Volume III Talbot County v. Town of Oxford No 1509 Record Extract Sept. 2006 MSA_S_1831_12 (1 of 2)

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 III

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324-25'

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND	:	
Plaintiff	:	
v.	:	
DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION, et al.	:	Civil Action No. 2-C-04-005095 DJ
	:	
Defendants	:	

TALBOT COUNTY'S MOTION FOR SUMMARY JUDGMENT

Talbot County, Maryland, by and through ALLEN, KARPINSKI, BRYANT & KARP,DANIEL KARP and VICTORIA M. SHEARER, and MICHAEL L. PULLEN, Talbot County Attorney, its attorneys, moves pursuant to Maryland rule 2-501 for summary judgment as there are no genuine disputes of material fact and the County is entitled to judgment as a matter of law, for the reasons set forth in the memorandum of law filed herewith.

ALLEN, KARPINSKI, BRYANT
& KARP

BY: Daniel Karp
DANIEL KARP

RESOLUTION

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

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

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

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

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

E. 1515

EXHIBIT

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COPY

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

1989 Legislative Session Legislative Day No. May 9, 1989

RESOLUTION NO. 56

Introduced by: The County Council

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

By the Council May 9, 1989

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

By Order, Mary Foster
Secretary

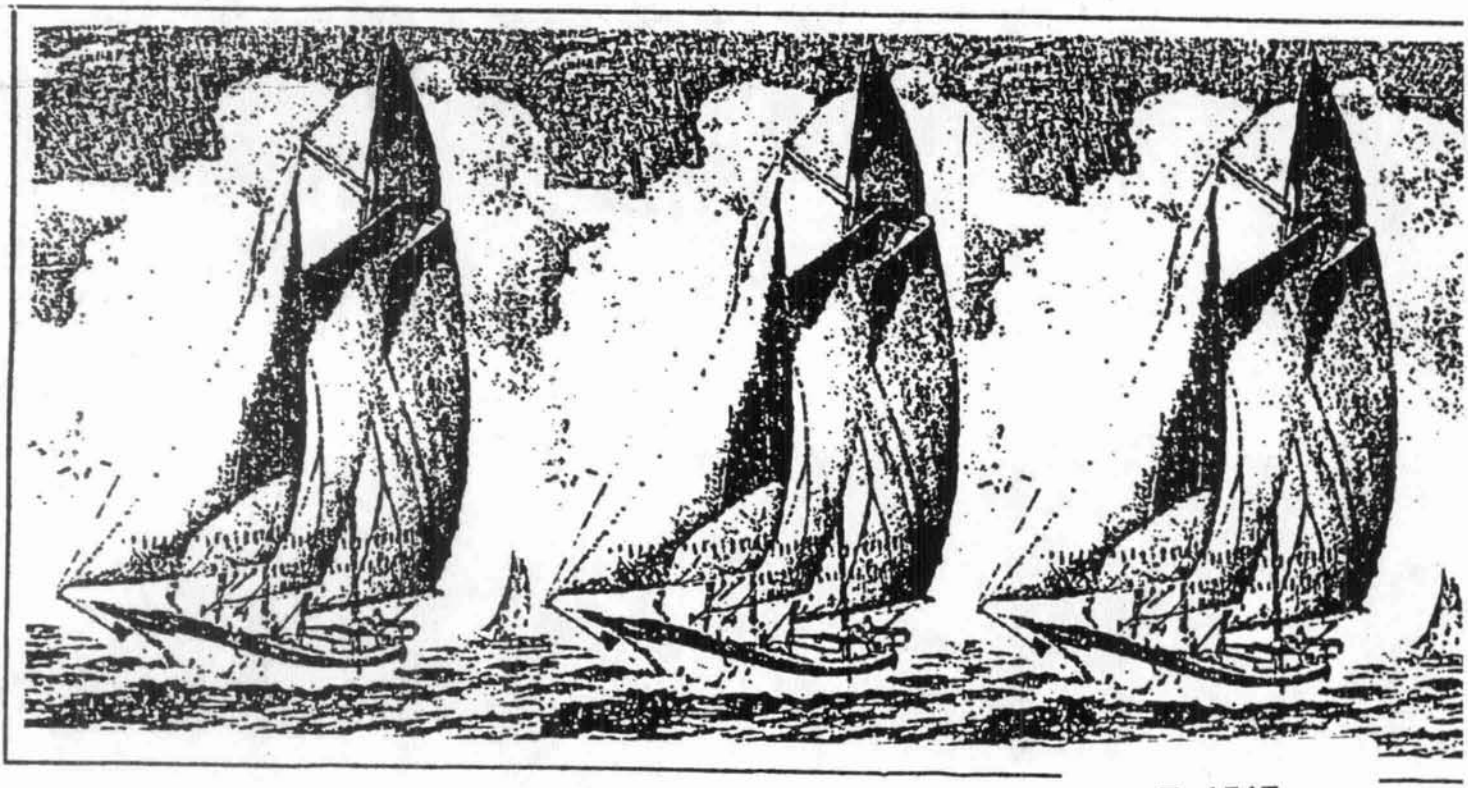
E. 1516

CRITICAL AREA PLAN

COPY

TALBOT COUNTY
MARYLAND

DRAFT
MAY, 1989



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CHAPTER I

INTRODUCTION

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

PURPOSE

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

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

E. 1520

ORGANIZATION

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

E. 1521

CHAPTER II

DEVELOPMENT IN THE CRITICAL AREA

INTRODUCTION

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

CRITICAL AREA DESIGNATION

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

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

IDENTIFICATION OF DEVELOPMENT AREAS

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

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

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

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

E. 1522

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

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

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

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

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

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

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

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

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

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

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

CRITERIA FOR DELINEATION OF INTENSELY DEVELOPED AREAS

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

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

CRITERIA FOR DELINEATION OF LIMITED DEVELOPMENT AREAS

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

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

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

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

DELINEATION OF RESOURCE CONSERVATION AREAS

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

Summary of Critical Area Classification

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

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

E. 1524

TABLE 2.1

CRITICAL AREA CLASSIFICATIONS

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

EXPANSION OF DEVELOPMENT AREAS AND FUTURE ALLOCATION

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

TABLE 2.2
EXPANSION FORMULA FOR TALBOT COUNTY

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

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

E. 1525

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

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

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

Policy C: New IDA's and LDA's which are located within Resource Conservation Areas should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.

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

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

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

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

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

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

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

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

AMENDMENTS TO AREA DESIGNATIONS AND THE CRITICAL AREA MAP

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

CHAPTER III

WATER QUALITY

INTRODUCTION

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

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

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

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

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

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

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

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

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

E. 1528

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

Table III-1 POTENTIAL WATER POLLUTING ACTIVITIES

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

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

Source: Rogers, Golden & Halpern

A. STREAMS

INTRODUCTION

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

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

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

GOALS and POLICIES

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

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

1. Identify any streams in the project area, on or off-site, that would be crossed or might otherwise be affected during the development activities;

2. Show that the development will not cause increases in the frequency and severity of floods;

3. Retain tree canopy along stream banks;

4. Provide for the retention of the natural substrate for stream beds;

5. Prohibit the placement of concrete, riprap or other artificial surfaces on the bottom of natural streams unless it can be demonstrated to the proper agency that it will improve the water quality and fish habitats;

6. Show that development will not increase non-point and point source pollution; and

7. Provide a buffer for development along the shoreline.

B. SEDIMENT CONTROL

INTRODUCTION

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

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

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

GOALS and POLICIES

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

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

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

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

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

E. 1532

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

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

C. SOILS AND EROSION

INTRODUCTION

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

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

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

GOALS and POLICIES

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

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

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

E. 1533

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. 1534

D. IMPERVIOUS SURFACES

INTRODUCTION

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

GOALS and POLICIES

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

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

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

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

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

E. 1535

E. STORM WATER MANAGEMENT

INTRODUCTION

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

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

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

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

GOALS and POLICIES

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

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

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

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

CHAPTER IV
HABITAT PROTECTION

INTRODUCTION

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

A. THREATENED AND ENDANGERED SPECIES

INTRODUCTION:

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

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

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

E. 1537

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

GOALS & POLICIES

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

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

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

1. That would limit timber harvesting, land clearing or construction;
2. That would limit improvements and maintenance to timber stands;
3. That would require approval of any proposed activity based on consultation with the agency administering the Non-Game and Endangered Species Program; and
4. That would be reviewed annually due to the fact that sometimes bald eagles will relocate their nests. New nest sites should automatically receive a zone of protection.

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

1. Before land clearing or harvesting of mature woodlands the presence of Delmarva fox squirrels should be determined; and
2. Specific recommendations on timber harvesting and land clearing of Delmarva fox squirrel habitat should be obtained from the agency administering the Non-Game and Endangered Species Program.

Sedge wren - Protection guidelines include:

1. Before dredging or filling shall be permitted, the presence of the sedge wrens on the tract should be determined. If sedge wrens are present:
   - An appropriate habitat should be retained including nest sites;
   - No disruptive activity should take place during breeding or nesting season.

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

B. PLANT AND WILDLIFE HABITAT

INTRODUCTION

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

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

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

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

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

Geese and Swans

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

Dabbling Ducks

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

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

Freshwater	Brackish/Open Sea
Canvasback duck	Black scoter
Redhead duck	Surf scoter
Greater scaup	Common Scoter
Lesser scaup	Red-Breasted merganser
	Common eider

Forest Interior Dwelling Birds

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

Colonial Nesting Birds

- Herons
- Egrets
- Terns
- Glossy Ibis

Shellfish

- Oysters
- Crabs
- Blue crabs
- Clams

GOALS & POLICIES

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

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

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

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

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

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

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

C. ANADROMOUS FISH

INTRODUCTION

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

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

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

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

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

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

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

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

GOALS and POLICIES

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

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

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

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

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

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

E. 1543

CHAPTER V

BUFFER AREAS

INTRODUCTION

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

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

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

GOALS and POLICIES

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

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

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

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

E. 1544

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

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

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

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

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

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

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

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

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

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

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

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

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

TYPES OF PERMITTED, RESTRICTED AND PROHIBITED USES IN THE BUFFER

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

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

2. Alteration of Existing Structures

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

3. Agriculture (except livestock operations)

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

4. Agriculture (livestock operations)

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

5. Commercial Timber Harvesting

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

6. Other Cutting or Clearing of Trees

   Cutting or clearing of trees should be allowed only for:

   - Personal use providing that Buffer functions are not impaired and trees cut are replaced;

   - Clearing the blockage of streams;

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

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

7. Water-Dependent Facilities

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

8. Shore Erosion Protection Devices or Measures

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

CHAPTER VI

NON-TIDAL WETLANDS

INTRODUCTION

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

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

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

GOALS and POLICIES

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

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

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

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

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

E. 1548

CHAPTER VII

AGRICULTURE

INTRODUCTION

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

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

GOALS and POLICIES

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

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

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

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

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

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

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

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

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

E. 1550

CHAPTER VIII

FORESTS & DEVELOPED WOODLANDS PROTECTION

INTRODUCTION

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

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

GOALS and POLICIES

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

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

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

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

E. 1551

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

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

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

CHAPTER IX

NATURAL PARKS

INTRODUCTION

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

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

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

GOALS and POLICIES

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

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

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

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

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

CHAPTER X

SURFACE MINING/SOLID WASTE/SANITARY LANDFILL

INTRODUCTION

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

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

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

GOAL and POLICIES

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

Policy A: Surface mining operations should not occur in:

