of all bills for the Annual Unit Payments that were sent by the HOA to the Unit Owners, which bills shall include: (1) date of the bill; (2) name and address to whom the bill was sent; (3) the address or other information to identify the Unit to which the bill applies; (4) the sequential number of the years which the Owner of the Unit has been billed for Annual Unit Payments; (5) the section and paragraph reference in the authority in the Declaration of Covenants, Restrictions and Conditions for the Annual Unit Payments; (6) the base amount of the Annual Unit Payment, as if it had been billed for payment in July of 2004 ($1,000 per Unit); (7) the adjustment in the amount billed based on the change in the C.P.I. from April 2004 to the C.P.I. of the last April of an even-numbered year before the Annual Unit Payment is due; (8) the date the payment is due; (9) the name of the payee and the address to where the payment should be sent; and (10) the fact that late charges and interest to the extent permitted by law on the unpaid balance of an Annual Unit Payment shall be payable beginning on July 1 of the year for which the Annual

for the costs incurred by the Town in collecting such unpaid balance, late charges and interest, including the cost of Town employee time, court costs, attorney fees on an hourly basis for actual time involved billed at normal hourly rates, and other relevant costs. It is acknowledged that unless the Town is able to process and litigate a number of such claims at the same time, that the cost of collection for a few delinquent accounts is likely to be relatively high in comparison to the amount sought to be collected, and that unless the Town is contractually entitled to collect the full amount of its collection costs from the Owners in breach of this Agreement (the Declaration), the relative cost of collection may be an incentive for Owners to refuse or delay payment of the Annual Unit Payments.

10.5.7 In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall be irrevocably designated a third-party beneficiary, coupled with an interest, for the purpose of and with the right, pursuant to and in accordance with the terms and procedures of the Maryland Code, Real Property Article, Title 14 (Miscellaneous Rules), Subtitle 2 (Maryland Contract Lien Act), or its successor, as amended from time-to-time, to establish, enforce, foreclose on and collect on a lien against the land and improvements of each lot for which a bill has been rendered for an Annual Unit Payment pursuant to Section 10.5 of this Agreement, and which such payment has not been timely paid in full to the Town or its collection agent, for the unpaid balance together with late charges, interest, and all costs of collection. No property shall be sold pursuant to the Maryland Contract Lien Act unless an Annual Unit Payment (or a portion thereof), late charges relating thereto, interest thereon or collection costs relating thereto have remained unpaid for a period of at least six (6) months after the due date for such Annual Unit Payment.

10.6 Town Collateral Improvement Fund. The Town shall establish a special fund, titled the "Collateral Improvement Fund" by ordinance or charter amendment, as legally necessary.

10.6.1 Purposes and Use. The purposes and use of the Town Collateral Improvement Fund shall include, and shall be limited to, the following:

10.6.1.1 To replenishment of the Town's financial reserves that have been depleted by the extraordinary legal and other expenses incurred by the Town in processing, defending, mediating and settling the issues related to the Miles Point Property since 1998 to the date hereof;

10.6.1.2 To fund the Town General Fund for the excess (if any) of the cost of additional Town personnel, equipment, building space, and other costs incurred by the Town, caused by the development and occupation of the Subject Property (the "Additional Town Costs"), over the taxes and other governmental revenues reasonably anticipated to be generated by the development and occupation of the Subject Property and deposited into the Town General Fund (the "Additional Town Revenues"), by making annual transfers between the General Fund and the Town Collateral Improvement Fund as follows:

10.6.1.2.1 Annually, before the opening of each Town fiscal year, transfer from the Town Collateral Improvement Fund to the Town General Fund the sum of money equal to the excess (if any) of the reasonably anticipated dollar amount of expenditures from the Town General Fund during the coming fiscal year as the result of reasonably anticipated Additional Town Costs over the reasonably anticipated Additional Town Revenues during the same coming Town fiscal year; and

10.6.1.2.2 Annually, after the close of each immediately past Town fiscal year, make an adjusting transfer of funds between the Town Collateral Improvement Fund and the Town General Fund, so that the net dollar amount of the transfers into the Town General Fund from the Town Collateral Improvement Fund for the immediately past Town fiscal year is equal to the excess (if any) of the actual Additional Town Costs over the actual Additional Town Revenues for the same immediately past Town fiscal year;

10.6.1.3 Making street and other capital repairs that otherwise would have been made from 1998 through the date hereof but for the expenditures of Town for administrative processing, litigation and other matter relating to the Miles Point Property, in an amount equal to the cost the expenditure of the Town on such matters from 1998 through the date hereof, together with an adjustment based on the difference in the C.P.I. applied to such amount at April 2004 and the C.P.I. at the date(s) such amount is repaid to the Town general fund; and

10.6.1.4 Expenses and capital expenditures to benefit and perpetuate the character of the Town, including, but not limited to the following:

10.6.1.4.1 Perpetuation, promotion and improvement of the historical, architectural, and cultural character of the Town;

10.6.1.4.2 Promotion and/or improvement of the Town harbor and other navigable water in the Town, public waterfront property, maritime history, marine traffic, marine life and commercial marine activities in the Town;

10.6.1.4.3 Promotion and/or improvement of the tourism industry in the Town, including improvements to the streetscape in commercial areas frequented by tourists;

10.6.1.4.4 Projects and facilities to improve the traffic flow and parking facilities, including possible public transportation within and adjacent to the Town to reduce the volume of vehicles on Talbot Street;

10.6.1.4.5 Projects and facilities to integrate the Miles Point Project with the settled area of the Town through the acquisition, construction and maintenance of connecting routes for pedestrians, cyclists and motorists;

10.6.1.4.6 Promotion, protection and enhancement of the scenic beauty and environmental resources of the Town;

10.6.1.4.7 Promotion and support of cultural, educational and recreational activities for the citizens, including the youth, to improve the quality of life for the residents;

10.6.1.4.8 Projects to plan for and improve the future of the Town;

10.6.1.4.9 Acquisition, improvement and maintenance of parks and open spaces;

10.6.1.4.10 Preservation of residential neighborhoods in the Town;

10.6.1.4.11 Promotion of affordable housing in the Town;

10.6.1.4.12 Other activities, projects, facilities and improvements having purposes of a similar nature, or intended to achieve benefits of a similar nature, in the Town or for the Town residents;

10.6.1.4.13 Providing Maintenance, repair, upkeep, and perpetuation of the above-described resources, improvements, facilities, projects and activities; and

10.6.1.4.14 Any other expenditures which the Town Commissioners deem to be in the best interest of the Town.

10.6.2 Procedures. All of the Annual Unit Payments received by the Town pursuant to this Agreement shall be a part of, shall be deposited into, and shall be subject to the terms and conditions of, the Town Collateral Improvement Fund. The Town Collateral Improvement Fund shall be a part of the budgeted Town funds, subject to the same procedures, safeguards, and controls as the Town General Fund, and subject to the use, control and discretion of the Town Commissioners in the same manner as the Town General Fund, except as otherwise stated in this Section 10.6. The Town shall not be required to spend all or any of the collections and deposits of the Annual Unit Payments in the year in which they are collected. The Town may accumulate funds in the Collateral Improvement Fund account for future capital projects and for other purposes consistent with the purposes of the Collateral Improvement Fund and deemed appropriate by the Town Commissioners. The Collateral Improvement Fund shall be maintained as a separately and distinct fund from all other public funds available to the Town except to the extent that disbursements may be made from the Collateral Improvement Fund to the Town General Fund as set forth in Section 10.6.1.

10.7 Town General Fund. All payments received by the Town pursuant to this Agreement, which are not designated in this Agreement or in the Schedule Of Consideration To The Town for a specific use or designation that indicates an intent contrary to their being deposited in the Town General Fund, shall be deposited in, and shall become a part of, the Town General Fund.

10.8 Consumer Price Index ("C.P.I."). Due to the time that it is likely to take before all of the necessary Development Approvals could be granted, and the time over which the payments may be paid thereafter, the dollar amount of the payments that are shown on the Schedule Of Consideration To The Town, that are designated with the symbol "± C.P.I.", shall be subject to annual adjustment based on the annual changes in the C.P.I., using the C.P.I. for April 2004 as the base year. Therefore, the dollar amount of such payments subject to the C.P.I. that are payable in 2004 shall be in the dollar amount shown on the Consideration Chart. For each succeeding year after 2004 in which a payment subject to the C.P.I. is due, beginning in 2005 and in each succeeding year thereafter for a year in which such a designated payment is due, the dollar amount of such payment shall be adjusted (up or down) by: (1) dividing the dollar amount of that payment as shown on the Consideration Chart by the C.P.I. for the month of April 2004; and by then (2) multiplying the result of that calculation by the C.P.I. for the month of April of the even numbered year last preceding the date on which the payment is due according to the terms of this Agreement; (3) the result of which calculation is the dollar amount of the payment due to the Town with the C.P.I. adjustment.

10.9 Limitation on the Conveyance of Subdivided Lots. The parties hereto recognize the importance to the character of the Town that the rate of development of the Subject Property be limited. Therefore, as further consideration to the Town, the Developer hereby agrees, for itself, its successor Developer Assignees, and its successors in interest to the Subject Property, including the Owners and the HOA, that the herein described limitations shall apply to the Developer's right to convey subdivided lots within the Subject Property (whether for the Perry Cabin Land only, or to include both the Perry Cabin Land and the Hunteman Property) pursuant to the Development Plan.

10.9.1 The number of conveyances of subdivided lots that the Developer shall be permitted to convey with respect to the Subject Property (whether for the Perry Cabin Land only, or to include both the Perry Cabin Land and the Hunteman Property), shall be limited during each twelve (12) month cycle as follows (measured in any combination of dwelling units and/or live/work units) as described in the following chart (see next page):

Line	Time Period	Maximum Number of Lots Conveyed
1	During the first twelve (12) month period, beginning on the date of the first recorded conveyance of a subdivided lot, the number of lots that may be conveyed by right for the current year.	50

2	During each succeeding twelve (12) month period after the first twelve (12) month period, beginning on the anniversary of the date the first recorded conveyance pursuant to line 1 of this chart, the number of lots that may be conveyed by right for the current twelve month period (not carried over from a previous twelve month period	40
3	If less than the maximum number of lots hereby permitted to be conveyed by this Section 10.9 during a previous twelve month period (50 during the first year, 40 during each subsequent year), according to lines 1 and 2 of this chart, are actually conveyed during that twelve month period, then the difference between the maximum number of lots permitted to be conveyed for that twelve month period and the number of lots actually conveyed during that twelve month period, may be carried over to subsequent years twelve month period, subject to the limitation on line 4 of this chart.	Unlimited
4	Notwithstanding the provisions and limitations stated in lines 1, 2 and 3of this chart, the maximum number of lots that may be conveyed during a single twelve month period, including the number of lots permitted to be conveyed that are allowed by line 3 of this chart to be carried over from previous years.	60

10.9.2 Developer's Report of Conveyances. The Developer shall be required to provide a written report to the Town, identifying each conveyance of a subdivided lot of the Subject Property , which report shall include: (a) identify the Owner(s) of each conveyed lot by full name(s) and current mailing address(s) as provided to the Maryland Department of Assessments & Taxation, (b) identify the lot by the number, block, section and otherwise, assigned to the lot within the Subject Property on the final recorded subdivision plat, and (c) the date of recordation of conveyance of the lot to the Owner.