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

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

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

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

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

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

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

CHAPTER XI

MARINAS AND WATER-DEPENDENT FACILITIES

INTRODUCTION

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

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

GOALS AND POLICIES

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

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

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

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

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

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

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

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

E. 1556

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

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

CHAPTER XII

IMPLEMENTATION

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

A. County Regulations

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

B. County Programs

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

C. County Coordination and Cooperation with Other Agencies

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

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

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CHAPTER II - DEVELOPMENT IN THE CRITICAL AREA

A. County Regulations

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

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

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

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

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

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

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

   a. Non-maritime heavy industry;

E. 1559

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

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

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

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

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

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

B. County Programs

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

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

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

C. County Coordination and Cooperation With Other Agencies

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

E. 1560

CHAPTER III - WATER QUALITY

Streams

A. County Regulations

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

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

B. County Programs

C. County Coordination and Cooperation with Other Agencies

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

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

Sediment Control

A. County Regulations

1. Use existing County regulations.

B. County Programs

C. County Coordination and Cooperation with Other Agencies

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

E. 1561

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

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

Soils and Erosion

A. County Regulations

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

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

B. County Programs

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

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

C. County Coordination and Cooperation with Other Agencies

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

E. 1562

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

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

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

Impervious Surfaces

A. County Regulations

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

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

B. County Programs

C. County Coordination and Cooperation with Other Agencies

Stormwater Management

A. County Regulations

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

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

B. County Programs

C. County Coordination and Cooperation with Other Agencies

E. 1563

CHAPTER IV - HABITAT PROTECTION

Threatened and Endangered Species

A. County Regulations

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

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

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

B. County Programs

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

C. County Coordination and Cooperation With Other Agencies

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

Plant and Wildlife Habitat

A. County Regulations

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

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

B. County Programs

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

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

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

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

C. County Coordination and Cooperation With Other Agencies

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

Anadromous Fish

A. County Regulations

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

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

B. County Programs

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

C. County Coordination and Cooperation With Other Agencies –

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

CHAPTER V - BUFFER

A. County Regulations

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

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

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

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

B. County Programs

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

C. County Coordination and Cooperation With Other Agencies

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

CHAPTER VI - NON-TIDAL WETLANDS

A. County Regulations

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

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

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

B. County Programs

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

C. County Coordination and Cooperation With Other Agencies

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

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

CHAPTER VII - AGRICULTURE

A. County Regulations

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

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

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

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

B. County Programs

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

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

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

C. County Cooperation and Coordination with Other Agencies

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

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

CHAPTER VIII - FORESTS AND DEVELOPED WOODLANDS

A. County Regulations

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

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

E. 1569

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

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

B. County Programs

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

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

C. County Coordination and Cooperation With Other Agencies

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

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

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

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

E. 1570

CHAPTER IX - NATURAL PARKS

A. County Regulations

B. County Programs

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

C. County Coordination and Cooperation with Other Agencies

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

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

CHAPTER X - SURFACE MINING/SOLID WASTE/SANITARY LANDFILLS

A. County Regulations

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

B. County Programs

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

C. County Coordination & Cooperation With Other Agencies

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

CHAPTER XI - MARINAS AND WATER DEPENDENT FACILITIES

A. County Regulations

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

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

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

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

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

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

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

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

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

B. County Programs

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

E. 1572

C. County Coordination and Cooperation With Other Agencies

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

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

ADDITIONAL COUNTY REGULATIONS AND INTERGOVERNMENTAL COOPERATION

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

1. Grandfathering

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

2. Variances

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

3. Intrafamily Transfers

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

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

4. Intergovernmental Cooperation

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

E. 1574

GLOSSARY

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

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

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

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

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

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

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

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

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

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

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

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

E. 1576

Eutrophication: The normally slow process by which a lake evolves into a bog or marsh and ultimately assumes a completely terrestrial state and disappears. During eutrophication the lake becomes so rich in nutritive compounds, especially nitrogen and phosphorous, that algae and other microscopic plant life become super abundant, thereby 'choking' the lake, and causing it eventually to dry up.

Fallow Land: Land that is plowed and tilled but left unseeded during a growing season.

Fastland: That portion of a coast behind the coastline which marks the seaward limit of permanently exposed coast and or the landward limit of effective wave action. Often with a well-defined scarp or wave cut cliff defining the seaward edge of the fastland.

Fecal Coliform Bacteria: A group of organisms common to the intestinal tracts of man and animals.

Forest: A biological community dominated by trees and other woody plants covering a land area of one acre or more. This also includes forests that have been cut, but not cleared.

Forest Interior Dwelling Birds: Species of birds which require relatively large forested tracts in order to breed successfully (for example, various species of flycatchers, warblers, vireos and woodpeckers).

Forest Management: The protection, manipulation and utilization of the forest to provide multiple benefits, such as timber harvesting, water transportation, wildlife habitat, etc.

Forest Practice: The alteration of the forest either through tree removal or replacement in order to improve the timber, wildlife, recreational, or water quality values.

Groin: Stone or wooden jetty constructed perpendicular to shore in order to interrupt lateral shore sand movement and for the purpose of accumulating sand on the shore.

Habitat: The natural abode of a plant or animal.

Herbicide: A chemical used to destroy or control the growth of weeds, bush or other undesirable plants.

Highly Erodible Soils: Soils with a slope greater than fifteen percent; or those soils with a K value greater than .35 and with slopes greater than five percent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Surface Mining:

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

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

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

Water table: The upper level of ground water.

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

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

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

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

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

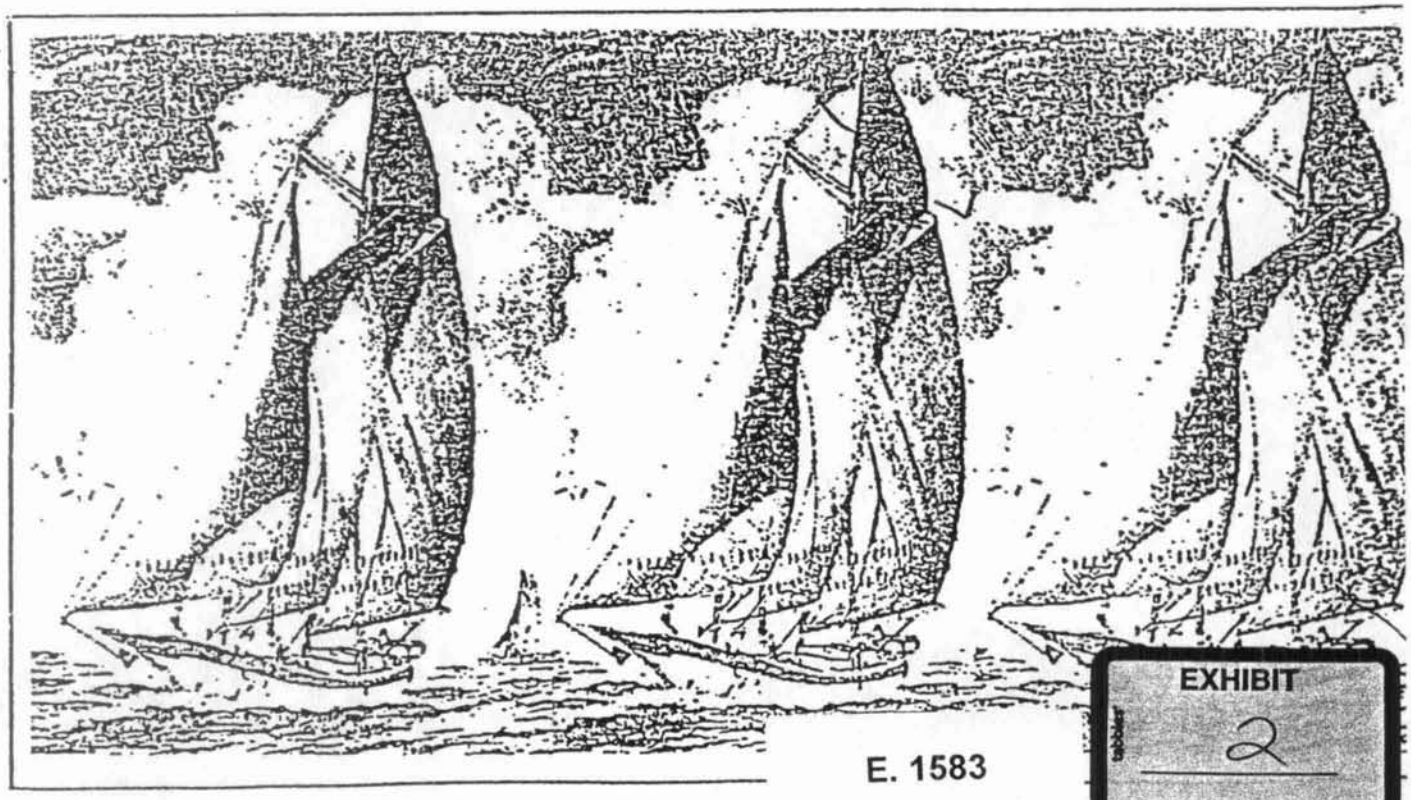
Wildlife Corridor: A strip of land having vegetation that provides habitat and a safe passageway for wildlife.

E. 1582

CRITICAL AREA ZONING ORDINANCE

COPY

Talbot County, Maryland



E. 1583

EXHIBIT 2

TALBOT COUNTY
CRITICAL AREA ZONING ORDINANCE

[redacted]
MAY, 1989

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C. Establishment of Zones

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

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

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

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

TABLE 1

NEW ZONING DESIGNATIONS WITHIN CRITICAL AREA

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

II. USE CRITERIA

A. Purpose

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

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

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

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

B. Districts

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

1. Character and Purpose of Districts

a. Rural Conservation District - RC

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

Any development in this district shall:

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

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

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

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

b. Rural Residential District - RR

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

Any development in this district shall:

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

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

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

c. Village Center District - VC

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

Any development in this district shall:

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

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

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

d. Town Residential District - TR

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

Any development in this district shall:

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

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

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

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

e. Limited Commercial District - LC

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

Any development in this district shall:

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

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

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

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

f. General Commercial District - GC

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

Any development in this district shall:

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

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

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

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

g. Limited Industrial District - LI

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

Any development in this district shall:

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

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

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

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

2. Land Use Table

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

TABLE 2

LAND USE TABLE

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

All setbacks are measured from property lines

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

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

RESIDENTIAL Continued	RC	RR	TR	VC	LC	GC	LI

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

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

RECREATION continued	RC	RR	TR	VC	LC	GC	LI
Motorcycle Event Courses (See Additional Land Use Regulations, Section II.B.3.c) - not allowed in Critical Area							
Parks and Playgrounds (public or private) - excludes commercial ballfields or motorized vehicle race courses	P	P	P	P			
Riding Stables and Horse Boarding (commercial) - all setbacks increased to 200 ft - minimum lot size increased to 10 acres or 1 acre per horse whichever is greater	S						

RETAIL SALES	RC	RR	TR	VC	LC	GC	LI
Automobile, Trucks, and Recreational Vehicles						P	P
Building Supply and Lumber Yards with outside storage					S	P	P
Farm Machinery and Supplies - setbacks increased to 200 feet from parcels in RC, RR, and TR districts for structures used for incidental milling of grain and feed						P	P
General Retail - includes sales of antiques, books, baked goods, clothing, crafts, drugs, dry goods, furniture, gifts, groceries, hardware, household items, liquor, plants (flowers, shrubs, trees), seafood, sports equipment, and items usually found in department stores, general stores, or variety stores - in VC: use shall be within 300 feet of a general retail use or post office (measured between property lines) existing as of (adoption date of ordinance), not exceeding 1,000 sq ft gross floor area, and excluding liquor sales - in LC: not exceeding 2,500 sq ft gross floor area				S	P	P	
Monuments and Memorial Stones - all setbacks increased to 100 feet for stone cutting activities						P	P
	RC	RR	TR	VC	LC	GC	LI

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

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

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

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

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

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

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

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3. **Additional Land Use Regulations**

a. Agricultural Research Facilities

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

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

b. Produce Stands

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

c. Motorcycle Event Courses

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

d. Home Occupations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4) Specific Provisions for Bed and Breakfast Accommodations

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

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

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

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

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

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

g) Bed and Breakfast accommodations shall be operated by owner-occupants of the residence. Any new owner of a residence in which a Bed and Breakfast is operated must apply to the Planning Officer for written permission to continue the operation; and

h) Bed and Breakfast enterprises shall be required to pay the Talbot County Accommodations Tax for each guest bedroom.

e. Rehabilitation Residence

Rehabilitation Residences for not more than eight court appointed youth. In addition, these residences shall:

1) provide adequate supervision and professional services through live-in houseparents;

2) be of sufficient size to accommodate the proposed number of residents or youth and staff and shall provide a minimum lot area of two acres per unit;

3) have adequate sanitary facilities for the proposed number of residents of youth and staff, certified by the Health Department;

4) be duly approved and/or licensed by all applicable State agencies;

5) provide ample outdoor space for recreation, free from hazard and appropriately equipped for the age and number of persons residing;

6) not constitute a nuisance caused by noise, vehicle traffic or parking, or any other physical activity; and

7) meet all other applicable requirements of this ordinance.

f. Airports

All runways, landing strips, and other parts of the airport or landing field normally used by aircraft shall be 1,000 feet from any lot occupied by a dwelling, school, church, or institution for human care. Hangars, storage buildings, repair shops, fuels storage areas, and any other buildings or structures shall be at least 200 feet from any lot occupied by a dwelling, school, church, or institution for human care. In addition, the following uses shall not be located in the Airport Zones:

1) High power transmission lines, in excess of 49 KV;
2) Manufacturing establishments or other uses which produce smoke interfering with the safe use of the airport;
3) Rifle ranges and private landing fields which would interfere with the health, safety, and general welfare of the public in the use of the airport;
4) Any plant, business, or structure that emits smoke, gas, and odors that would interfere with the health, safety, and general welfare of the public in the use of the airport; and
5) Any use which would create electrical interference with radio communication between the airport and aircraft, make it difficult for flyers to distinguish between airport lights and others, result in glare in the eyes of flyers using the airport, impair visibility in the vicinity of the airport, or otherwise endanger the landing, taking off, or maneuvering of aircraft.

4. **Residential District Density Limits**

a. Rural Conservation District	- RC	1 dwelling unit per 20 acres
b. Rural Residential District	- RR	1 dwelling unit per 5 acres
c. Village Center District	- VC	1 dwelling unit per 1 acre without sewer service (with approval from Health Department) 4 dwelling units per 1 acre with sewer service (with approval from Public Works Department)
d. Town Residential District	- TR	1 dwelling unit per 1 acre without sewer service (with approval from Health Department) 4 dwelling units per 1 acre with sewer service (with approval from Public Works Department)

5. **Rural Conservation District Density Transfer**

The residential density limits on a parcel in the Rural Conservation District may be increased through a joint subdivision (which is processed as any other subdivision). Only joint subdivisions in the Rural Conservation District, as described below, may be considered. A joint subdivision includes property in the sending area (habitat areas without significantly eroding shorelines) and the receiving area (areas with significantly eroding shorelines). See definition of Joint Subdivision for complete description of sending and receiving areas. Through a joint subdivision, the number of permitted dwelling units in the sending area portion of the subdivision may be transferred to the receiving area portion of the subdivision. Such a transfer may only take place through a joint subdivision. Any private agreement between property owners does not alter the allowed density on their properties until a subdivision is approved and recorded.

The maximum density in the receiving area, combining permitted and transferred units, is 1 dwelling unit per 5 acres. In addition, the joint subdivision shall show 20 acres of property in the sending area portion of the subdivision as protected from future development for each dwelling unit transferred to the receiving area. The protection from future development in the sending area shall be accomplished through fee title donation, conservation easements, and/or cooperative agreements with landowners. The Planning Officer shall determine the protection method most appropriate to the subject property. The following chart show the number of permitted dwelling units and the number of transferred units that may be accepted in the receiving area on lots created after (approval date of ordinance). Parcels or lots recorded prior to (approval date of ordinance) are allowed 1 unit, however, the total number of units allowed (as shown below) may not be exceeded.

# of Permitted Units 1 unit/20 acres	Acres of Land in Receiving Area	# of Transferred Units that may be Accepted in Receiving Area with eroding shorelines	Total # of Units Allowed 1 unit/5 acres
0	0 up to 5	0	0
0	5 up to 10	1	1
0	10 up to 15	2	2
0	15 up to 20	3	3
1	20 up to 25	3	4
1	25 up to 30	4	5
1	30 up to 35	5	6
1	35 up to 40	6	7
2	40 up to 45	6	8

and so forth.

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6. Intrafamily Transfers

Notwithstanding the density limits established in section II.B.4, a property of record by 1 March 1986 and located in the Rural Conservation District may be subdivided by the owner by means of a Bona Fide Intrafamily Transfer subject to the following limits:

a. A parcel that is 7 acres or more and less than 12 acres may be subdivided into not more than 2 lots. A parcel that is 12 acres or more and less than 60 acres in size may be subdivided into not more than 3 lots. The lots may be created at different times;

b. A parcel that is subdivided by means of a bona fide intrafamily transfer:

1) may be transferred only to a member of the owner's immediate family for the purpose of establishing a residence for that family member. Only the recipient of a lot through an intrafamily transfer may request a building permit for a structure on a lot created through this process. Such a building permit for a residential structure must be filed with the final subdivision plat creating the lot. For the purposes of this Section 6, immediate family means a father, mother, son, daughter, grandfather, grandmother, grandson, or granddaughter who has attained the age of 21 years.

2) may not be rented or leased to any party except for a member of the owner's immediate family.

3) must comply with the County Subdivision Regulations;

4) or a portion of a parcel that has been so subdivided may not be further subdivided;

5) is not eligible for joint subdivision under the Rural Conservation Density Transfer Section II.B.5;

6) may not be conveyed subsequently to any person other than a member of the owner's immediate family (except for a conveyance to a third party as security for a mortgage or deed of trust and except for a conveyance resulting from Court proceedings, including bankruptcy, divorce, mental competency, probate, foreclosure, etc. or from the disposition of a will). A variance from this limitation may be obtained from the Board of Appeals with the applicant showing that:

a) The lot was created as part of a bona fide intrafamily transfer and not with the intent of subdividing the original parcel of land for the purpose of ultimate commercial sale; and

b) A change in circumstances has occurred since the original transfer was made that is not inconsistent with this section and warrants an exception. Changes in circumstances include situations where the intrafamily transfer recipient has not resided in the County for 5 years prior to application for a variance or suffers significant financial hardship. The Board may define such hardship as being unable to meet all financial obligations for the preceding 6 months.

c. Any deed for a lot created by bona fide intrafamily transfer shall contain a covenant stating that the lot is created subject to the provisions of this section;

7. **Supplemental Special Exception Findings and Requirements**

As indicated in the Land Use Table, the following uses may be allowed after approval of a Special Exception from the Board of Zoning Appeals. A request for a Special Exception shall follow all requirements and procedures established in Section 11 of the County Zoning Ordinance. In addition, the Board of Appeals shall determine whether: 1.) the findings and requirements listed below for each use have been met, 2.) the request is consistent with other applicable provisions of this ordinance, and 3.) the request is consistent with the intent and purpose of the Maryland Chesapeake Bay Critical Area Law. The Board shall consider the recommendation of the Planning Officer regarding these three criteria. The applicant is responsible for proving compliance with each finding and requirement, and consistency with this ordinance and the intent of the Critical Area Law. Information necessary for responding to these required findings, if not available locally, shall be obtained from appropriate state and federal agencies. Copies of all special exception requests shall be submitted to the State Critical Area Commission by the Planning Officer. Approvals may not be granted until the County receives notification from the Commission that it has received copies of the request.

a. **Piers, Marinas, and Public Recreation, Education & Research Areas.**

These facilities, which use water for transportation and derive economic benefits from shore access, include new, expanded, or redeveloped community piers, commercial marinas, and the replacement of these facilities. Below are the findings and requirements for all water dependent facilities of this type and then specific findings and/or requirements for each.

1) For all Community Piers, Commercial Marinas, and Public Recreation, Education, & Research Areas

a) The following findings must be made:

(1) The activity shall have minimal individual and cumulative impact on water quality and fish, wildlife, and plant habitat in the Critical Area through design and location criteria;

(2) The activity shall be water dependent;

(3) The project shall meet a recognized private right or public need;

(4) Adverse effects on water quality and fish, plant, and wildlife habitats shall be minimized; and

(5) Nonwater dependent structures or operations associated with water dependent projects or activities shall be located outside the Buffer with sufficient area provided for these associated structures or operations; and

b) The following requirements must be met:

(1) The activity shall not alter existing water circulation patterns or salinity regimes;

(2) The activity shall maintain or improve the flushing characteristics of the water body adjacent to the activity;

(3) Wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats shall not be disturbed;

(4) The operation procedures shall preclude any adverse impacts to water quality that may occur as a result of the activity, such as non-point source run off, sewage discharge from land activities or vessels, or from boat cleaning and maintenance operations;

(5) The operation procedures shall insure that shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;

(6) The construction procedures shall insure that dredging will be conducted in a manner, and using a method, which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the Critical Area;

(7) The construction procedures shall insure that dredged spoil will not be placed within the Shoreline development buffer or elsewhere in a Habitat Protection Area except as necessary for:

(a) Backfill for permitted shore erosion protection measures,

(b) Use in approved vegetated shore erosion projects,

(c) Placement on previously approved channel maintenance spoil disposal areas, and

(d) Beach nourishment; and

(8) Interference with the natural transport of sand shall be minimized.

2) For community piers and related boat facilities

a) The following requirements must be met:

(1) The facilities shall not offer food, fuel, or other goods and services for sale and shall provide adequate and clean sanitary facilities;

(2) The facilities shall be community owned, established, and operated for the benefit of the residents of a platted and recorded riparian subdivision;

(3) A single point of access through the Shoreline Development Buffer to the facilities shall be provided;

(4) If community piers, slips, or moorings are provided as part of the new development, private piers in the development are not allowed; and

(5) The number of slips, piers, or mooring buoys shall be the lesser of sections (a) or (b) below:

(a) One slip for each 300 feet of shoreline in the subdivision in the Rural Conservation District or for each 50 feet of shoreline in the subdivision in a Rural Residential, Village Center, or Town Residential District; or

(b) A density of slips, piers, or mooring buoys to platted lots or dwellings within the subdivision in the Critical area according to the following schedule:

Slips and Moorings:	Platted Lots or Dwellings in the Critical Area:
1 for each lot	up to 15
15 or 75% whichever is greater	16 - 40
30 or 50% whichever is greater	41 - 100
50 or 25% whichever is greater	101 - 300
75 or 15% whichever is greater	over 300

3) For commercial marinas

a) The following requirements must be met:

(1) The operational procedures shall minimize the discharge of bottom wash water into tidal waters;

(2) The operational procedures shall meet the sanitary requirements of Maryland State Law (COMAR 10.17.02);

(3) New marinas shall not be located adjacent to Anadromous Fish Spawning Waters, Shellfish Beds, and Submerged Aquatic Vegetation Areas;

(4) Expansion of existing marinas in the Rural Conservation District shall not degrade water quality and shall result in an overall net improvement in the water quality within and at the entrance to the marina; and

(5) The number of slips or mooring buoys shall not exceed one for each vehicle parking space which shall be provided outside the Shoreline Development Buffer.