10.9.3 Issuance of Building Permits. There is no limitation in this Agreement on the number of building permits that the Town will issue per year. The Town shall issue building permits requested by Owners of lots within the Subject Property in the same manner and within the same time frame as is the normal custom and practice of the Town, recognizing that normal time periods may vary depending upon the number of building permit requests that are pending and the number of employees of the Town that are available to process building permit requests. Notwithstanding the provisions of this Section 10.9.3 as further set forth in Section 14 of this Agreement (Defaults), the Town may refrain from issuing any building permits within the Subject Property if the Developer is in breach of its obligations under this Agreement.

10.9.4 Applications Submitted When A Payment Is Due And Unpaid. An application for a building permit relating to a Unit for which a payment, as described in the Schedule Of

Consideration To The Town is due but has not been paid in full to the Town, shall not be issued by the Town, and if said building permit is issued by the Town, upon written notification to the Owner by the Town, the Owner of the lot on the Subject Property to which the issued building permit relates shall not use or act on the issued building permit, and shall cease and desist all construction pursuant thereto, until payment of said amount due to the Town is paid in full.

10.9.5 For the purpose of this Section 10.9, the issuance of a building permit for construction on a lot, and the pouring of footers for construction on that same lot, shall be tantamount to the conveyance of a lot in counting the number of lots the Developer can convey within any twelve month period.

10.9.6 Developer Conveyances of Lots in Violation of Section 10.9.1. If the Developer violates the limitation on the number of lots that may be conveyed within a twelve (12) month period pursuant to Section 10.9.1, then the Town may take any of the following actions with respect to each request for a building permit relating to a lot conveyance that exceeds the limitation: (a) deny the application if the issuance thereof would violate a Town law; or (b) return the application to the applicant along with a written notice that: (i) conveyance of the lot for which a building permit is sought constitutes a violation of limits on the number of lot conveyances that are permitted during any one year, as provided by this Section 10.9.1 of this Agreement, to which the applicant, as an Owner or agent of an Owner, is bound; (ii) the first date of the next year on which building permit applications can be submitted; and (iii) that building permits will be issued in the order in which the applications therefore are received on or after the first date when such applications can be accepted by the Town. If a building permit is inadvertently issued in violation of a limitation of this Section 10.9.3, and is not recalled or cancelled, then such building permit shall be counted toward the limit for the next year after the inadvertent violating issuance is discovered.

10.10 Additional Units. It is not the intention of the parties to permit or consent to additional Units, beyond the number specified in Section 8.2 of this Agreement. However, if any Unit is ever constructed on the Subject Property, or if the use of any structure on the Subject Property is ever converted to one or more Units, such that there are more Units on the Subject Property than the total number of Units indicated in Section 8.2 of the this Agreement, then the Owner of each such additional Unit shall, immediately upon such construction or conversion, become liable to the Town, and pay to the Town, on a per Unit basis all of the same fees, charges and payments on a per Unit basis for each of the Units as provided on the Schedule Of Consideration To The Town (Exhibit 10). The due date for the payments relating to such converted Unit shall be based on the original date of conveyance, construction and occupancy of the structure, rather than based on the conversion date.

10.11 Security, Enforcement And Collection Of Consideration. The following provisions shall apply to the enforcement and collection by the Town of the Consideration granted to the Town and described in Section 10 (Consideration To The Town) and/or Exhibit 10 (Schedule Opf Consideration To The Town) of this Agreement:

10.11.1 Collection of Other Monetary Payments Due Pursuant To Section 10. Any monetary payments, other than Annual Unit Payments, due and payable to the Town pursuant to this Agreement that remain unpaid for thirty (30) days after the due date for such payment shall be subject to a late charge and interest on the unpaid balance at the same rate as is provided for unpaid Annual Unit Payments pursuant to Section 10.5 of this Agreement.

10.11.2 Withholding of Permits. Any other provision of this Agreement to the contrary notwithstanding, the Developer and the Owner(s) consent and agree that all applications, administrative processing, and permits relating to a lot or Unit on the Subject Property for which a payment or performance is due to the Town, as described in the Schedule Of Consideration To The Town, and which has not been satisfied, shall be returned to the applicant, postponed or denied by the Town until such payment or performance has been satisfied.

10.11.3 Declaration of Covenants, Restrictions and Conditions for the Project. The Declaration shall contain provisions to impose on the Developer, the HOA, and the Owners, respectively, the duties and responsibilities consistent with the terms of this Section 10 and with Exhibit 10 (Schedule Of Consideration To The Town) to this Agreement, including those perpetual duties that will extend beyond the life of this Agreement; designate the Town as a third-party beneficiary for the purpose of enforcing its roights contained therein pursuant to this Section 10; and give the Town the power to assess, lien and collect from the Owners costs incurred by the Town pursuant to this Section 10.

10.11.4 Town As Third-Party Beneficiary. The Commissioners Of St. Michaels, and its successors, are hereby irrevocably designated a third-party beneficiary, coupled with an interest, for the purpose and with the right to enforce upon the Developer, the Owners and the HOA, their respective duties to the Town agreed to in this Agreement and/or in Exhibit 10 (Schedule Of Consideration to The Town) to this Agreement, with the Town Commissioners having the power to make all decisions and take all actions for the Town relating thereto to such enforcement. In the Declaration of Covenants, Restrictions and Conditions for the Project, the Town and its successors shall be irrevocably designated a third-party beneficiary, coupled with an interest, for the same purpose and with the same rights. Town shall have the right to the cost of collection, including attorneys fees, related to such enforcement actions in the event that the Town prevails in any such action.

10.12 Amendment To Include The Hunteman Property. In the event that the Town agrees to amend this Agreement to add the Hunteman Property to the definition of the term "Subject Property" as otherwise defined by this Agreement (the "Amendment") within one (1) year after the date on which the Developer offers the Amendment as provided by Section 9.8 of this Agreement, thereby granting Qualified Vested Rights to the Hunteman Property as of the date of the Amendment, then as consideration therefore the Town shall have the irrevocable right to accept, and receive from the Developer, its successor Developer Assignees, and its successors in interest to the Subject Property (as thus redefined), including the Owners, as part of the

Amendment, the additional consideration relating to the Hunteman Property as and when described in Exhibit 10(Schedule Of Consideration To The Town) hereto, and as further explained and/or modified by this Section 10, relative to the Subject Property (including the Hunteman Property) as thus defined in by the Amendment to this Agreement.

10.13 Upon written request by the Developer, lender or a prospective interest in a Unit, or an Owner of a Unit, the Town shall issue a written estoppel certificate, indicating the status of the payments relating to such Unit that are both: (1) required by this Agreement to be paid to the Town; and (2) have been paid to the Town.

Section 11: Regulation by Other Public Agencies. The parties acknowledge that other public agencies, not within the control of Town, possess authority to regulate aspects of the development of the Subject Property separately from the Town, and that this Agreement does not limit the authority of such other public agencies. To the extent permitted by law, where the Town can reasonably do so without prejudicing its own independence of decision-making or other governmental duties, the Town shall reasonably cooperate with the Developer, at the Developer's expense, in support of any application by Developer to any other public agency for any permit or approval, which is required for the Project. Within fifteen (15) days of any request, Town shall provide to Developer or to such other public agencies information possessed by Town which is not confidential, privileged or the proper subject of discussion by the Town Commissioners in an executive session pursuant to the Maryland Public Meetings Act, and which is necessary for processing such applications.

Section 12. Public Facilities

Subject to the consideration stated in Section 10 of this Agreement, the Public Facilities (including Parks and Open Space) relating to the Development Plan for the Subject Property shall be developed pursuant to the terms and conditions set forth in the Public Facilities Agreement (Exhibit 4), which is incorporated herein by reference.

Section 13. Administration of Performance

13.1 Processing Cooperation and Assistance. To the extent permitted by law, the Town shall reasonably cooperate with the Developer, at the Developer' expense, in securing any and all entitlements, authorizations, utility connections, permits or approvals which may be required by any other governmental or quasi-governmental entity in connection with the Development of the Project or the Subject Property. Without limiting the foregoing, the Town shall reasonably cooperate with the Developer in any dealings with federal, state and other local governmental and quasi-governmental entities concerning issues affecting the Subject Property. At the Developer's expense, the Town shall keep the Developer fully informed, except where to do so would reveal confidential or privileged information, with respect to its communications with such agencies that could impact the development of the Subject Property.

13.2 Processing During Third Party Litigation. The filing of any Third Party lawsuit(s) against the Town and/or the Developer relating to this Agreement or to other development issues affecting any portion of the Subject Property or the Project shall not hinder, delay or stop the

development, processing or construction of the Project, approval of the Future Approvals, or issuance of ministerial permits or approvals, unless: (1) there is an applicable law providing to the contrary; or (2) the Third Party obtains a court order preventing the activity. However, the Developer acknowledges that the Developer may be proceeding at its own peril. .

13.3 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between Town and Developer. During the Term of this Agreement, clarifications of details or specific procedures of this Agreement and the Development Plan and the Development Approvals may be appropriate with respect to the details of performance of Town and Developer. If and when, from time to time, during the terms of this Agreement, Town and Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarification through operating memoranda approved in writing by Town and Developer, which, after execution, shall be attached hereto and become part of this Agreement and the same may be further clarified from time to time as necessary with future written approval by Town and the Developer. Operating memoranda are not intended to, and cannot, constitute an amendment to this Agreement or allow a major modification to the Project but are mere ministerial clarifications, therefore public notices and hearings shall not be required. The Town Attorney shall be authorized, upon consultation with, the Developer, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute an amendment hereof which requires compliance with the provisions of Section 6.5 (Amendment and Waiver). The authority to enter into such operating memoranda is hereby delegated to the Town Manager, and the Town Manager is hereby authorized to execute any operating memoranda hereunder without further action from the Planning Commission or Town Commissioners.

13.4 Good Faith Compliance Review

13.1 Notice of Non-Compliance; Cure Rights. If at the completion of any Periodic Review, as defined in Section 13.4.3 of this Agreement, the Town reasonably concludes, on the basis of substantial evidence, that Developer is not in good faith compliance with a specific substantive term or provision of this Agreement, then the Town may issue and deliver to the Developer a written Notice of Defaultas required by Section 14.3. Developer may cure any matter set forth by the Notice of Default within the period established by Section 14.