4) For water oriented public recreation, education, and research areas

For public beaches or other public water oriented recreation or education areas including, but not limited to, publicly owned boat launching and docking facilities and fishing piers the following requirements must be met:

a) Sanitary facilities shall be provided meeting the requirements of Maryland State Law;

b) Permeable surfaces shall be used wherever standard engineering practices allow, if no degradation of ground water would result;

c) Not more than 15% of existing natural vegetation shall be permanently disturbed; and

d) Service facilities shall be located outside the Shoreline Development Buffer wherever physically possible; and

e) Service facilities for passive recreation, such as nature study, and hunting and trapping, and for education, shall be located outside of the Shoreline development buffer.

b. Mineral Extraction Activities

The following requirements must be met:

1) The operational procedures shall protect the Critical Area from all sources of pollution from mineral extraction activities including, but not limited to: sedimentation and siltation, chemical and petrochemical use and spillage, and storage or disposal of waste, dusts, and spoils; all runoff shall be retained on site;

2) The postextraction or postexcavation use(s) of the site shall be proposed with the operation procedures to insure that extraction activities permit reclamation of the site within 2 years after excavation is completed;

3) Mineral Extraction Activities shall not:

(a) Be located in Habitat Protection Areas and Natural Heritage Areas;

(b) Be located in areas of highly erodible soils;

(c) Cause the loss for 25 years or more of productive forest and agriculture uses as determined by the Soil Conservation Service or Maryland Forest, Park, and Wildlife Service;

(d) Result in degradation of water quality or a loss of Anadromous Fish Spawning Waters, Shellfish Beds, and Submerged Aquatic Vegetation Areas;

(e) Be located within the Shoreline Development Buffer; or

(f) Have wash plants including ponds, spoil piles, and equipment located within the Shoreline Development Buffer.

4) Surety shall be provided to guarantee that all proposed reclamation activities are accomplished.

5) A 6 foot high solid fence shall enclose all extraction activities.

8. **Agricultural and Forestry Management**

Permitted Agricultural and Forestry uses in the Critical Area shall be conducted in accord with the following provisions. To determine compliance with these provisions, the Planning Officer shall request an annual report from the Soil Conservation District for agricultural uses and a report from the Maryland Forest, Park and Wildlife Service for forestry uses.

a. Agricultural Uses

1) The creation of new agricultural lands shall not be accomplished by:

a) diking, draining, or filling any palustrine wetlands;
b) clearing forests or woodlands with soils having a slope greater than 15%; or on soils with a "K" value greater than .35 and slope greater than 5%;
c) clearing vegetation that will adversely affect water quality or will destroy Plant and Wildlife Habitats; or
d) the clearing of existing natural vegetation within the Shoreline Development Buffer,

2) The following requirements shall be met for any agricultural uses:

a) Within 6 months of (adoption date of ordinance), land owners shall establish and maintain:

(1) A vegetated filter strip of not less than 25 feet along the tidal shoreline and tributary streams of agricultural fields:

(a) The width of the filter strip shall be measured landward from the Mean High Water Line of tidal water, tidal wetlands and from tributary streams (excluding drainage ditches). If the average slope of the strip is greater than 6% (measured from the water's edge to the landward edge of the strip, along a line perpendicular to the water), then the strip shall be expanded in 4 foot increments for each 1% of slope over 6%;

(b) The filter strip shall be composed of either trees and a dense ground cover, or a thick sod of grass, and shall be managed so as to provide water quality benefits and habitat protection consistent with the Shoreline Development Buffer Design Standards. Noxious weeds, including Johnson grass, Canada thistle, and multiflora rose, which occur in the filter strip, may be controlled by authorized means; and

(2) A Grassland and Manure Management Program where determined to be appropriate by the Soil Conservation District. The Program shall not permit the feeding or watering of livestock within 50 feet of the Mean High Water Line of tidal water and tidal wetlands, and of tributary streams, whichever is further inland.

b) Prior to 13 May 1991, landowners shall have agreed to be a conservation district cooperator and have agreed to use the following practices: Proper nutrient application rates, Appropriate timing of nutrient application, Appropriate method of nutrient application, Reduced tillage practices, Crop rotation, and Cover crop.

c) After 13 May 1991, landowners shall have in place and be implementing a current Soil Conservation and Water Quality Plan approved by the local District that adheres to the agricultural components of the Maryland 208 Water Quality Plan. Land owners who have such Plans under review by the local Soil Conservation District, but have not received final approval, may continue agricultural activities, following the practices listed in section b) above.

d) In preparing the Plan, the landowner shall select and implement, with the assistance of a technically trained soil conservation planner or technician, from among the several Best Management Practices, those which minimize impacts to water quality, conserve fish, wildlife, and plant habitats, and integrate best with the farming operation. The Plan shall:

(1) assure that Best Management Practices for the control of nutrients, animal wastes, pesticides, and sediment runoff are used to protect the productivity of the land base and enhance water quality. These practices shall minimize contamination of surface and groundwater and, further, shall minimize adverse effects on plants, fish, and wildlife resources. New agricultural drainage ditches are permitted only if the adjacent land has approved Best Management Practices in place;

(2) assure that animal feeding operations, including retention and storage ponds, feed lot waste storage, and manure storage minimize the contamination of water bodies;

(3) identify areas of significant sheet and gully erosion and propose Best Management Practices to protect Anadromous Fish Propagation Waters;

(4) include a 25 foot filter strip, as described in Section II.B.8.a.2)a)(1); and

(5) protect nontidal wetlands through preparation of a Nontidal Wetlands Management Plan as described in Section III.B.7.

(6) protect Habitat Protection Areas through preparation of a Habitat Protection Plan as described in Section III.B.8.

b. Forest Uses

1) A Forest Management Plan shall be completed for all timber harvesting occurring within any 1 year interval and affecting 1 or more acres in forests and developed woodland in the Critical Area. However, a Plan shall be completed for all timber harvesting in the Shoreline Development Buffer regardless of area. The Plan shall be prepared by a registered professional forester. The Plan shall be reviewed and approved by the Maryland Forest, Park and Wildlife Service through the District Forestry Board and the project forester. A copy of each Forest Management Plan shall be filed with the Planning Officer. The Plan shall:

a) include measures to protect surface and groundwater quality and identify whether the activities will disturb or affect Habitat Protection Areas and incorporate protection measures for these areas;

b) provide for the continuity of habitat through forest management techniques which include scheduling size, timing and intensity of harvest cuts, afforestation and reforestation;

c) consider forests as a protective land use to be managed so that maximum values for wildlife, water quality, timber, recreation, and other resources can be maintained, recognizing that, in some cases these uses may be mutually exclusive;

d) provide conservation measures to protect the hydrologic regime and water quality of Nontidal Wetlands, minimizing alterations to the surface or subsurface flow of water into and from the wetland through preparation of a Nontidal Wetlands Management Plan as described in Section III.B.7.; and

e) prohibit the cutting or clearing of trees within the Shoreline Development Buffer, except the commercial harvesting of trees may be permitted in the portion of the Buffer more than 50 feet from the Mean High Water line of tidal water and wetlands, and more than 50 feet from tributary streams. Such harvesting shall allow the selective cutting of any species or clearcutting of Loblolly Pine and Tulip Poplar trees. Commercial harvesting shall not be permitted within those portions of the Shoreline Development Buffer located in the following Habitat Protection Areas: Nontidal Wetlands, Habitats of Threatened and Endangered Species or Species in Need of Conservation, and Plant and Wildlife Habitats. For this activity the Plan shall also insure that:

(1) disturbance to stream banks and shorelines shall be avoided;

(2) the area disturbed or cut shall be replanted, or allowed to regenerate in a manner that assures the availability of cover and breeding sites for wildlife, and reestablishes the wildlife corridor function of the Shoreline Development Buffer; and

(3) the cutting does not involve the creation of logging roads and skid trails within the Shoreline Development Buffer.

f) permit the following forest activities in the Shoreline Development Buffer without approval from the Maryland Forest, Park, and Wildlife Service. These activities need not be addressed in the annual report regarding Forest Management submitted to the Planning Officer:

(1) The cutting of trees or removal of natural vegetation where necessary to provide access to private piers, or to install or construct a shore erosion protection device or measure or a water dependent facility, providing the device, measure, or facility has received all necessary state and federal permits;

(2) The cutting of individual trees for personal use provided that this cutting does not impair the water quality or existing habitat value or other functions of the Shoreline Development Buffer and provided that the trees are replaced on an equal basis for each tree cut;

(3) Removal of individual trees which are in danger of falling and causing damage to dwellings or other structures, or which are in danger of falling and therefore causing the blockage of steams, or resulting in accelerated shore erosion;

(4) Horticultural practices necessary to maintain the health of individual trees; and

(5) Other cutting techniques which may be undertaken within the Shoreline Development Buffer and under the advice and guidance of the Maryland Departments of Agriculture and Natural Resources, if necessary to preserve the forest from extensive pest or disease infestation or threat from fire.

2) A Sediment Control Plan shall be required for all harvests of 5,000 square feet or more in the Critical Area, including harvesting on agricultural lands. This Plan shall also be reviewed and approved by the Maryland Forest, Park and Wildlife Service and shall be developed according to the State guidelines entitled: "Standard Erosion and Sediment Control Plan for Harvest Operations." The operations shall be implemented in accordance with specifications set out by the Maryland Forest, Park and Wildlife Service. The County will enforce this Plan with the assistance of the Maryland Department of Natural Resources;

III. DESIGN CRITERIA

The following provisions serve as a supplement to the Site Plan requirements, Section 37 of the County Zoning Ordinance for development activities in the Critical Area.

A. Introduction

1. Purposes

a. Development activities in all zoning districts in the Critical Area shall:

1) be consistent with the goals of the Critical Area Plan,
2) minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands,
3) conserve fish, wildlife, and plant habitat,
4) be designed to address, beyond pollution control, the adverse environmental impacts created by the number, movement, and activities of persons in the project.

b. Development activities within the Rural Conservation District shall:

1) Conserve, protect, and enhance the overall ecological values of the Critical Area, its biological productivity and its diversity;
2) Provide adequate breeding, feeding, and wintering habitats for those wildlife populations that require the Chesapeake Bay, its tributaries, or coastal habitats in order to sustain populations of those species;
3) Conserve the land and water resource base that is necessary to maintain and support land uses such as agriculture, forestry, fisheries activities, and aquaculture; and
4) Conserve the existing developed woodlands and forest for the water quality benefits that they provide.

c. Development activities in the Rural Residential, Town Residential, and Village Center Districts, and in areas of less than 20 contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial Districts shall:

1) Maintain, or if possible, improve the quality of runoff and groundwater entering the Chesapeake Bay and it tributaries;
2) Maintain, to the extent practical, existing areas of natural habitat; and
3) Accommodate additional low or moderate intensity development if the development conforms to the water quality and habitat protection criteria.

d. Development activities in areas of 20 or more contiguous acres of Limited Commercial, General Commercial, and Limited Industrial Districts shall:

1) Improve the quality of runoff from developed areas that enters the Chesapeake Bay or its tributary streams;
2) Accommodate additional development provided that water quality is not impaired;
3) Conserve and enhance fish, wildlife, and plant habitats to the extent possible; and
4) Encourage the use of retrofitting measures to address existing storm water management problems.

2. **Additional Uses Requiring a Site Plan**

Section 37 of the County Zoning Ordinance lists those uses for which site plans must be submitted. This list includes all nonresidential uses and all residential uses, but excludes single family development that does not require publicly funded offsite improvements. In order to achieve the purposes described in section III.A.1 above, a simplified site plan, (as described in Section 37.e of the County Zoning Ordinance) shall be submitted for all residential single family development unless offsite public improvements are necessary, then a full site plan shall be submitted for such uses, as now required. For residential single family development involving the creation of new lots, a simplified site plan shall be submitted with the preliminary subdivision plat creating these lots. In addition, a simplified site plan shall be submitted with the building permit for improvements on existing vacant lots or on developed lots. The Planning Officer may grant a waiver to the requirements for a simplified site plan for minor development activity on developed lots. As a guideline, such a waiver may be granted when the existing and proposed improvements generate less than 15% or 5,000 sq ft of impervious area on the site, whichever is less. Nevertheless, the building permit for minor development activity shall be consistent with Section III.B.2., Structure Location and Design.

3. **Additional Required Information on all Site Plans**

Section 37 of the County Zoning Ordinance also describes the information that must be included on a site plan, including a provision for simplified site plans for lesser projects. The County Subdivision Regulations also describe the information that must be included on a subdivision plat. In addition to the information now required for site plans, simplified site plans, and subdivision plats, the following items shall also be addressed in the submission process. Items 1, 2, and 3 are criteria which shall be used in designing and locating lots and structures. Items 4 through 9 are technical plans that insure the proposed development meets the purposes described in Section III.A.1 above. These technical plans shall be submitted with the site plan or simplified site plan for all development activities. The technical plans shall be approved by the designated agency prior to submission to the Planning Officer. The additional items are:

1. Lot Design,
2. Structure Location and Design,
3. Shoreline Development Buffer,
4. Soil Erosion & Sedimentation Control Plan,
5. Shore Protection Plan,
6. Stormwater, Floodplain, and Tributary Stream Management Plan,
7. Nontidal Wetlands Management Plan,
8. Habitat Protection Plan, and
9. Forest Replacement Plan.

4. **State Notification**

Copies of all site plan requests and subdivision requests shall be submitted to the State Critical Area Commission by the Planning Officer. Approvals may not be granted until the County receives notification from the Commission that it has received copies of the request.

B. Criteria

1. Lot Design

a. Lot Size. All lots shall meet the following minimum-size requirements.

Rural Conservation RC	Rural Residential RR	Town Residential TR	Village Center VC	Limited Commercial LC	General Commercial GC	Limited Industrial LI
(1du/20ac* 1du/5ac**)	(1du/5ac*)	(1du/1ac* without sewer) (4du/1ac* with sewer)	(1du/1ac* without sewer) (4du/1ac* with sewer)			
1) Average lot size for all lots in a subdivision*						
5 acres or less or 20 acres or more	3.5 acres or less	2 acres or less	2 acres or less	Not Applicable	Not Applicable	Not Applicable
2) Minimum lot size						
2 acres#	2 acres#	1 acre# without sewer	1 acre# without sewer	1 acre#	1 acre#	1 acre#
		10,000 sq ft## with sewer	10,000 sq ft## with sewer			

* permitted density of dwelling units per acre as stated in Section II.B.4.

** maximum density of dwelling units per acre possible in receiving area through a joint subdivision as stated in Section II.B.5.

*** residual parcels protected from future development through donation of title or easements in manner acceptable to the Planning Officer shall not be included in average lot size calculations

\# septic system approval required from Health Department

\#\# sewer (or shared facility) hook up approval required from Public Works Department

b. Lot Width. All lots shall meet the following minimum dimension requirements.

Rural Conservation RC	Rural Residential RR	Town Residential TR	Village Center VC	Limited Commercial LC	General Commercial GC	Limited Industrial LI
		for lots of 1 acre or more				
200 ft	200 ft	100 ft	100 ft	100 ft	100 ft	200 ft
		for lots smaller than 1 acre				
		75 ft	75 ft			

Lot width is measured along a line parallel to the street frontage between the front and rear yard setback areas. Street frontage shall be at least 50 feet and shall be measured along the front property line. Street frontage for a lot may be reduced to not less than 25 feet, if the lot has joint access to a street with an adjacent lot. The lot width dimension shall also be applied to water frontage (if any) and shall be

measured along a straight line drawn from the intersections of the side lot lines with the mean high water line. The width for lots with highly irregular water frontage shall be determined by the Planning Officer.

c. Lot Access

Lots in the RC, RR, and TR Districts that are 5 acres or smaller and that are created through subdivisions (of more than 2 lots) approved after (approval date of this ordinance) shall not use any adjacent state highways for access. Access shall be achieved through use of County roads or private roads. The Planning Officer may agree to access to a State Highway if no other reasonable alternative is available.

d. Lot Location

Lots that are 5 acres or smaller and that are created through subdivisions approved after (approval date of this ordinance) shall be clustered. In clustering lots, the first priority shall be to minimize any alteration to Habitat Protection Areas described in the project's Habitat Protection Plan (Section III.B.8.) and the second priority shall be to minimize development activities on land that has been used for agricultural purposes within the 2 years prior to the subdivision request.

2. Structure Location and Design

a. Setbacks. All structures shall meet the following minimum setback requirements from property lines.

	Rural Conservation RC	Rural Residential RR	Town Residential TR	Village Center VC	Limited Commercial LC	General Commercial GC	Limited Industrial LI
	for lots of 2 acres or more		for lots of 1 acre or more				
front	50 ft	50 ft	50 ft	50 ft	25 ft	50 ft	50 ft
rear	50 ft	50 ft	25 ft	25 ft	from LC, GC, and LI zoning districts		
					10 ft	10 ft	10 ft
					from all other zoning districts		
					25 ft	50 ft	50 ft
side	50 ft	50 ft	15 ft	15 ft	from LC, GC, and LI zoning districts		
					10 ft	10 ft	10 ft
					from all other zone districts		
					25 ft	50 ft	50 ft

	for lots smaller than 2 acres		for lots smaller than 1 acre	
front	50 ft	50 ft	25 ft	25 ft
rear	25 ft	25 ft	25 ft	25 ft
side	25 ft	25 ft	10 ft	10 ft

1) Shoreline Development Buffer

As required in the Section III.B.3, a Shoreline Development Buffer of at least 100 feet is required from Mean High Water and from Tributary Streams regardless of the specified setback.

2) Special Setbacks from State Highways

All setbacks from major state highways (Routes 50, 404, 333, 322, 33, 328, and 331) shall be increased to 150 feet in the RC, RR, VC, and TR Districts, and shall be increased to 50 feet in the LC District. Setbacks from all other state highways shall be increased to 100 feet in the RC, RR, VC, and TR Districts, and shall be increased to 50 feet in the LC District.

3) Lot Frontage

The front of the lot shall be along the street from which the lot receives access. If there is more than one street access, then lot frontage shall be determined by the Planning Officer. In any case the front yard setback shall apply to all street frontages, except as noted in section 2) above.

4) Special Front Yard Setbacks

Front yard setbacks may be reduced to the average front yard setback of all principal residential structures within 100 feet for new principal residential structures in the RC, RR, VC, and TR Districts.

5) Special Side Yard and Rear Yard Setbacks

Side yard setbacks shall be doubled for structures on lots created after (approval date of this ordinance) in the VC or TR Districts that are adjacent to parcels or lots in the RC or RR Districts that are 2 acres or larger. Side yard setbacks may be eliminated for structures on adjacent lots of 1 acre or less in the VC or TR Districts through the subdivision process with the agreement of the owner(s) of the subject lots. Side and rear yard setbacks may be reduced by half for accessory residential storage structures that are 300 square feet or smaller.

b. Structure Height

The Height Regulations in Section 20.04 of the County Zoning Ordinance shall apply to all structures in the RC, RR, VC, TR, LC, GC, and LI Districts.

c. Structure Siting

Residential structures shall be clustered so as to minimize any alteration to Habitat Areas and shall be consistent with the project's Habitat Protection Plan as described in Section III.B.8.

d. Signs

The Sign Regulations in Section 8.02 of the County Zoning Ordinance shall apply to proposed signs. References to the C-2 zoning district shall apply to the General Commercial (GC) zoning district.

3. **Shoreline Development Buffer**

a. A Shoreline Development Buffer shall be shown on the site plan for any development activity. The Buffer shall be managed to achieve the following purposes:
   1) Remove or reduce the sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay;
   2) Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources;
   3) Maintain an area of transitional habitat between aquatic and upland ecological communities;
   4) Maintain the natural environment of streams;
   5) Protect riparian wildlife habitat; and
   6) Maintain natural vegetation.

b. The Buffer shall be at least 100 feet wide, measured landward from the Mean High Water Line of tidal waters and tidal wetlands, and from tributary streams. The Buffer shall be expanded beyond 100 feet to include contiguous, sensitive areas, such as soils with slopes greater than 15%, hydric soils, or highly erodible soils, whose development or disturbance may impact streams, wetlands, or other aquatic environments. If the average slope in the Buffer is greater than 15% (measured from the water's edge to the landward edge of the Buffer, along a line perpendicular to the water), then the Buffer shall be expanded in 4 foot increments for each 1% over 15%.

c. New development activities, including structures, roads, parking areas and other impervious surfaces, mining and related facilities, or septic systems are not permitted in the Buffer. The only exception to this limit are structures and roads so closely associated with water dependent activities that they can not be located outside the buffer. Clearing existing natural vegetation in the Buffer is not allowed except for normal maintenance. Such maintenance shall be consistent with the forest activities in the Buffer not requiring approval from the Maryland Forest, Park and Wildlife Service as described in Section II.B.8.b.1.f), and may include the mowing of ground cover. Additional vegetation should be planted where necessary to protect, stabilize, or enhance the shoreline.

d. Existing areas of public access to the shoreline, such as foot paths, scenic drives, and other public recreational facilities, shall be maintained, with new facilities encouraged in Limited Commercial, General Commercial, and/or Limited Industrial Zoning Districts of 20 or more contiguous acres.