13.4.2 Limitation on Town's Right to Modify or Terminate Agreement. Town shall not take any action to terminate or modify this Agreement except upon substantial evidence showing a failure of Developer to perform a material duty or obligation under this Agreement which has not been cured by Developer as provided under Section 14.4 of this Agreement.

13.4.3 Failure of Periodic Review. The Town's failure to review, at least annually, compliance by the Developer with the terms and conditions of this Agreement shall not constitute or be asserted by any Party as a breach by any other Party of this Agreement.

Section 14: Default and Remedies.

14.1 In the event of a dispute arising from, or an alleged default or breach of, this Agreement all parties shall have the right to pursue an action for a declaratory judgment action, specific performance or termination of this Agreement. A party may also maintain an action to [illegible] this Agreement should equitable circumstances so warrant. Except as otherwise set forth in this Agreement, all other remedies, legal or equitable, are waived. All actions relating to this Agreement brought by, for or on behalf of the Town shall be brought by The Commissioners Of St. Michaels, a Maryland municipal corporation, and shall be directed solely by the Town Commissioners. All actions relating to this Agreement brought against the Town and/or the Planning Commission as an agency of the Town shall be brought solely against The Commissioners Of St. Michaels, a Maryland municipal corporation, and shall be defended solely at the direction of the Town Commissioners. Further, this Agreement is not intended to expand of limit the rights and remedies of the parties hereto, and their successors in interest, under the applicable land-use laws.

14.2 Developer Default; Additional Town Remedies. In the event Developer is in default under the terms of this Agreement, Town shall have the right:

14.2.1 To refuse processing of an application for, or the granting of any permit, approval or other land use entitlement for, development or construction of the Subject Property or portion thereof owned or controlled by Developer, including but not limited to the withholding of grading, excavation, building and occupancy permits; and/or

14.2.2 To sue for damages if the default relates to non-payment and/or non-performance of consideration due and owing to the Town pursuant to consideration to the Town (Section 10) and the Schedule of Consideration to the Town (Exhibit 10).

14.3 Notice of Default or Breach. In the event a party to this Agreement believes that another party is in breach or default of an obligation under this Agreement, said party shall provide a written Notice of Default and shall deliver said Notice of Default pursuant to the Notices provision of Section 6.6.

14.4 Opportunity to Cure. A party in receipt of a Notice of Default shall have thirty (30) days to cure a default before the non-defaulting party may institute any legal action or terminate this Agreement pursuant to a breach or default. If a breach or default has not been cured within the thirty (30) day period, the non-defaulting party may pursue all remedies permitted under this Agreement.

Section 15: Mortgagee Protection; Certain Rights of Cure. E. 1466

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 certain judicial foreclosure sale or a person or entity who obtained a 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.

E. 1467

Either party may at any time, and from time to time, deliver written notice to the other party requesting that the other party certify in writing that, to the knowledge of the certifying party: (i) this Agreement is in full force and effect and is a binding obligation of the parties, (ii) this Agreement has not been amended or, if amended, identifying the each amendment, and (iii) the requesting party is not in breach of this Agreement or, if in default, the nature and extent of each default. A party shall not rely upon the estoppel certificate of another party to this Agreement

against whom it would be used unless that certificate is signed by such party against whom it would be used and its attorney.

Section 17: Conflicts of Laws, Rules, Regulations

17.1 Conflict with County, State or Federal Laws or Action of Other Governmental Jurisdiction. In the event that any County, State or federal law or regulation enacted after the Effective Date, or any governmental action, other than an action by Town, taken after the Effective Date, prevents or precludes compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended by Town as may be necessary to comply with such County, State or federal law or regulation or non-Town governmental action; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws, regulations or non-Town governmental action and to the extent such laws, regulations or non-Town governmental action do not render such remaining provisions impractical to enforce. Town also agrees to process Developer's proposed changes to the Project as may be necessary to comply with such County, State or federal law and to process such proposed Project changes in accordance with Town procedures and findings.

17.2. Notice. Neither party shall claim that a conflict, as described in Section17.1, exists, unless that party has given the other party at least thirty (30) days written notice of the conflict. The notice shall identify the law, regulation or non-Town governmental action, the date the law or regulation was enacted or the date the non-Town governmental action was taken, and the manner in which the law, regulation or non-Town governmental action conflicts with one or more provisions of this Agreement.

17.3 Modification Conference. Within thirty (30) days after notice is given as provided in Section 20.2, Town staff and Developer shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such law, regulation or non-Town governmental action. In such negotiations, Town and Developer agree to preserve the terms of this Agreement, including the Developer Obligations and the rights of Developer as derived from this Agreement, to the maximum feasible extent while resolving the conflict. Town and Developer agree to cooperate with each other in attempting to resolve the conflict in a manner that minimizes any financial impact of the conflict upon Developer and Town.

17.4 Town Consideration. Within thirty (30) days after the modification conference, regardless of whether the parties reach an agreement on the effect of such law or regulation upon this Agreement, the matter shall be scheduled for hearing before the Town. Notice of such hearing shall be given pursuant to the Development Agreement Statutes and Enabling Ordinance. The Town, at such hearing, shall consider the exact modification or suspension that shall be necessitated by such law, regulation or non-Town governmental action. Developer shall have the right to offer oral and written testimony at the hearing. No modification or suspension of this Agreement shall be effective unless approved by the affirmative vote of not less than a majority of the authorized voting members of the Town and by Developer.

17.5 Cooperation in Securing Permits or Approvals. Provided Town and Developer agree to a modification or suspension of this Agreement pursuant to this Section17, Town shall use its best efforts to assist Developer in the timely securing of any permits or approvals which may be required as a result of such modifications to, or suspensions of, all or any part of this Agreement.

17.6 Challenge Regarding New Law or Regulation. Developer and/or Town shall have the right to challenge by appropriate judicial proceedings any such new law, regulation or non-Town governmental action preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

17.7 Tolling of Term during Suspension. The term of this Agreement, as provided in this Section17, shall be tolled during the period that any suspension of the Agreement imposed by Section 17 is in full force and effect.

17.8 Third Party Litigation Regarding Agreement. In the event any legal action or special proceeding is commenced by any person or entity other than a Party to this Agreement, challenging this Agreement or any provision herein, the parties agree to cooperate with each other in good faith to defend said lawsuit. Notwithstanding the foregoing, Town may elect to tender the defense of any lawsuit filed by a third person or entity to Developer, in such event, Developer shall hold the Town harmless from and defend the Town from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, attorneys' fees and expenses of litigation awarded to the prevailing party or parties in such litigation. The Developer shall not settle any lawsuit on grounds which include, but are not limited to non-monetary relief without the consent of the Town. The Town shall act in good faith, and shall not unreasonably withhold consent to settle.

Section 18: Miscellaneous Provisions

18.1 Recordation of Agreement. This Agreement shall be recorded in the County Land Records within twenty (20) days of the Effective Date of this Agreement at the Developer's expense.

18.2 Entire Agreement. Except as to representations by the Developer, relating to the Subject Property and made during the public hearings relating to the application for the award of growth allocation and/or during the public hearings relating the review and approval of this DRRA, as described in Section 10.3 of this Agreement, this Agreement embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement.

18.3 Invalidity, Unenforceability, Severability, And Savings Clause. **E. 1469**

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 larger number and/or the longer duration that would not cause such court to render or declare such Annual Unit Payments and/or this Agreement to be invalid, void or unenforceable, thereby saving the validity and enforceability of the Annual Unit Payments and this Agreement.

18.3.2 Savings Clause. If any term(s) and/or provision(s) of this Agreement would cause a court of competent jurisdiction to render or declare this Agreement, or such offending term(s) and/or provision(s), to be in violation of the rule against perpetuities, then such offending term(s) and/or provision(s) of this Agreement that would cause a court of competent jurisdiction to render or declare this Agreement to be in violation of the rule against perpetuities shall automatically, and by the terms of this Agreement, be amended as follows:

18.3.2.1 First, reduce the duration or number of years of the such offending term(s) and/or provision(s) only to the extent necessary such that they, individually or in combination, do not violate the rule against perpetuities; and

18.3.2.2 Second, if the provisions of Section18.3.2.1 of this Agreement are not sufficient to save the validity and enforceability of the offending term(s) and/or provision(s) of this Agreement, then such offending term(s) and/or provision(s) shall be severed and deleted from this Agreement only to the extent necessary to save the validity and enforceability of this Agreement.

18.3.3 If, after applying Sections 18.3.1 and 18.3.2 of this Agreement, any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect and, if possible, the parties shall amend this Agreement so as to effect the original intention of the parties. However, if such invalidity or unenforceability would have a material adverse impact on the Project, the Developer may terminate this Agreement by providing written notice thereof to the Town.

18.4 Governing Law. This Agreement and the actions of the parties hereunder shall in all respects be governed by and construed in accordance with the laws of the State of Maryland.

18.5 Incorporation of Exhibits and Other Documents by Reference. All exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference As additional terms of this Agreement.

18.6 Cross-Reference; Headings. When a reference is made in this Agreement to an article, section, paragraph, clause, schedule or exhibit, such reference shall be deemed to be to this Agreement unless otherwise indicated. The headings and captions used in this Agreement are for convenience and ease of reference only and shall be used to interpret, expand or limit the terms of this Agreement.

18.7 Rules of Construction and Interpretation. Any term used in an exhibit hereto shall have the meaning as in this Agreement unless otherwise defined in such exhibit. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive. "Herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter" and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation".

18.8 No Party Deemed Drafter. The final language of this Agreement is the result of extensive negotiations. Each party has thoroughly reviewed and revised this Agreement and has had the advice of counsel prior to execution hereof, and the parties agree that none of them shall be deemed to be the drafter thereof.

18.9 Business Days. If any date or any period provided in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday or legal holiday.

18.10 Time of Essence. Time is of the essence in all things pertaining to the performance of this Agreement.

18.11 Consent. Where a consent or approval of either party is required or necessary under this Agreement, such consent or approval shall not be unreasonable withheld.

18.12 Waivers. Any failure by a party hereto to insist upon strict performance by the other party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such party will have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate officers of the Town or Developer, as the case may be, as set forth by Section 0. Any such written waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

18.13 Reservation of Rights. To the extent not inconsistent with this Agreement, each party reserves all rights, privileges and immunities under applicable laws.

18.14 Third-Party Beneficiaries. The Town is expressly intended as third party beneficiaries of this Agreement, including, but not limited to, the Consideration To The Town set forth in Section 10 hereof.

18.16 Attorneys' Fees. In the event any action, suit or proceeding is brought by any party to this Agreement against another for the enforcement or declaration of any right or obligation pursuant to, or as a result of any alleged breach of, this Agreement, the prevailing Party shall be entitled to its reasonable attorneys fees, litigation expenses and costs, and any judgement, order or decree rendered in such action, suit or proceeding shall include an award thereof.