4. **Soil Erosion & Sedimentation Control**

a. A Soil Erosion and Sedimentation Control Plan shall be prepared. The purpose of the Plan is to insure that erosion control is the basis for sediment control and that sediment control practices are designed to reduce adverse water quality impacts whenever development activities, including certain types of timber harvesting (see Section II.B.8.) involve <u>any</u> clearing, grading, transporting, or other form of disturbance to land by the movement of earth. Specifically, this plan shall insure that development activities on soils likely to generate sediment, because of composition, texture, slope, or permeability, shall include protection measures that adequately address these characteristics and will prevent significant adverse impacts on water quality or plant, fish, or wildlife habitat.

b. The Plan shall be reviewed, with specific comments, by the Soil Conservation District, with permitting by the County Public Works Department and enforcement by the Maryland Department of Environment. The Plan shall be consistent with the Maryland Natural Resources Article requirements (Environmental Article Subsection 4-101 et seq, Annotated Code of Maryland).

c. In addition to the above referenced state law and as stated in the Maryland Critical Area Law, these principles and criteria shall be followed in the preparation of the Soil Erosion and Sedimentation Control Plan:

1) The physical characteristics of a site shall be assessed to determine how it can be developed with the smallest risk of environmental damage;

2) Grading shall be minimized by using the existing topography;

3) Off-site impacts shall be minimized by using vegetative buffer strips between the disturbed and adjacent areas;

4) Clean water shall be prevented from becoming dirty by diverting runoff;

5) Sediment shall be removed from dirty water before it leaves the site by diverting it to a trapping device so that suspended sediment can be deposited;

6) Temporary seeding or mulching shall be accomplished on areas which will be exposed for longer than 2 weeks prior to construction;

7) Permanent stabilization shall be provided for disturbed areas;

8) Development activities on slopes greater than 15%, as measured before development, may be acceptable if the Plan shows that such activity is the only effective way to maintain or improve the stability of the slope;

9) Grading shall be completed as soon as possible after it is begun; immediately after grading is complete, mulching, permanent vegetative cover, or other stabilizing techniques shall be established in the area;

10) Staged seeding, mulching, or other stabilizing techniques shall be accomplished as cut slopes are made and fill slopes are brought up to grade;

11) Grading activities shall be minimized between November 1 and April 1;

12) Soil and other construction materials shall not be temporarily or permanently stored in locations which would result in the unnecessary destruction of vegetation; and

13) The adverse effects of fill and suspended sediments on shellfish beds, submerged aquatic vegetation beds, wetland vegetation, and fish spawning and nursery areas shall be minimized.

5. Shore Protection

a. A Shore Protection Plan shall be prepared. The purpose of the Plan is to prevent shore erosion whenever development activity is adjacent to significantly eroding shorelines (with an erosion rate of more than 2 feet per year). Shore erosion shall be minimized without encouraging erosion along other shore areas. Preparation of a Shore Protection Plan is encouraged for less erosive areas.

b. The Plan shall be reviewed, with specific comments, by the Maryland Department of Natural Resources. Additional approval for structural protection measures may be required from the U.S. Army Corp of Engineers. Subsequent to state approval, a Building Permit shall be obtained from the County Public Works Department.

c. For all nonresidential development activities and all residential development activities involving the creation of more than 2 lots, the Plan shall be prepared by a registered professional engineer. It shall contain complete specifications for proposed shore erosion works, including information on the design storm, calculated wave runup, required stone weight and/or other data as required by the Maryland Department of Natural Resources. The owner of the property at the time of site plan submittal shall be responsible for installation of any shoreline improvements and on projects involving the creation of more than 2 lots, shall provide surety to guarantee the installation of such improvements. Maintenance of any shoreline improvements shall be the responsibility of the current property owner.

d. The following design guidelines shall be used in the development of the Shore Protection Plan:

1) The adverse effects of fill and suspended sediments on shell fish beds, submerged aquatic vegetation beds, wetland vegetation, and fish spawning and nursery areas shall be minimized;

2) Deposition of eroded materials in channels and navigable areas shall be reduced from historic rates;

3) Shorelines shall be stabilized to minimize loss of real estate and structures;

4) The effects on water quality from both erosion and the construction of protection works shall be minimized;

5) As a first choice, use of nonstructural shore protection measures, where applicable, is encouraged in order to conserve and protect fish, plant, and wildlife habitat; and

6) As a second choice, structural shore protection measures which provide the maximum amount of habitat for vegetation, fish, and invertebrates is encouraged; when using structural protection, revetments or riprap should be favored over bulkheads, where applicable.

e. The following criteria shall be used in determining the appropriateness of structural vs. nonstructural protection measures.

1) Nonstructural protection measures able to withstand a 50 year storm, such as bank grading and height reduction, beach enrichment and fill, and vegetative plantings, should be considered:

(a) In areas with an historic, predevelopment erosion rate of less than 1 foot per year;

(b) Where primary residential or commercial structures are more than 100 feet from mean high water;

(c) Where the existing bank is less than 3 feet in height, within 10 feet of mean high water; and/or

(d) The fetch, or exposed distance over water in front of the shore, and to 55 degrees to either side, is less than 800 feet.

2) In circumstances failing to meet these criteria, structural control measures able to withstand a 50 year storm, such as riprap, bulkheads, sheet piles, and other non-earth structures, should be considered. Construction procedures shall minimize destruction of tidal wetland vegetation. However, such destruction shall not be a governing factor for project approval, if any such damage is of a limited nature and is replaced on a square foot for square foot basis. Beach enrichment practices such as dredge fill and vegetative planting may be employed within the area between a control structure and mean low water in beach areas in order to enhance or initiate wetland vegetation where it is historically reasonable to expect such vegetation to thrive.

6. Stormwater, Floodplain, and Tributary Stream Management

a. A Stormwater, Floodplain, and Tributary Stream Management Plan shall be prepared. The Plan shall address the quality and quantity impacts of development activities so as to maintain and improve the water quality of the runoff and streams emptying into the Chesapeake Bay. Specifically the Plan shall improve the quality of stormwater runoff in highly developed areas, limit the amount of a development's impervious area, reduce the quantity of stormwater runoff in less developed areas, minimize roadway obstructions to the flood plain, and minimize its impacts on streams.

b. The Plan shall be approved and enforced by the County Department of Public Works and be consistent with the Talbot County Code, Section 16A-7 in terms of Stormwater and Section 20 in terms of floodplain management. The Stormwater, Floodplain, and Stream Management Plan shall be consistent with Maryland Sediment and Erosion Control requirements (Environmental Article Subsection 4-101 et seq, Annotated Code of Maryland).

c. The following criteria shall be used in preparation of the Plan. It is the responsibility of the applicant to demonstrate compliance with these criteria to the satisfaction of the County Public Works Director.

1) Stormwater Management

a) In the Rural Conservation, Rural Residential, Town Residential, and Village Center Districts and in the Limited Commercial, General Commercial, and/or Limited Industrial Districts of less than 20 contiguous acres:

(1) Constructed impervious areas shall be limited to 15% of a parcel or lot created prior to (approval date of this ordinance). A parcel or lot of 1 acre or less created prior to (approval date of this ordinance) and after 1 June 1986, may have impervious areas of up to 25%.

Constructed impervious areas shall be limited to 15% of a subdivision approved after (approval date of this ordinance). The impervious area of any public or private roads created in such subdivisions, shall be included in the impervious area calculations. A maximum impervious area shall be designated on the subdivision plat for each parcel or lot. Constructed impervious areas shall be limited to 25% of any parcels or lots of 1 acre or less.

(2) Development activities shall not cause downstream property, watercourses, channels, or conduits to receive stormwater runoff at a higher volume or rate than would have resulted from a 10 year storm were the land in its predevelopment state;

(3) All stormwater storage facilities shall be designed with sufficient capacity to achieve the water quality goals of this Ordinance and to eliminate all runoff caused by the development in excess of that which would have come from the site if it were in its predevelopment state.

b) In the Limited Commercial, General Commercial, and/or Limited Industrial Districts of 20 or more contiguous acres:

(1) All proposed development or redevelopment activities shall include all technologies as required by applicable state and local ordinances to minimize adverse impacts to water quality caused by stormwater:

(a) Redevelopment activities that increase the impervious area of a parcel by more than 5,000 sq ft in a 12 month period, shall be designed to reduce phosphorus pollutant loadings of stormwater runoff by at least 10% below the level of pollutant run off from the site prior to redevelopment; and

(b) New development activities shall be designed to reduce phosphorus pollutant loadings of stormwater runoff by at least 10% from the predevelopment levels.

Offsets to achieve these reductions may be provided either on or off site, provided that water quality benefits are equivalent, that their benefits are obtained within the same water shed, and that the benefits can be determined through the use of modeling, monitoring, or other computation of mitigation measures.

(2) Exposed ground surfaces shall be established in vegetation;

(3) Impervious surfaces shall be at least 100 ft from the water's edge, except when needed to serve water dependent facilities; buffers of natural vegetation should be kept between impervious surfaces and surface waters.

2) Floodplain Obstructions

a) All private roadways, structures, or other facilities that intercept, obstruct, or divert tidal or sheet flow shall provide for reestablishment of the flow through the use of appropriate systems and construction techniques.

b) Private roadways in flood prone areas should not obstruct or alter the course, direction, or rate of predevelopment surface flow.

3) Tributary Stream Management. All development activities that must cross or affect streams, on or off site, shall be designed to:

a) Minimize adverse water quality and quantity impacts of stormwater;

b) Reduce increases in flood frequency and severity that are attributable to development;

c) Retain tree canopy so as to maintain stream water temperature within normal variation;

d) Provide a natural substrate for streambeds;

e) Avoid use of concrete riprap or other artificial surfaces for the bottoms of natural streams unless it can be demonstrated that water quality and fish habitats can be improved;

f) Not increase nonpoint and point source pollution; and

g) Absorb precipitation as close as possible to the point of its first contact with the surface;

7. Nontidal Wetlands Management

a. A Nontidal Wetlands Management Plan shall be prepared for any development activity containing or within 25 feet of a nontidal wetlands. Development activities in the drainage area of nontidal wetlands shall be designed to protect the hydrologic regime and water quality of the wetlands, minimize alterations to the surface or subsurface flow of water into and from the wetland, and not cause impairment of the water quality or the plant, wildlife, and habitat value of the wetland.

b. The Plan shall be reviewed, with specific comments, by the Maryland Department of Natural Resources.

c. For all nonresidential development activities and all residential development activities involving the creation of more than 2 lots, the Plan shall be prepared by a professional environmental engineer or biologist.

d. The following criteria shall be used in the preparation of the Plan:

1) A 25 foot buffer around nontidal wetlands shall be maintained. Development activities which may disturb the wetlands or the wildlife in the wetlands shall be prohibited in the buffer unless it can be shown that these activities will not adversely affect the wetland.

2) The hydrologic regime and water quality of the identified nontidal wetlands shall be protected by providing that any disturbances in the drainage area of the wetlands will minimize alteration to the surface or subsurface flow of water into and from the wetland and not cause impairment of the water quality or the plant and wildlife and habitat value of the wetland.

3) Development activities which would cause necessary and unavoidable impacts on the wetlands may be allowed if it is shown that these development activities are water dependent or of substantial economic benefit. Such development activities shall include mitigation measures that provide water quality benefits and plant and wildlife habitat equivalent to the wetland destroyed or altered and shall be accomplished, to the extent possible, onsite or near the affected wetland.

8. Habitat Protection

a. A Habitat Protection Plan shall be prepared. The Plan shall prohibit development activities or other disturbances that would disrupt the nesting, breeding, stopover, and/or feeding activities of the wildlife within Threatened & Endangered Species Habitats or Plant & Wildlife Habitats, and activities or disturbances that would affect the anadromous fish population within Drainage Basins of Anadromous Fish Propagation Waters.

b. The Plan shall be reviewed, with specific comments, by the Maryland Forest, Park and Wildlife Service.

c. For all nonresidential development activities and all residential development activities involving the creation of more than 2 lots, the Plan shall be prepared by a professional biologist experienced in the management of natural resources described in this Habitat Protection section.

d. Substantial portions of the Habitats or Drainage Basins, described in Section 8.a. above, that lie within any parcel or lot should be protected from any development activity. What constitutes a substantial portion depends on the specific characteristics of the parcel and habitat involved, however, as a general rule less than 20% of a habitat area or drainage basin within a parcel should be disturbed. Protected portions of habitats or drainage basins should be conserved through fee title donation, conservation easements, cooperative agreements with landowners, and/or special provisions in forest management and soil conservation plans with acceptance of the protection method by the Planning Officer. In addition, development activities should be located, generally, as close to a public right of way as possible. The criteria below shall be followed in the preparation of the Plan:

1) Threatened and Endangered Species

Measures protecting the habitats of Threatened and Endangered Species shall address the following objectives:

a) Bald eagle nesting territories shall be identified and should be areas of restricted activity with a protection zone around each nest. Within the protection zone, timber harvesting, land clearing, or construction as well as improvements and maintenance to timber stands should be limited. Any activity within the protection zone should be consistent with the recommendations of the Maryland Nongame and Endangered Species Program. The location of the protection zone should be reviewed annually so as to assure protection of new or relocated nests;

b) Delmarva fox squirrel habitats shall be identified before land clearing or harvesting of mature woodlands. Timber harvesting and land clearing of these habitats should be consistent with the recommendations of the Maryland Nongame and Endangered Species Program; and

c) Sedge wren habitats shall be identified before dredging or fill is permitted. With the identification of such habitats, the habitat and nesting site shall be retained. No disruptive activity should take place during the breeding season within these Habitats. Permission to dredge or fill in or near these habitats should be obtained from the Maryland Nongame and Endangered Species Program.

2) Plant and Wildlife Habitat

The Plan shall conserve Plant and Wildlife Habitats, protecting the types of habitats which are required to support the continuous presence of a variety of species.

a) Buffer areas for colonial water bird nesting sites (particularly those of local significance - see definitions for Plant and Wildlife Habitats) shall be established. These areas shall be protected from development activities and from disturbance in the breeding season.

b) Development activities, especially for new water dependent facilities, shall be designed not to disturb sites of historic aquatic staging and concentration areas for waterfowl (particularly those of local significance).

c) Development activities or the clearing or cutting of trees shall be designed and implemented so as to conserve riparian habitat and forest interior wildlife species and their habitats (particularly those of local significance). Management measures shall include incorporating appropriate wildlife protection elements into forest management plans, and clustering development and using other site design standards which provide for the conservation of wildlife habitat. Measures shall also include soil conservation plans which have wildlife habitat protection provisions appropriate to the areas defined above, and incentive programs including the provision of easements and other similar techniques that restrict land use;

d) Natural Heritage Areas shall be protected from alteration due to development activities or cutting or clearing of forests so that the structure and species composition of the areas are maintained.

e) Native vegetation should be preserved, as much as possible, particularly along the water's edge.

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

g) Vertical diversity of plant type shall be preserved by maintaining natural bush and ground cover layers beneath stands of trees.

h) Plants with high benefit to wildlife shall be planted during or after development.

3) Drainage Basins for Anadromous Fish Propagation Waters

Instream and streambank habitat of anadromous fish propagation waters shall be protected through the following techniques:

a) Land use and site design practices in the watershed of spawning streams shall minimize the adverse impacts of development on the water quality of the streams. Any adverse impacts of any activities shall be avoided by:

(1) Minimizing development activities or other land disturbances in the watershed;
(2) Maintaining, or, if practicable, improving water quality in streams;
(3) Minimizing, to the extent possible, the discharge of sediments into streams; and
(4) Maintaining, or, if practicable, increasing the natural vegetation of the watershed.

b) Unobstructed movement in streams shall be provided for spawning and larval forms of anadromous fish. The construction or placement of dams or other structures that would interfere with or prevent the movement of spawning fish or larval forms in streams shall be prohibited. The removal of existing barriers shall be accomplished wherever possible;

c) The construction, repair, or maintenance activities associated with bridges, or other stream crossings or with utilities and roads, which involve disturbance of the Shoreline Development Buffer or which occur instream shall be prohibited between March 1 and June 15;

d) Channelization or other physical alteration which may change the course or circulation of a stream and thereby interfere with the movement of fish, shall be prohibited;

e) Construction of shore based facilities (such as marinas), dredging, filling, and construction of jetties or bulkheads shall not be allowed in areas of established Submerged Aquatic Vegetation within spawning waters;

f) Development activities shall be designed so that power boats are discouraged from operating during spawning season in spawning waters; wake and wave effects, propeller disturbance, noise and boat size should be kept to a minimum; and

g) Natural vegetation shall be maintained within the Shoreline Development Buffer of all tributary streams.

9. Forest Replacement

a. A Forest Replacement Plan shall be prepared for any development activities which result in the cutting or clearing of forests and developed woodlands, or for development activities on sites of 7 acres or more that have less than 15% of the site in forest or developed woodland. In addition, a Forest Management Plan shall also be prepared, as described in Section II.B.8.b. By definition a forest or developed woodland is at least 1 acre in area, therefor, neither Replacement or Management Plans are required for cutting or clearing activities in wooded areas of less than 1 acre. However, a Forest Management Plan is required for any cutting or clearing activities of any size area in the Shoreline Development Buffer. The purpose of the Forest Replacement Plan is to maintain, and preferably increase, the total acreage in forest coverage in the Critical Area and conserve developed woodland vegetation to the greatest extent possible.

b. The Plan shall be reviewed, with specific comments, by the Maryland Forest, Park and Wildlife Service.

c. For all nonresidential projects and all residential projects involving the creation of more than 2 lots, the Plan shall be prepared by a registered professional forester.

d. The following criteria shall be used in preparing the Plan:

1) In the Rural Conservation, Rural Residential, Town Residential, and Village Center Districts, and in Limited Commercial, General Commercial, and/or Limited Industrial Districts covering less than 20 acres:

a) Existing forests and developed woodlands shall be protected in Habitat Protection Areas;

b) The removal of any existing forest or developed woodland shall be limited to 20% of the forest use on any parcel. The remaining 80% shall be protected and maintained through fee title donation, conservation easements, cooperative agreements with landowners and/or special provisions in forest management and soil conservation plans with acceptance of the protection method by the Planning Officer. Any forest or developed woodland that has been removed shall be replaced, preferably on site, on a not less than an equal area basis, with the same species or a species appropriate to the site as determined by the Maryland Forest, Park and Wildlife Service;

c) An additional 10% of any forest or developed woodland may be removed from forest use provided that the replacement forest shall be 1.5 times the area of this additional 10% of the forest or developed woodland being removed;

d) A fee-in-lieu shall be provided to the County, adequate to ensure the restoration or establishment of an equivalent forest area if the area of the site precludes the implementation of sections b) & c), above. At least two sites shall be identified for the restoration or establishment of equivalent forest area and a full cost estimate (including all acquisition and site preparation costs) shall be provided. The amount of the fee shall be determined by the Planning Officer based on the recommendation of the Maryland Forest, Park and Wildlife Service. The fee shall be placed in a County fund dedicated to forest restoration or establishment.

e) Surety shall be provided by the property owners or developers in an amount acceptable to the Maryland Forest, Park and Wildlife Service that will be suitable to assure satisfactory forest replacement as required in sections b) and c) above;

f) The conservation easements, restrictive covenants, or other protective instruments used to maintain all forest or developed woodland areas, or areas to be forested that are shown on the site plan shall be specified.

g) Grading permits shall be obtained before forests or developed woodlands are removed;

h) Any forest area removed before obtaining a grading permit, or any forest area removed that exceeds the maximum allowed in section b) and c) above shall be replaced at 3 times the area of forest removed; and

i) Unforested or partially forested parcels or lots of 7 acres or more, shall be planted to provide a forest or developed woodland cover of at least 15%.

2) In the Limited Commercial, General Commercial, and/or Limited Industrial Districts of 20 or more acres:

a) Forest and developed woodland resources shall be enhanced through techniques such as urban forestry (street tree plantings, gardens, landscaping, open land buffer plantings);

b) Destruction of forest and woodland vegetation shall be minimized; and

c) Existing forests and developed woodlands in Habitat Protection Areas shall be protected.

IV. ADMINISTRATIVE PROCEDURES

A. Zoning Code Text and Zoning Map Amendment Criteria

A request for an amendment to the regulations, restrictions, classifications, and boundaries established in this ordinance shall follow the procedures and criteria established in Section 15 of the County Zoning Ordinance except as noted below. In addition, the following criteria shall also be used in considering zoning text amendments and zoning map amendments.

1. Zoning Text Amendments

Requests for text amendments shall be consistent with Maryland State Critical Area Law. Any such request shall not result in permitting uses that would adversely affect any wildlife or plant habitats as a result of the uses' intrinsic nature and potential impact. Specifically, such requests shall not be granted if they would allow the following development or redevelopment activities in the Critical Area:

a. Nonmaritime heavy industry;

b. Transportation facilities and utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters (utility transmission facilities do not include power plants);

c. Permanent sludge handling, storage, and disposal facilities with the exception of those facilities associated with current wastewater treatment operations in Talbot County, and excepting the agricultural or horticultural land application of sludge (with Maryland State approvals and approved application methods and rates) outside of the Shoreline Development Buffer;

d. Any development activity that would be detrimental to water quality or fish, wildlife or plant habitats identified in this ordinance;

e. Solid or hazardous waste collection or disposal facilities;

f. Sanitary landfills; and

g. Septage storage or holding facilities excepting those facilities on the site of a Talbot County Waste Water Treatment Plant.

Existing, permitted facilities of the type listed in section e, f, and g above shall be subject to the standards and requirements of Maryland State Law, COMAR Title 10.

2. Zoning Map Amendments

Requests for map amendments (or rezonings) shall be considered based on the Findings for Reclassification, Section 15.04 of the County Zoning Ordinance. Rezoning requests shall be consistent with the goals and policies of the Talbot County Comprehensive Plan, specifically those sections concerning the Chesapeake Bay Critical Area. In addition, the following criteria and procedures shall be used, except for map amendments where the applicant claims there is a mistake in the existing zoning classification, then only paragraph a. shall be applied.

a. Rezoning requests for property outside of the towns and outside of areas shown as possible annexation areas, should be reviewed by the County on an annual cycle, with requests submitted to the Planning Officer by October 1. However, in 1990 there are

2 review cycles and requests shall be submitted by April 1 or October 1. Subsequent to final County Council approval, all requests shall be submitted by the County to the Maryland Critical Areas Commission for approval as an amendment to the County's Critical Area Program. By state law, the Commission has 90 days to act on a request. If no action is taken in 90 days, the request will be considered approved. A request approved by both the County Council and the Commission shall take effect 60 days after approval by the Commission. A request denied by the Commission may be reconsidered by the County Council. Such a request shall be revised by the applicant to address the reasons for Commission denial. The revised request shall be submitted to the Planning Officer for reconsideration by County Council within 90 days of Commission denial. An extension of the 90 day deadline may be requested for a specific period of time, if the applicant can demonstrate, to the satisfaction of the Planning Officer, circumstances beyond the applicant's control.

b. Not more than 1,213 acres of the Critical Areas of the County, including all incorporated towns, shall be rezoned from the Rural Conservation District (or town zoning district(s) established for the Resource Conservation Area of the Critical Area) to any other zoning district. Of these 1,213 acres, 155 acres is reserved for the Town of Easton, 195 acres is reserved for the Town of Oxford, 245 acres is reserved for the Town of St. Michaels for rezonings or rezonings associated with annexations and 618 acres is reserved for the County for rezonings of property outside of the towns and outside of areas shown as possible annexation areas (See Maps 1, 2, & 3).