18.17 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

18.18 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

18.18 Project as a Private Undertaking. It is understood and agreed by and between the parties hereto that: (a) the Project is a private development; (b) neither party is acting as the agent of the other in any respect hereunder; (c) each party is an independent contracting entity with respect to the provisions of this Agreement; (d) Town has no interest in or responsibilities for any improvements to the Subject Property until Town accepts the improvements pursuant to the provisions of this Agreement or in connection with any subdivision approvals; and (e) Developer shall have the full power and exclusive control of the Subject Property subject to the obligations of Developer set forth in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement.

18.20 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such instruments and other writings and take such actions as may be reasonably necessary to carry out the intent or fulfill the provisions of this Agreement or to evidence or consummate any transaction contemplated by this Agreement. Without in any manner limiting the specific rights and obligations set forth in this agreement, the parties hereby declare their intention to cooperate with each other and affecting the terms of this agreement, and to coordinate the performance of their respective obligations under the terms of this agreement.

18.21 Covenant of Good Faith and Fair Dealing. Neither party shall do anything that shall have the effect of harming or injuring the right of the other party to receive the benefits of this Agreement. Each party shall refrain from doing anything that would render its performance under this Agreement impossible or impracticable. Each party shall do everything which this Agreement contemplates that such party shall do to accomplish the intent and to fulfill the provisions of this Agreement.

18.22 No Obligation to Develop. It is understood that Developer's development of the Project depends upon a number of factors including, but not limited to, the housing and

commercial markets, the availability of financing, and the general economic climate of the area. Nothing in this Agreement shall be construed as requiring Developer to develop the Project, and any failure to develop the Project shall not be deemed a default of Developer under this Agreement. However, the Developer(s), for themselves and their successors, collectively acknowledge and agree as follows: (1) that all Development Approvals contemplated by this Agreement are exclusive to the Development Plan contemplated by this Agreement; (2) that they shall relinquish all such Development Approvals that are not used for and in connection with the Development Plan; and (3) they waive all rights and claims to an impermissible change of mind with respect to any future application to the Town for any land-use permit or approval for the Subject Property; so that (4) it is intended and agreed that neither party hereto shall gain any advantage over the other with regard to any future use of the Subject Property other than the Development Plan.

18.23 Rule Against Perpetuities. If any of the covenants, restrictions or other provisions of this Agreement shall be unlawfully void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

IN WITNESS WHEREOF, Developer and Town have executed this Agreement on the dates set *forth below.*

WITNESS/ATTEST:

DEVELOPER:

THE MIDLAND COMPANIES, INC.

By: _____ 2-16-04
George A. Valanos, President Date

ST. MICHAELS POINT, L.L.C.

By: _____ 2-16-04
George A. Valanos, Managing Member Date

MILES POINT PROPERTY, LLC

By: _____ 2-16-04
George A. Valanos, Managing Member Date

TND DEVELOPMENT, INC.

D C Colley

By: [signature] 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: [signature] 2-19-04
Frederick N. Megahan, Chairman Date

D. C. Colley

APPROVED AS TO FORM:

By: [signature]
H. Michael Hickson
Town Attorney

By: [signature]
Richard A. DeTar
Attorney for the Developer(s)

Exhibit 10

MILES POINT
DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT
EXHIBIT 10
SCHEDULE OF CONSIDERATION TO THE TOWN

	Description	Item Fees	Item Total	PERRY CABIN 279 units[1]	HUNTEMAN 41 units[1]	MILES POINT TOTAL 320 units[1]
A.	**INFRASTRUCTURE COSTS, FEES, CHARGES, AND DUTIES,** imposed or to be imposed by Town law, or assumed by the Public Infrastructure Agreement, or by utility tariff of rates & charges, in effect at the time such infrastructure is installed or services are sought:					
1.	The developer shall at its cost install or arrange for installation of all infrastructure relating to the Project on the Subject Property:					
a	Developer shall construct and install all infrastructure at its sole cost.			Amount unknown at this time	Amount unknown at this time	Amount unknown at this time
b	The following infrastructure relating to the Project on the Subject Property shall be owned, maintained and/or operated by the Developer and/or the HOA in perpetuity: passages[2], lanes[2] and alleys[2], brick sidewalks, street lights, grass strips and trees along streets, stormwater management facilities, all open spaces not owned by the Town, and all other			Amount unknown at this	Amount unknown at this	Amount unknown at this

LIBER 1225 FOLIO 564

E. 1475

2	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	Developer and/or HOA-owned facilities.			time	time	time
2.	Public Utilities Infrastructure:(Water and any other Town-owned facilities, shall be installed at the cost of the Developer, and after being accepted by the Town shall thereafter be maintained by the utilities to the property line of the individual lot owners):[3]					
a.	Water:					
(1)	Developer shall pay the full actual cost of construction and installation to Town standards of the water system, including the required fire hydrants, serving the Subject Property from point of adequate capacity.			Amount unknown at this time	Amount unknown at this time	Amount unknown at this time
(2)	Homeowner shall pay to Town any connection and related fees relating to Homeowner's property at normal rates in general effect at time fees incurred.			Amount unknown at this time	Amount unknown at this time	Amount unknown at this time
b.	Electric: The Town is the owner of the electric distribution system (the "System") that serves the Subject Property. The System is currently					

LIBER 1223 FOLIO 63

3	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	leased to Delmarva Power & Light Company through October 15, 2006.					
(1)	Developer shall cause electric distribution system to be installed on the Subject Property at rates and costs in accordance with the applicable tariff approved by the P.S.C. and in effect at the time.			Amount unknown at this time	Amount unknown at this time	Amount unknown at this time
(2)	Homeowner shall pay to electric utility operator all connection and related fees relating to Homeowner's property at normal rates in general effect at time fees incurred.			Amount unknown at this time	Amount unknown at this time	Amount unknown at this time
c.	CATV.					
(1)	Developer shall pay or otherwise cause construction and installation of the CATV system serving the Subject Property in accordance with requirements of CATV system operator.			Amount unknown at this time	Amount unknown at this time	Amount unknown at this time
3.	Utility-owned infrastructure (e.g., sewer, telephone, & CATV) shall be the			As required by utility service	As required by utility service	As required by utility service

Liber 1227 Folio 69

4	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	responsibility of the Developer and utility supplier as they may agree or as determined by applicable tariffs.			supplier	supplier	supplier
4.	Open Spaces (except for the Waterfront Park) and all improvements thereto, including, structures, electricity, water, walkways, bicycle paths, trees, shrubbery and other vegetation – at the sole cost of the Developer and/or HOA to include cost of construction and maintenance in perpetuity.			Amount unknown at this time	Amount unknown at this time	Amount unknown at this time
5.	Town Involvement In Infrastructure Installation – actual Town costs relating to items A.1, A.2.a.(1), A.2.b.(1), and A.2.c.(1) above, shall be paid directly by Developer, or reimbursed by Developer to Town, as work on infrastructure progresses:[4]					
a.	Town engineering costs – to be reimbursed by Developer as billed			Actual Cost Unknown	Actual Cost Unknown	Actual Cost Unknown
b.	Town inspection costs – to be reimbursed by Developer as billed			Actual Cost Unknown	Actual Cost Unknown	Actual Cost Unknown
c.	Related Town attorneys fees – to be reimbursed by Developer as billed			Actual Cost Unknown	Actual Cost Unknown	Actual Cost Unknown
d.	Town Consultant costs, if any – to be reimbursed by Developer as billed			Actual Cost Unknown	Actual Cost Unknown	Actual Cost Unknown

LIBER 1225 FOLIO 567

E. 1478

5	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
A	TOTAL INFRASTRUCTURE COSTS, FEES, CHARGES, AND DUTIES			AT NO COST To The Town	AT NO COST To The Town	AT NO COST To The Town
B	MISCELLANEOUS ONE-TIME CASH PAYMENTS FROM DEVELOPER TO THE TOWN:					
1	PAYMENT FOR WITHDRAWAL OF PERRY CABIN, PHASE III, APPLICATION FOR AWARD OF GROWTH ALLOCATION. Payment is due upon the withdrawal of the Perry Cabin, Phase III, application for award of growth allocation, which shall occur no later than the occurrence of the following: (1) final, non-appealable, award of growth allocation for Miles Point III; and (2) upon obtaining Sewer Approval, as defined by the Development Rights and Responsibilities Agreement (the "DRRA":					
a	Amount agreed to be paid to the Town by Midland, which may be used for any purpose by the Town as determined by the Town Commissioners.			$175,000	N/A	$175,000
2.	TRANSPORTATION PAYMENT, payable					

Liber 1223 Folio 568

6	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	by the Developer to the Town no later than first to occur of issuance of 25th building permit or occupancy permit of the 10th residential unit on the Subject Property: Shall be used by the Town, as determined by the Town Commissioners, to study and/or address transportation issues involving traffic in the Town, including facilitating traffic flow on Route 33, parking facilities, and/or public transportation. Does not exempt owners or occupants of the Subject Property from end-user fees for any public transportation system funded in part by this payment.			$100,000 ± C.P.I.[5]	N/A	$100,000 ± C.P.I.[5]
3.	PAYMENT Toward New Well, Well House & Fence, payable by the Developer to the Town in three equal annual payments of $50,000 each; first payment to be one year after issuance of first building permit for a dwelling or live/work Unit on the Subject Property.			$150,000 ± C.P.I.[5]	N/A	$150,000 ± C.P.I.[5]
B.	**TOTAL MISCELLANEOUS ONE-TIME CASH PAYMENTS**			**$425,000**		$425,000

LIBER 1225 FOLIO 569

7	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
C	ONE-TIME PROPERTY TRANSFERS FROM DEVELOPER TO TOWN:					
1	ASSIGNMENT OF RIGHT OF 1ST REFUSAL TO MEYERHOFF ACREAGE ON WEST SIDE OF ROUTE 33, due from Midland to the Town upon final, non-appealable award of growth allocation relating to the Perry Cabin Land. Assignment of right of 1st refusal terminates in the event that the Town fails to reclassify Hunteman Property consistent with Development Plan after Talbot County loses control over re-classification of the Hunteman Property.			Unknown	N/A	Unknown
2	ACQUISITION FOR OR TRANSFER TO THE TOWN OF SUITABLE PROPERTY FOR A NEW WATER TOWER SITE, ½ acre ± of land in a suitable location acceptable to the Town, due from the Developer to the Town upon issuance of first building permit for a dwelling or live/work Unit.			Unknown	N/A	Unknown
3	ACQUISITION FOR OR TRANSFER TO THE TOWN OF SUITABLE PROPERTY FOR SITE OF NEW WELL AND WELL HOUSE, approximately ¼ acre ± of land in a			$50,000 ± C.P.I.[5]	N/A	$50,000 ± C.P.I.[5]

LIBER 1225 FOLIO 570

The Midland Companies, Inc.;
St. Michaels Point, L.L.C.; Miles Point Property, LLC; and TND Development, Inc.

Miles Point Development Rights And Responsibilities Agreement
Exhibit 10
Schedule Of Consideration To The Town

St. Michaels Planning Commission
on behalf of
The Commissioners Of St. Michaels

8	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	suitable location acceptable to the Town, or cash in lieu thereof [6] (estimate of value), due from the Developer to the Town upon issuance of first building permit for a dwelling or live/work Unit.					
4.	WATERFRONT PARK, consisting of land area located on the Subject Property as shown on the Development Plan, together with improvements thereto consisting of installation of non-structural shoreline stabilization, as described and performed by Environmental Concerns, Inc. (the "Non-Structural Shoreline Stabilization"), inspection and stabilization of existing rip-rap, pavilion, walkways, landscaping and parking, all as represented in public hearings, and all at the expense of, the Developer, to be conveyed by Developer to the Town in fee simple, free and clear of all liens and encumbrances, as follows:					
a	Contributed by the Developer to the Town on or before the first to occur of: (a) issuance of 40th building permit on the Perry Cabin Land; or (b) 18 months after recordation of the final subdivision plat[7] for all or any part of the development after the award of growth allocation on the Perry Cabin Land, that					

liber 1225 folio 71

9	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	portion of the Waterfront Park located on the Perry Cabin Land, consisting of approximately 2.8 acres and the represented improvements completed thereon: [8]					
	Market value of waterfront land	2.8 acres	$218,390/ac.	$611,494		$611,494
	Cost of other improvements			96,552		96,552
	Cost of installation of Non-Structural Shoreline Stabilization	$380 per lineal foot	1,050 lineal ft.	$400,000		$40000
	Recreational value of waterfront park to community in perpetuity			Immeasurable		Immeasurable
	Environmental impact of converting eroding shoreline to Non-Structural Shoreline Stabilization in perpetuity			Immeasurable		Immeasurable
b	INSTALLATION OF NON-STRUCTURAL SHORELINE STABILIZATION on the Hunteman Property (the "Hunteman Non-Structural Shoreline Stabilization") due from the Developer simultaneous with the installation of the Non-Structural Shoreline Stabilization on the Perry Cabin					

LIBER 1225 FOLIO 572

10	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	Land, thus advancing the time when the Hunteman Non-Structural Shoreline Stabilization will be installed, and insuring that the Hunteman Non-Structural Shoreline Stabilization will be installed even if the Hunteman Property never becomes a part of the Subject Property under the terms of this Agreement: Cost of installation Impact to environment of converting eroding shoreline to Non-Structural Shoreline Stabilization in perpetuity	$380 per lineal foot	1,050 lineal feet	$400,000 Immeasurable		$400,000 Immeasurable
c	Waterfront park, consisting of approximately 5.9 acres and the represented improvements completed thereon, contributed by the Developer to the Town within 12 months after granting of all Development Approvals for the Development Plan on the Hunteman Property and written Sewer Approval for 41 Units for the Hunteman Property that the County will allow to be exercised within 24 months, subject to Town's decision to include Hunteman Property as part of the Subject Property after the					

Liber 1223 Folio 73

E. 1484

11	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	County relinquishes or loses zoning control over the Hunteman Property					
	Market value of waterfront land	5.9 acres	$218,390/ac.		$1,288,506	$1,288,506
	Cost of other improvements				$203,448	$203,448
	Recreational value of waterfront park to community in perpetuity				Immeasurable	Immeasurable
D	MAINTENANCE, REPAIRS AND RECONSTRUCTION of the non-structural stabilization of the shoreline at the waterfront park (the "Shoreline Stabilization") by Environmental Concerns, Inc. or a company of at least equal qualifications an experience in such matters, shall be provided by the Developer to the Town for a period of ten (10) consecutive years immediately following the completion of the installation of such Shoreline Stabilization, as necessary or reasonable to maintain the Shoreline Stabilization in good condition to accomplish the purposes described by the Developer and Environmental Concerns, Inc. in the public hearings for growth allocation. The Town shall maintain Upland areas of the Waterfront Park upon transfer of					

LIBER 1225 FOLIO 74

12	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	ownership to the Town. "Upland" means all areas of the Waterfront Park above the elevation of the land disturbed or planted to prepare for or install the Shoreline Stabilization.			Value Unknown	Value Unknown	Value Unknown
5.	CONTINUOUS PUBLIC ACCESS AND USE OF ALL OTHER PARKS AND OPEN SPACES located on the Subject Property other than the waterfront park, including squares, parks, walking paths, bicycle paths, to be titled and maintained in perpetuity in the name of the Developer and/or the Homeowners Association ("HOA") at the expense of the Developer and/or the HOA:			n		
a.	Easement or other document satisfactory to the Town, granting the perpetual right to the public to use and enjoy said parks and open spaces, due to be granted to the Town by the Developer as and when such parks and open spaces are opened for use by the residents of the Perry Cabin Land.			Value Unknown	Value Unknown	Value Unknown
b.	Easement or other document satisfactory to the Town, granting the perpetual right to the public to use and enjoy said parks and open spaces, due to be granted to the Town by the Developer as and when such parks and open spaces are opened for use			Value Unknown	Value Unknown	Value Unknown

LIBER 1225 FOLIO 75

13	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	by the residents of the Hunteman Property.					
C	**TOTAL ONE-TIME PROPERTY TRANSFERS & EASEMENTS**			**At least $1,015,517**	**At least $2,034,483**	At least $3,050,000
D.	**ONE-TIME PER UNIT PAYMENTS,** payable with regard to each dwelling or live-work unit on the Subject Property ("Unit"):					
1.	INITIAL PER UNIT PAYMENT,[9] payable by the Developer to the Town (separate and apart from the Town building permit fee, as imposed by law) for each, Unit based on the number of Units involved at the time, at the earlier of: (a) transfer to a person or entity who is not a Developer of title to a parcel of land on which a Unit is authorized by the Development Plan; or (b) with the issuance by the Town of the initial building permit for a Unit:					
a.	Dwelling units: Perry Cabin Land	$1,500 ± C.P.I.[5]	271	406,500		406,500
	Hunteman Property	$1,500 ± C.P.I.[5]	41		61,500	61,500

LIBER 1225 FOLIO 78

E. 1487

14	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
b.	Live-work units: Perry Cabin Land	$1,500 ± C.P.I.[5]	8	12,000		12,000
	Hunteman Property	N/A	-0-		N/A	
2.	WATER SYSTEM CAPACITY PAYMENTS, payable (separate and apart from the Town water hook-up charge, as imposed by law) by the Owner at the time of application for each Town water service hook-up (meter) for a Unit on the Subject Property; payments shall be accumulated by the Town and used solely to add water storage capacity to the Town water system; revenue to be put in fund for improvements to the Water System					
a	Capacity payment per hook-up Capacity payment per hook-up	$1,200 ± C.P.I.[5 10 11]	271 units 41 units	325,200	49,200	$374,400
b	Capacity payment per hook-up	$1,200 ± C.P.I.[5 10 11]	8 units	$9,600	N/A	$9,600
3.	OCCUPANCY PAYMENTS, payable to the Town (separate and apart from the Town occupancy permit fee, as imposed by law) by the Owner for each Unit at the time the initial occupancy permit for a Unit is issued by the Town, prorated based on the date on which					

LIBER 1225 FOLIO 77

15	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	the application is submitted to the Town in the fiscal year (July 1 to June 30), which payment shall be deposited into and be a part of the Town's "Collateral Improvements Fund":					
a.	Dwelling units x $1,500 ± C.P.I. (prorated estimated to average 50%)	$1,500 ± C.P.I.[5 12]	271	$203,250	N/A	203,250
b	Dwelling units x $1,500 ± C.P.I. (prorated estimated to average 50%)	$1,500 ± C.P.I.[5 12]	41	N/A	30,750	30,750
c.	Live/work units x $1,500 ± C.P.I. (prorated estimated to average 50%)	$1,500 ± C.P.I[5 12]	8	$6,000	N/A	$6,000
D.	**TOTAL ONE-TIME PER UNIT PAYMENTS**			**963,420**	**141,580**	**$1,105,000**
E.	ANNUAL PER UNIT PAYMENTS, in addition to all governmental fees, charges and taxes imposed by law, payable to the Town by the Owner of each Unit, beginning for each Unit on the July 1 next following date of issuance by the Town of an occupancy permit for that Unit, and annually on each July 1 thereafter for 30 consecutive years, subject to annual adjustment based on the C.P.I.; all of which receipts shall be					

E. 1489

16	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
	deposited into the Town's "Collateral Improvements" fund:					
a	Perry Cabin Land – 279 units, including live/work units @ ($1,000/yr. ± C.P.I.) x for 30 consecutive years	$1,000 ± C.P.I (per dwelling)[5]	$279,000 per year	$8,370,000	N/A	$8,370,000
b	Hunteman Property – 41 units @ ($1,000/yr. ± C.P.I.) x for 30 consecutive years	$1,000 ± C.P.I (per dwelling)[5]	$41,000 per year	N/A	$1,230,000	$1,230,000
E.	**TOTAL ANNUAL PER UNIT PAYMENTS for 30 consecutive years (exclusive of all governmental fees, charges and taxes imposed by law)**			**$8,370,000**	**$1,230,000**	$9,600,000

RECAP

A.	TOTAL INFRASTRUCTURE			AT NO COST To The Town	AT NO COST To The Town	AT NO COST To The Town
B.	TOTAL MISCELLANEOUS ONE-TIME CASH PAYMENTS			$425,000		$425,000
C.	TOTAL ONE-TIME PROPERTY TRANSFERS & EASEMENTS			At least $1,015,517	At least $2,034,483	At least $3,050,000
D.	TOTAL ONE-TIME PER UNIT PAYMENTS			963,420	141,580	$1,105,000

17	Description	Item Fees	Item Total	PERRY CABIN 279 units	HUNTEMAN 41 units	MILES POINT TOTAL 320 units
E.	TOTAL ANNUAL PER UNIT PAYMENTS for for 30 consecutive years (exclusive of all governmental fees, charges and taxes imposed by law)			$8,370,000	$1,230,000	$9,600,000
	TOTAL			$10,773,937[13]	$3,406,063[13]	$14,180,000[13]

LIBER 11225 FOLIO 580

[1] If any Unit is ever constructed on the Subject Property, or if the use of any structure on the Subject Property is ever converted to one or more Units, such that there are more Units on the Subject Property than the total number of Units indicated in Section 8.2 of the Development Rights And Responsibilities Agreement (the "Agreement"), then the Owner of each such additional Unit shall, immediately upon such construction or conversion, become liable to the Town, and pay to the Town, on a per Unit basis all of the same fees, charges and payments as are provided on the above Schedule for each of the other Units. The due date for the payments relating to such converted Unit shall be based on the original date of conveyance, construction and occupancy of the structure, rather than based on the conversion date.

[2] The Town shall be the owner of, and maintain, the roads, drives and streets, as identified in the Design Code and shown on the Concept Plan for the Project, upon construction to Town standards, inspection and acceptance by the Town. The Town reserves the right, but not the duty, at its sole discretion, to acquire title to, own, maintain and control the passages, lanes, and alleys, (collectively "Privately Owned Public Ways") as identified in the Design Code and as shown on the Concept Plan for the Project. The owner of Privately Owned Public Ways shall be responsible for the repairs, maintenance and re-building of those Privately Owned Public Ways. All roads, drives, streets, alleys, lanes passages, and public ways of every type (collectively the "Public Ways") shall be open to the public at all times. The Town shall have the sole right to establish speed limits, and enforce all traffic laws on all Public Ways. The Town and all public utilities shall have the right to enter over, under and upon all Privately Owned Public Ways for the purpose of installing, repairing, maintaining and rebuilding wires, conduits, and other transmission, distribution and collection facilities related to furnishing public utility services.

[3] All utility services normally provided by the Town to in-Town properties will be supplied at normal in-Town rates and charges, as they may be amended from time-to-time. The installation of electric facilities are governed by the tariff for the electric distribution provider approved by the Maryland Public Service Commission and in effect at the time of the installation. The CATV provider generally installs the CATV system at its own cost. (utility program for upfront costs)

[5] Amount of payment shall be adjusted to reflect the change in the C.P.I. since the C.P.I. on the base C.P.I. date, which shall be April 2004. The amount of each payment shall be adjusted to reflect the change in C.P.I. between April of 2004 and the C.P.I. as of the date of the last C.P.I. adjustment date, pursuant to this Agreement, before the payment is due to the Town pursuant to this Agreement. The C.P.I. adjustment dates for purposes of this Agreement shall be every other April after April of 2004. The C.P.I. for the purpose of this Agreement shall be the published C.P.I. for the applicable month of April.

[6] The parties acknowledge that a new well will be needed as the result of the Project. Placement of the well depends in part on the configuration of the system. If the Town engineer determines that a site within the development is not the best location for the new well, then the Developer will pay $50,000 to the Town toward a new well site in lieu of donating the land for a new well site. It is estimated that the new well and well house will cost $150,000, exclusive of land.

[7] A material assumption giving rise to this time frame is that recordation of the final subdivision plat for any part of the Development can not occur until written Sewer Approval, as defined by the DRRA.

[8]

The market value of the waterfront park is derived from the following information:	Perry Cabin	Hunteman	Total
Land Value:			
Per SDAT records, Hunteman Property conveyed on 9/4/2001 to Miles Point Property, LLC for the price of			$1,248,500
Per appraisal of Hunteman Property done in 2001			1,800,000
Round value of Hunteman Property at this time, 2 ½ years after purchase by Miles Point Property, LLC			1,900,000
Equate value of entire park, consisting of 8.7 acres and 3,000 lineal feet of shoreline, of which lineal 900 ft. is rip-rapped (apportioned based on acres of park land)	$611,494	$1,288,506	$1,900,000
Cost of Improvements to waterfront park:			
Non-Structural Shoreline Stabilization: 2,100 lineal ft., of which, approx. 1,050 2,100 lineal ft. will be on each of the two properties (apportioned based on lineal feet of non-structural shoreline stabilization)	400,000	400,000	$800,000
Other improvements – site work, gazebo, walkways and landscaping (apportioned based on acres of park land)	96,552	203,448	300,000
Total Cost Of Improvements	$496,552	$603,448	$1,100,000
Total Land Value And Total Cost Of Improvements	$1,108,046	$1,891,954	$3,000,000

[9] These payments shall be a part of the Town's general fund and the use of these payments shall be at the sole discretion of the Town Commissioners.

[10] All properties connected to the Town water system will be assessed for arsenic removal based on the number of users connected to the system at the time corrective measures are instituted. As new users come on line the cost of the arsenic correction and other capital improvements per user will decrease, assuming that the cost for the entire system remains constant.

[11] The estimated total cost of a new water tower in current dollars would be approximately least $1,000,000, exclusive of site. This development would use additional water storage capacity that has either been constructed or will need to be constructed, and that would not be used if this development were not built. Therefore, this development should bear the cost of the water storage capacity that will be used as the result of the proposed development.

[12] A one-time payment, prorated from the date the occupancy permit is issued to the beginning date of the period covered by the next annual payment.

[13] The dollar amounts in this column, and this total, are stated in current dollar values. However, most of the dollar amounts that are to be paid to the Town will be paid in an amount that has had the C.P.I. applied to it. Moreover, with regard to the items in this chart that are to be furnished in kind, such as land, or improvements to land, the values and costs are stated in current dollars, whereas the performance would be in the future, at which time inflation may cause the price to be higher. Therefore, most of the values in that chart are stated in current values that will not be effectively reduced by inflation.

LIBER 1225 FOLIO 581

Maryland Department of Planning

L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Audrey E. Scott
Secretary

Florence E. Burian
Deputy Secretary

TO: Critical Area Commission Panel for Talbot County

FROM: Larry F. Duket,
Maryland Department of Planning

RECEIVED
MAR 24 2004
CRITICAL

SUBJ: Statement of the Maryland Department of Planning
Re: Talbot County Council Bill 933

DATE: March 24, 2004

INTRODUCTION

The Maryland Department of Planning appreciates the opportunity to offer comments on Talbot County's Council Bill 933. The Bill would create a significant change in the manner in which Talbot County addresses the growth allocation needs of incorporated municipalities (towns).

The Bill is of significant interest to this Department because it comes at a time when the State is committing its planning functions, regulatory programs, funding, technical assistance, and capital programs in furtherance of directing growth towards county-designated growth areas and incorporated municipalities (county and municipal "smart growth" and "priority funding" areas, if you will). With the Governor's Priority Places initiative, this Department is committed to participating in the debate on issues fundamental to the implementation of a sound growth strategy for Maryland.

The growth allocation process was principally created to allow county and municipal governments to reconcile their comprehensive planning, zoning, and capital programs with the new Resource Conservation Area (RCA) rules of the Critical Area law. The RCA category limited development to one dwelling unit per 20 acres. From a land use planning perspective, it is unusual and economically inefficient to have land within municipalities relegated to a one dwelling unit per 20 acre standard. Yet, the Critical Area RCA had this effect on farm and forest lands not yet having public water and sewer that were located within municipalities, within municipal growth boundaries, and on adjacent lands eligible for annexation. Municipal governments, in particular, were given assurances in the Critical Area law that their need for growth allocation would be accommodated.

Ex. 17

000162

301 West Preston Street · Suite 1101 · Baltimore, Maryland 21201
Telephone: 410.767.4500 · Fax: 410.767.4480 · Toll Free: 1.877.767.6272 · TTY Users: Maryland Relay
Internet: www.MDP.state.md.us

COUNCIL BILL 933

Under CB-933, specific amounts of growth allocation reserved for towns would be deleted from the Talbot County Critical Area Program. Consequently, the County will have approval authority over all future growth allocation requests in towns. This would occur through the supplemental growth allocation process that is now part of the County's Program. This process was originally created for narrower purposes by CB-762, "supplemental" growth allocation, and was approved as a refinement by the Commission in 2000. It seems unlikely that, in 2000, the Commission would have treated such a significant change to the growth allocation process as a mere refinement, were it not for the retention at that time of specific language giving allocations to the towns.

Under CB-933, the County, and a town with an applicant seeking growth allocation, would use a joint hearing process to ostensibly ensure that both municipal and county planning and growth issues are considered. This Department supports the use of tools and processes that promote interjurisdictional coordination and cooperation, and appreciates that this is the primary goal of CB-933. Our concern is that CB-933, by striking reserved amounts of allocation for each town, places the County as the final decision-maker for all municipal requests for growth allocation.

A county's process for accommodating the needs of municipalities for growth allocation should not operate as a blank check for towns. That is, we do not believe the rule calls for municipalities to always get what they purport to need. But CB-933 effectively makes the supplemental growth allocation process the "primary and only" process and contains no decision-making criteria or standards to account for or accommodate municipal growth needs. Not even the municipal comprehensive plan or zoning map is relevant under the terms of CB-933. Council Bill 933 can result in the denial of a specific, bona-fide, good faith request for growth allocation which meets the accounting and location criteria of the Critical Area law, adheres to the Commission's Growth Allocation Policy, and is consistent with town planning and zoning laws and town Critical Area Programs. It is difficult to understand how that process accommodates the growth allocation needs of the towns.

Under the Regional District Act, certain incorporated municipalities in Prince George's and Montgomery Counties are under the zoning authority of their respective county because these municipalities have never been given the authority to exercise their own zoning powers. That aside, the concept of county control over municipal land use decisions is not contemplated in Maryland planning and zoning law. County and municipal planning and zoning programs are created on equal, separate, and, at times, competitive footings. And the General Assembly has been careful to address county-municipal relationships in writing Maryland's planning, growth, and environmental laws. In doing so, the Legislature has both preserved the sanctity of municipal land use decisions and created laws that embody preferences for continued growth in municipalities that plan and zone for growth. Even in the case of municipal annexation of land previously under county jurisdiction, the General Assembly has limited the

County's control over land use decisions on annexed land to a five year period following the date of annexation.

When the Critical Area law was being drafted, much legitimate concern was voiced over the application of the RCA category to farm and forest land that was either within municipal boundaries or at its edges, where growth and expansion were planned. Such concerns were based on property interests, public infrastructure investments, long range capital plans, and professional land planning principles. These concerns were answered by the creation of growth allocation (growth increment) in the law. The concerns of municipalities, in particular, were addressed by the rule that the counties shall have a process to accommodate the growth allocation needs of the municipalities.

On hindsight, the issue of County control over municipal growth allocation should have been raised in the context of CB-762. Given that CB-762 retained specific allocations for each town, perhaps the issue was not as well defined as now presented in the context of CB-933. Also, there may be approved Programs in other counties with a similar practice; we think these Programs need to be revisited. Perhaps this can be evaluated during the six year review process, and perhaps it needs to be evaluated sooner if municipalities report to you that they are not being accommodated.

Much has changed since the first generation of Critical Area Programs. The Commission and local governments know more and have greater experience with much of the detail and technical nature of the Critical Area law and Criteria. Many new State laws have been enacted since then: the 1992 Planning Act, the Forest Conservation Act, Priority Funding Areas, Rural Legacy, Smart Codes, and so on. Each of these new laws favors growth directed to county-designated growth areas and incorporated municipalities. These new laws reflect the same spirit as the Critical Area law: growth within municipalities that plan and zone for it, is to be accommodated.

The Maryland Department of Planning offers its assistance to the County, the several towns, and the Critical Area Commission to work to resolve issues to ensure that municipal needs for growth allocation are accommodated. Thank you for the opportunity to offer our views on this important matter.

Critical Area Commission

PANEL REPORT
May 5, 2004

APPLICANT: Talbot County

PROPOSAL: County Council Bill 933
Review and Reallocation of Growth Allocation for the Towns

COMMISSION ACTION: Vote

COMMISSION PANEL: Dave Blazer (Chairman), Bill Giese, Joe Jackson, Ed Richards and Gary Setzer

PANEL RECOMMENDATION: Pending Panel Discussion

STAFF: Ren Serey

APPLICABLE LAW/ REGULATIONS: Natural Resources Article §8-1809 (h)

DISCUSSION:

The Talbot County Council submitted Bill #933 for approval by the Commission. The Bill's stated purpose is "to review and reallocate the number of reserved acres of growth allocation allocated among the [Talbot County] towns." Previously, the County had set aside a specified number of acres of growth allocation for use by the Towns of Easton, St. Michaels, and Oxford. The County's original Critical Area Ordinance, adopted in 1989, reserved 155 acres for the Town of Easton, 195 acres for the Town of Oxford, and 245 acres for the Town of St. Michaels. The 1989 Talbot County Critical Area Program ordinance included three maps of the Towns and surrounding areas. These maps identified potential areas for annexation or rezoning. The Ordinance also specified that the number of reserved acres should be reviewed by June 1, 1993 for possible reallocation, and at least every four years thereafter. These reviews have not taken place.

As of today, Easton has used more than its original allotment of 155 acres of growth allocation. Easton has awarded 183.762 acres (including 28.762 acres of supplemental growth allocation, awarded under the County's "supplemental" growth allocation process, discussed below). This total includes 36.42 acres associated with the Cooke's Hope Project, which has been approved by the Town, but not yet reviewed by the Commission. The Town also

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requested an additional 156 acres of supplemental growth allocation from the County. The request for supplemental growth allocation was approved, and those projects are moving forward.

Oxford has awarded 15.223 acres of the original 195 acres allotted by the County.

Of the 245 acres allotted to St. Michaels, the Town has awarded 21.00 acres for the Strausburg Subdivision, which was approved by the Commission as a refinement to the Town's Program in October 2003. The Town has also recently approved the use of 70.92 acres of growth allocation for the Miles Point III Project, which is currently under review by the Commission.

Talbot County Bill 933 repeals the ordinance provisions that allocated specific numbers of growth allocation acres to the Towns.

Bill 933 states that the withdrawal of growth allocation from the municipalities is part of the County's comprehensive review of its local Critical Area Program. The Bill also states that this action is necessary because, among other things:

- The original awards of growth allocation to the towns have "no continued validity for any planning and zoning purpose;"
- The original awards are "inconsistent with current principles of proper planning and the land use goals and policies in the existing and draft Talbot County Comprehensive Plans;" and
- "Growth in and around the towns affects not only the particular town, but also the County as a whole, and the County should, therefore, have some ability to protect the County's legitimate interests as they are affected by development in the critical area, as contemplated by State law when it gave this control to the counties under the Chesapeake Bay Critical Area Protection Program..."

In Bill 933, Talbot County proposes to amend its zoning code to delete all provisions relating to the reservation of growth allocation acreage for the Towns. This includes acreage already awarded by a Town, unless the growth allocation has resulted in "actual physical commencement of some significant and visible construction... pursuant to a validly issued building permit." (Section 2 of Bill 933). It is the County's intent that growth allocation awarded by a Town that has not resulted in physical commencement of some significant and visible construction pursuant to a validly issued building permit shall revert to the County.

Commission staff understands that at this time there are two, and possibly three, growth allocation projects in Talbot municipalities for which growth allocation has been awarded by a Town, but under Bill 933, would be considered unutilized and accordingly would revert to the County. First is the Strausburg Subdivision in St. Michaels, which involved 21.00 acres of growth allocation to change the Critical Area designation from Resource Conservation Area

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(RCA) to Limited Development Area (LDA) for a ten lot residential subdivision. The Commission approved this growth allocation request as a refinement to St. Michaels' Critical Area Program on October 1, 2003. Second is the Miles Point III application, which the Town approved for 70.92 acres of growth allocation in January 2004. The Town has submitted this growth allocation request to the Commission, and the Commission is currently reviewing it.

Third, it is possible that Bill 933 may affect the Cooke's Hope Project in Easton. For this project, the Town of Easton used a combination of the original "reserved" growth allocation acreage and some supplemental growth allocation that it received from the County under the process of Bill 762. Thus, the Cooke's Hope project was reviewed through the County's supplemental growth allocation process. The Town of Easton recently sent this growth allocation to the Commission, but it has not yet been reviewed or approved by the Commission, and therefore, has not resulted in physical commencement of some significant and visible construction pursuant to a validly issued building permit

In accordance with §27.01.02.06.A(2) of COMAR, "Counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities." Although Bill 933 removes provisions pertaining to the reservation of growth allocation acreage for the Towns from the County Code, the Bill does not itself set forth a process for the County's Towns to obtain future growth allocation acreage. For that process, the County has informed the Commission that it will use other parts of §190-109 of the County Code which address how the use of growth allocation by the Towns is to be accommodated in the future. County Code Section §190-109 D (9) outlines a joint review and hearing process whereby elected officials from Talbot County and the affected municipality work cooperatively together on projects involving the Town's proposed use of growth allocation. This process, "Procedures for Awarding Supplemental Growth Allocation to Municipalities in Talbot County," was enacted by the County at a time when Easton was close to exhausting its original growth allocation allotment. This process was approved by the Commission as a refinement to Talbot County's Program in June 2000.

A copy of Bill 933 is attached. Within the Bill, boldface indicates a heading or defined term; underlining indicates language added to existing law by original bill; ~~strikethrough~~ indicates language deleted from existing law by original bill, and * * * indicates existing law unaffected.

The Panel's discussions to date have focused on the following issues:

- The applicable sections of the Critical Area Law and Criteria governing growth allocation.

- The effect of Bill 933 on other approved Critical Area Programs, program amendments, or program refinements.

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- The interpretation of the growth allocation provisions of COMAR 27.01.02.06.A, particularly the provision that states, "When planning future expansion of intensely developed and limited development areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities."

At the Panel's request, Commission staff provided research summarizing the process used by the various Critical Area counties to provide for the use of growth allocation by the municipalities. The various processes appear to fall into three general categories: 1) growth allocation acreage is given by the County to a municipality and the County is not involved in the review and approval process; 2) the County may or may not identify a certain number of acres that are "set aside" for the municipalities, but the County must be consulted, and in some cases, must review the use of growth allocation before the town can use it; and 3) the County participates in a coordinated review process with the municipality, either simultaneously with, or following the Town's review process.

The Panel has considered the information about the various processes and procedures used by the Critical Area counties with regard to municipalities' use of growth allocation. They have discussed the importance of the procedures being clearly set forth in a coordinated manner in the ordinances and programs of the counties and affected municipalities. They have also discussed the significance of amending one local program in such a way that it creates conflicts with other approved programs. At the public hearing on March 24, 2004, and in written comments submitted for the record, the Panel received information from numerous commentors stating their views about the applicability of other State laws, policies, and regulations to the proposed Program amendment from Talbot County. On advice of counsel, the Panel agreed that the Commission's role regarding Bill 933 should be focused on the provisions of the Annotated Code of Maryland §8-1809(j) which state that

> "The Commission shall approve Programs and Program amendments that meet:
> (1) The standards set forth in §8-1808(b)(1) through (3) of this subtitle; and (2) The Criteria adopted by the Commission under §8-1808 of this subtitle."

The goals of the Critical Area law, referenced above are:

1. To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

2. To conserve fish, wildlife, and plant habitat; and

3. To establish land use policies for development in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

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The Panel requested information regarding the effect of Bill 933 on other approved Critical Area Programs, program amendments, or program refinements. Commission staff provided this information, and the Panel discussed the information, particularly the approved Programs of Oxford, St. Michaels and Easton. The approved Town programs show that Bill 933 will affect the established growth allocation procedures of St. Michaels and Oxford. Easton is not specifically affected because the Town has already utilized all of its original reserved growth allocation acreage.

In addition to the effect on approved Town programs, Bill 933 will affect the following specific program amendments: the Strausburg Subdivision growth allocation (awarded by the Town of St. Michaels and approved by the Commission in October 2003), the Miles Point III Project growth allocation (awarded by the Town of St. Michaels and currently under review by the Commission) and potentially Cooke's Hope in Easton, depending on the final analysis of how the procedure used affected the 7.66 acres of growth allocation remaining from Easton's original reservation.

The Panel has discussed the meaning of the COMAR provisions relating to "coordination" between counties and affected municipalities. The Panel has acknowledged the various potential interpretations of this term. The Panel believed that the definition in Webster's Dictionary, "to harmonize in a common effort," seems to be a comprehensive and reasonable definition. The Panel seemed to agree that at a minimum "coordination" involves the participation of the affected parties. The Panel has also discussed the effect of Bill 933 on:

- the Strausburg growth allocation;
- the Miles Point III growth allocation;
- established municipal growth allocation processes;
- the effects of Commission actions on prior actions and current procedures.

The Panel will resume its discussion of this matter on May 5, 2004.

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Critical Area Commission

SUPPLEMENT TO PANEL REPORT
May 5, 2004

APPLICANT:	Talbot County
PROPOSAL:	Comprehensive Review of Local Program, County Council Bill 933
COMMISSION ACTION:	Vote
PANEL MEMBERS:	Dave Blazer (Chairman), Gary Setzer, Bill Giese, Joe Jackson and Ed Richards
PANEL RECOMMENDATION:	Deny
STAFF:	Ren Serey
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article §8-1809 (j)

DISCUSSION:

I move on behalf of the panel to deny approval of Talbot County Bill 933 as an amendment to the County's Critical Area Program and to invite the County to work with the Commission and its staff to develop new growth allocation provisions that will be compatible with the State Critical Area Act and Criteria.
The basis for the motion is as follows:

Accepting Bill 933 would negate at least one previous Commission action approving a local program change. This is the refinement to the St. Michaels program for the Strausburg growth allocation approved in October 2003.

Accepting Bill 933 would create conflicts between the County program and several approved municipal programs. The municipal programs have their own approved growth allocation procedures premised on the growth allocation reserves provided by the County. The conflict that Bill 933 would create is contrary to the Commission's oversight responsibility to ensure that local programs are implemented in a consistent and uniform manner.

Ex. 19

rt L. Ehrlich, Jr.
Governor

ichael 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

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. 20

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E. 1502

'ıe Panel recommended and the Commission fully supported inviting Talbot County to work ıth the Commission and its staff to develop new growth allocation provisions that will be compatible with the State's Critical Area Act and Criteria. Commission staff are available at your convenience to discuss new growth allocation procedures or to arrange a meeting with the Commission's Program Implementation Subcommittee.

Please contact me if you have questions or need additional information.

Sincerely,

Lisa A. Hoerger

Lisa Hoerger
Natural Resource Planner

cc: Honorable Philip Carey Foster
Mr. R. Andrew Hollis, Talbot County
Mr. Mike Pullen, Talbot County
Ms. Mary Kay Verdery, Talbot County
Ms. Marianne Mason, DNR- AG

E. 1504

Ex. 21

Talbot County Comprehensive Plan

MAP 3-3
St. Michaels Growth Area Plan

LEGEND:

- TOWN OF ST. MICHAELS
- DESIGNATED GROWTH AREA
- CRITICAL AREA
- COUNTRYSIDE PRESERVATION AREA
- WESTERN RURAL CONSERVATION AREA

PRIORITY FUNDING AREA BOUNDARY

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2000 Legislative Session, Legislative Day No. March 28, 2000

Bill No. 762

Introduced by: Ms. Spence

A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND

By the Council March 28, 2000

Introduced, read first time, ordered posted, and public hearing scheduled on Tues. April 18 at 1:35 p.m. at the County Council Chambers, Court House, South Wing, Easton, Maryland 21601.

By Order Jessica Mohns
Secretary

Ex. 22

000533

E. 1505

A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND.

SECTION ONE: BE IT ENACTED, by the County Council of Talbot County, that Title 19-14 (c) (iv) (c) [i] be repealed and re-enacted to establish procedures for awarding supplemental growth allocation to municipalities in Talbot County, Maryland, as follows:

[i] Not more than 1,213 acres of the Critical Areas of the County, including all land lying within the Critical Area within incorporated towns, shall be reclassified from the Rural Conservation (RC) District (or town zoning districts established for the Resource Conservation Area of the Critical Area) to any other zoning district. Of these 1,213 acres, 155 acres is reserved for the Town of Easton, 195 acres is reserved for the Town of Oxford, 245 acres is reserved for the Town of St. Michaels for growth allocation associated with annexations, and 618 acres is reserved for the County.

When 1,092 acres (ninety [90] percent of 1,213 acres) has been approved for growth allocation by the Towns and/or the County, then the County shall request permission from the Maryland Critical Area Commission to double the maximum number of acres that may be reclassified from the Rural Conservation District (or comparable town districts) from 1,213 to 2,426 acres. Upon Critical Area Commission approval, the County shall reserve acreage for each town.

If the commission approves the doubling of the number of acres that may be rezoned under this Section, the County will have its full allocation of 2,554 acres for growth as specified in the County's Critical Area Plan, that is 1,213 acres (original limit) + 1,213 acres (potential additional limit) + 128 acres (amount reserved in Section [j] below = 2,554 acres). The Maryland Critical Area law does not allow for the full 2,426 acre allocation (1,213 + 1,213) at the time of the establishment of this Section (August 13, 1989).

Upon request for supplemental growth allocation by any municipal corporation within the County, the County Council may transfer growth allocation to the municipal corporation and may impose such conditions, restrictions, and limitations upon the use of any such supplemental growth allocation, if any, as the Council may consider appropriate. All such requests shall comply with the following requirements.

[1] Application Process. The applicant shall file their application with the municipality. In addition to complying with all municipal requirements, the applicant shall also provide the information required by § 19.14 (c) (iv) [b] of the Talbot County Zoning Ordinance, as amended, and shall also comply with the design standards set forth in § 19.14 (c) (iv) [b] [1] through [9], of the Talbot County Zoning Ordinance, as amended. The municipality shall forward the application to the County Council for consideration and review within five (5) working days.

[2] Staff and Planning Commission Review. The planning staff and the Planning Commission shall review the application in accordance with the procedures set forth in §19.14 (c) (iv) (c) [1] through [4], except that municipal and county staff reports shall be forwarded to the Planning Commissions of both jurisdictions and the planning staff shall schedule a joint hearing on the application before the Planning Commissions of both jurisdictions. The designated chairperson of each Planning Commission shall co-chair the hearing. Each Planning Commission shall vote separately and make its recommendations to its respective council or commission. Each Planning Commission shall provide a copy of its recommendations to the other jurisdiction.

[3] Council Review. The county and municipal councils or commissions shall hold a joint hearing on the application, co-chaired by the designated chairperson of each council or commission which may be coordinated jointly with the Critical Area Commission. The county and municipal councils or commissions shall make their

respective decisions separately as independent entities. The County Council shall evaluate the application in accordance with § 19.14 (c) (iv) [d].

[4] Amendments to Approved Projects. Any amendment to an approved project shall be subject to County Council review and approval for a period of five (5) years following the date of initial approval.

BE IT FURTHER ENACTED, that this Ordinance shall become effective sixty (60) days following its enactment.

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 762 having been published, a public hearing was held on Tues. April 18, 2000

BY THE COUNCIL

Read the third time.

ENACTED April 25, 2000 *
AS AMENDED

By Order Theresa Mann
Secretary

Spence - aye
Dyott - aye
Foster - aye
Higgins - aye
Harrison - aye

000535

E. 1507

THE COMMISSIONERS OF ST. MICHAELS

SETTLED 1670 - 80

INCORPORATED 1804

FACSIMILE TRANSMITTAL SHEET

TO: Andy Hollis

FROM: Cheryl Thomas

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RE: County Bill 762

NOTES/COMMENTS:

Per your request – please let me know if you think my input at the public hearing is necessary. Thanks!

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Ex. 23

000627

Thank you for your attention and consideration of this matter. Please let me know whether it is your intention to accept my suggestion and furnish me with the most up to date copy of this Bill.

Please also copy me on any further proposed legislation involving growth allocation in the future.

Thank you for you attention to this matter.

Very truly yours,

H. Michael Hickson

HMH/pjh

Enclosure

cc: Cheril S. Thomas, Town Clerk/Manager

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acres). Upon Critical Area Commission approval, the County shall reserve acreage for each town.

If the Commission approves the doubling of the number of acres that may be rezoned under this Section, then the County will have its full allocation of 2,554 acres for growth as specified in the County's Critical Area Plan, that is 1,213 acres (original limit) + 1,213 acres (potential additional limit) + 128 acres (amount reserved in Section [j] below = 2,554 acres). The Maryland Critical Area Law does not allow for a full 2,426 acre allocation (1,213 + 1,213) at the time of establishment of this Section (August 13, 1989).

[* Amendment, Bill 699 – Effective May 29, 1999]

[j] Not more than 128 acres of the Critical Area of the County, including lands within the incorporated towns, shall be reclassified from a Limited Development Area (LDA) to an Intensely Developed Area (IDA). For purposes of this Section, LDA zoning districts include Rural Residential (RR), Town Residential (TR) and Village Center (VC) or areas of less than twenty (20) contiguous acres of Limited Commercial (LC), General Commercial (GC) or Limited Industrial (LI). Town zoning districts include all districts classified as LDA. The requested IDA classification shall include areas of twenty (20) or more contiguous acres of LC, GC, LI or town zoning districts established for the IDA of the Critical Area.

In determining whether the twenty (20) acre threshold has been reached, the contiguous areas of existing commercial and/or industrial zoning districts, whether located in the Critical Area or Non-critical Area, shall be considered. Of the 128 acres, twenty-four (24) acres is reserved for the Town of Easton, forty-four (44) acres for the Town of Oxford, twenty-four (24) acres for the Town of St. Michaels for growth allocation or growth allocation associated with annexations, and thirty-six (36) acres for the County for growth allocation for property outside of the Towns and outside of areas shown as possible annexation areas (See Maps 1, 2 and 3).*

[* Amendment, Bill 459 - Effective November 9, 1991]

[k] The number of reserved areas allocated among the Towns for rezoning in Section 19.14(c)(1)(iv)[i] & [j] & (iii) should be reviewed by the County and Towns by June 1, 1993 for possible reallocation and at least every four (4) years thereafter.

[l] In any one rezoning review cycle, not more than 100 acres should be approved by the County for reclassification from the Rural Conservation District to any other zoning district. Not more than twenty (20) acres should be reclassified from the Rural Residential, Town Residential, or Village Center Districts or area of less than twenty (20) contiguous acres of Limited

000631

COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND

March 28, 2000

COPY

* * *

Pursuant to notice, the above-captioned meeting was held on Tuesday, March 28, 2000, commencing at 1:30 p.m. in the Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

COUNCIL MEMBERS:

HILARY B. SPENCE, President
WAYNE DYOTT, Vice President
PHILIP CAREY FOSTER
LEVIN F. HARRISON, IV
ROBERT D. HIGGINS

ALSO PRESENT:

R. ANDREW HOLLIS, County Manager
MICHAEL L. PULLEN, ESQUIRE, County Attorney

REPORTED BY:
KATHRYN M. BENHOFF, CSR

Ex. 24

000640

MS. WELTY: Right.

MR. HIGGINS: The County Council at that time said no, we are not going to blanket give 400 acres without commitment for a specific project, so now, it is going to be reviewed specific project by specific project jointly between, first step will be each Planning Commission, the Town Planning Commission and the County Planning Commission. Each separate group, being the County Council and the Town Council, will receive a recommendation up from each of their respective Planning Commissions, and that this process -- but what it's going to be is it's going to be a specific, site specific project by project issue as opposed to blanket saying we think that you need 400 acres for the next eight years, see you later, alligator.

Now, in my opinion, it does not affect St. Michaels and Oxford at this time --

MS. SPENCE: Right.

MR. HIGGINS: -- because they have not gone through their initial allocation, which is around 200 acres for each of those municipalities, so they will fall into this same procedure if at any future point in time they've

gone through theirs.

MR. FOSTER: Well, would they necessarily have to exhaust it, or might they still not choose to apply for this, perhaps reserving some of it for some future project and deciding that that's all they would have left, and a new one comes along, that wouldn't they still be able to make the application?

MR. COWEE: It's my understanding that until that acreage is used up, they would not be under this process.

MS. SPENCE: Right, until it's used up.

MR. FOSTER: They could not? Is that your understanding, Mr. Pullen?

MR. PULLEN: I think that, I think that is, in fact, in the existing ordinance --

MR. FOSTER: Okay.

MR. PULLEN: -- in one of the two sections that we referred to earlier.

MR. FOSTER: Okay.

MR. HIGGINS: But does that clear it up to Mrs. Welty where the question was?

MS. WELTY: Well, if the Town of Easton applies