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

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

c. Not more than 128 acres of the Critical Area of the County, including all incorporated towns shall be rezoned from the Rural Residential, Town Residential, or Village Center Districts, or areas of less than 20 contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial (or town zoning district(s) established for the Limited Development Area of the Critical Area). The requested zoning districts should establish an area of 20 or more contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial zoning districts (or town zoning district(s) established for the Intensely Developed Area of the Critical Area). In determining whether the 20 acre threshold has been reached, the contiguous areas of existing commercial and/or industrial zoning districts shall be considered. Of the 128 acres, 24 acres is reserved for the Town of Easton, 44 acres for the Town of Oxford, 24 acres for the Town of St. Michaels for rezonings or rezonings associated with annexations, and 36 acres for the County for rezonings for property outside of the towns and outside of areas shown as possible annexation areas (See Maps 1, 2, & 3).

d. The number of reserved acres allocated among the Towns for rezoning in Sections IV.A.2.b.&c. above shall be reviewed by the County and Towns by June 1, 1993 for possible reallocation and at least every 4 years thereafter.

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

f. No overall acreage limit is established for rezonings from the Rural Residential or Town Residential districts to the Town Residential or Village Center districts, to establish less than 20 contiguous acres of the Limited Commercial, General Commercial, and/or Limited Industrial districts, or to town zoning districts established for the Limited Development Area of the Critical Area. There are no acreage limits on rezonings where the current and proposed zoning districts include only Limited Commercial, General Commercial, and/or Limited Industrial Districts that already cover 20 or more contiguous acres, or town zoning districts established for the Intensely Developed Area of the Critical Area.

g. Specific annexation requests for property included in the acres reserved for the Towns in Section IV.A.2.b.&c. above and as shown in Maps 1, 2, & 3, shall be reviewed by the County for consistency with the County Comprehensive Plan and shall be subject to all current ordinances regulating annexations. The County shall not act on rezoning requests not associated with an annexation request for property adjacent to the Towns as shown on Map 1, 2, or 3, until an annexation request for the property has been denied by the Town or until 12 months after an annexation request for the property has been submitted to the Town, whichever occurs first. If the County approves a rezoning request not associated with an annexation request for property adjacent to the Towns as shown on Map 1, 2, or 3, then the acreage of the property rezoned shall be subtracted from the acres reserved for the Town for annexation in Section IV.A.2.b.&c. above.

h. Rezoning requests for property that has been annexed within 5 years of the request, shall be reviewed by the County for consistency with the County Comprehensive Plan. Rezoning requests for property that has been in the town for more than 5 years prior to the request, do not require review by the County, however, the towns shall inform the County of such rezonings to insure the total reserved acres, listed above, are not exceeded.

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

j. When considering rezoning requests from the Rural Conservation District, priority shall be given based on the district requested in the following order: Village Center, Town Residential, Rural Residential, Limited Commercial, General Commercial, Limited Industrial. When considering rezoning requests from the Rural Residential, Town Residential, or Village Center Districts, priority shall be given based on the district requested in the following order: Limited Commercial, General Commercial, Limited Industrial.

k. All rezoning requests shall include a proposed site plan and or subdivision plat that meets the Design Criteria, Section III, of this ordinance. The request should make maximum effort to meet the intent of the Critical Area Policies and the Design Criteria in Section III of this ordinance. The request should:

1) create lots or parcels that maximize the opportunities for clustered development that protects habitat and agricultural resources,
2) locate structures so as to minimize impact on habitat protection areas and agricultural areas,
3) provide a minimally disturbed buffer along the shoreline,
4) minimize soil erosion and sediment runoff,
5) maximize protection of erosive shorelines,
6) have minimal effect on stormwater, floodplain, and stream character,
7) minimize impacts on nontidal wetlands,
8) maximize protection of plant and wildlife habitats, particularly for Threatened and Endangered Species, plant and wildlife common to the Chesapeake Bay region, and Anadromous Fish Propagation Waters, and
9) maximize protection of forests.

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

m. A rezoning request to establish a total area of less than 20 contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial zoning districts (including contiguous areas of existing commercial or industrial zoning districts) shall be adjacent to the Town Residential, Village Center, Limited Commercial, General Commercial, or Limited Industrial District. Such requests should not be adjacent to the Rural Residential District. For purposes of this section m., adjacency means at least 25% of the perimeter land boundary of the subject parcel is in common with the referenced zoning district(s). Land boundaries shall be measured at the centerline of any rights of way.

n. A rezoning request to establish a total area of 20 or more contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial zoning districts (including contiguous areas of existing commercial or industrial zoning districts) should not be approved unless the proposed development activity is water dependent, will have substantial economic benefit to Talbot County, and can not be located within the limits of an incorporated town. Such a request should be located within or adjacent to Village Center, Limited Commercial, General Commercial or Limited Industrial Districts. For purposes of this section n., adjacency means at least 25% of the perimeter land boundary of the subject parcel is in common with the referenced zoning district(s). Land boundaries shall be measured at the centerline of any rights of way. Such a request should be located so as not to conflict with the character and purpose of the Rural Conservation District.

B. Criteria For Nonconforming Uses, Lots, Parcels, and Structures

1. Purpose

This section is intended to limit the number and extent of non-conforming uses, lots, parcels and structures by prohibiting or limiting their enlargement, their reestablishment after abandonment, and their restoration after substantial destruction. The intent of this section is to permit nonconforming uses, lots and structures to continue, but to limit enlargement, alteration, restoration, or replacement that would increase the discrepancy between existing conditions in the Critical Area and the regulations contained in this ordinance. Uses, lots, parcels or structures lawfully established prior to (approval date of this ordinance) that do not conform to the provisions of this ordinance may continue as nonconformities subject to the limitations of this section.

2. Nonconforming Uses

The use of a parcel, lot or structure lawfully established prior to (approval date of this ordinance) that does not conform with the use regulations contained in this ordinance may be continued, subject to the limitations contained in this section. A nonconforming use shall not be intensified and it shall not be enlarged or expanded by more than 10% of gross floor area.

Existing surface mining wash ponds within the Critical Area that do not comply with the provisions of this ordinance regarding surface mining uses shall be reclaimed as soon as possible by the property owner after the sand and gravel operation has ceased. To the fullest extent possible, such existing sand and gravel operations shall conduct their extraction activities to provide a minimum 100 foot buffer of natural vegetation between the operation and the mean high water line of tidal waters, tidal wetlands, or the the edges of streams, whichever is further inland.

Any nonconforming use, including the nonconforming use of a lot, parcel or structure, that is discontinued or abandoned for a period of one year shall not be resumed thereafter and any future use of lot, parcel, or structure shall conform to the provisions of this ordinance.

3. Nonconforming Lots

a. Nonconforming undeveloped lots of record

A single lot or parcel of land within the Critical Area that was legally of record on (approval date of this ordinance) may be developed with a single family dwelling if a dwelling does not already exist there. Such lot or parcel may be so developed in accordance with the density and lot width provisions in effect prior to the adoption of this ordinance, notwithstanding that such development may be inconsistent with the current density and lot width provisions of this ordinance. Such a lot or parcel shall be developed in accord with the design provisions of this ordinance, section III, unless a variance is obtained meeting the requirements described in section IV.C of this ordinance, or unless construction activity has progressed to the point of the pouring of foundation footings or the installation of structural members by (the approval date of this ordinance). Such construction shall be completed in accordance with existing development approvals.

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b. Nonconforming developed lots of record

Residential structures, located on parcels that do not conform with the density provisions of this ordinance, may be expanded in accord with all other provisions of the ordinance, so long as additional dwelling units are not created.

A parcel or lot that has been developed with two or more single family residences prior to (approval date of this ordinance) and that does not conform to the provisions of this ordinance may be divided subject to the provisions of this section and of the County Subdivision Ordinance. In no case shall the property be divided into more lots or parcels than there are existing single family residences and, in each case, one residence must be located on each parcel. Property containing mobile homes, employee residences, guest residences, or hotel, motel, or bed & breakfast uses may not be divided under this section.

c. Nonconforming portions of parcels

When the establishment of new zoning districts created by this ordinance places a portion of a parcel in a new zoning district and this portion does not meet the minimum density limit of the new zoning district, then this portion may be platted as a single lot through the County Subdivision Ordinance even though it does not meet the minimum density limit of the new zoning district.

4. Nonconforming Structures

A structure lawfully in existence as of (approval date of this ordinance) that does not conform to the provisions of this ordinance may be continued so long as it remains otherwise lawful and may be repaired or reconstructed, subject to the following provisions:

a. Nonconforming structures within the Shoreline Development Buffer may be expanded if the impervious area of the parcel's Shoreline Development Buffer and of the entire parcel on which the structure is located, is limited to 15% (25% for parcels or lots less than 1 acre created after 1 June 1986). In addition, setbacks, from property lines for such an expansion, shall not be less than the setbacks of the existing nonconforming structure;

b. Nonconforming structures outside the Shoreline Development Buffer may be expanded if the impervious area of the entire parcel on which the structure is located is limited to 15% (25% for parcels or lots less than 1 acre created after 1 June 1986); and

c. If a nonconforming primary structure within the Shoreline Development Buffer is damaged or destroyed to any extent, it may be repaired or reconstructed at its prior location within one year. A 6 month extension may be approved by the Planning Officer. All current provisions of this ordinance shall apply to the repair or reconstruction, except for the Shoreline Development Buffer provisions. The setback or the repair or reconstruction may not be less than the setback of the original nonconforming primary structure.

A nonconforming, accessory freestanding structure that is damaged or destroyed beyond 50 % of its assessed value shall be reconstructed or restored only in conformance with the provisions of this ordinance.

E. 1637

If any other nonconforming structure is destroyed to an extent exceeding 50% and is not restored or the use resumed within one year from the date of destruction, any future structure or use on the site shall comply with current provisions of this ordinance.

C. Variances

1. Purpose

A variance from the quantitative numerical requirements of this ordinance may be granted by the Board of Appeals in specific cases if such a variance would not be contrary to the public health, safety, or welfare, and if there are special conditions such as site features or other circumstances not created by the property owner, and if a literal enforcement of the provisions of this ordinance would result in unwarranted hardship to the property owner. A variance from the qualitative policy requirements of this ordinance may not be requested.

2. Criteria

The Board of Appeals shall not grant a variance from the terms of this ordinance unless and until the applicant has demonstrated and the Board of Appeals has found that:

a. A completed application for a variance has been submitted in writing to the Board of Appeals with a copy provided to the Chesapeake Bay Critical Area Commission at least two weeks prior to the scheduled hearing. The application must demonstrate that the criteria set forth in sections b through e, below, have been met;

b. Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of this ordinance would result in unwarranted hardship to the property owner;

c. A literal interpretation of this ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone within the Critical Area;

d. The granting of a variance will not confer upon the property owner any special privilege that would be denied by this ordinance to other owners of lands or structures within the Critical Area;

e. The variance request is not based on conditions or circumstances which are the result of actions by the property owner nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property; and

f. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law, the Talbot County Critical Area Plan, and the regulations adopted in this ordinance.

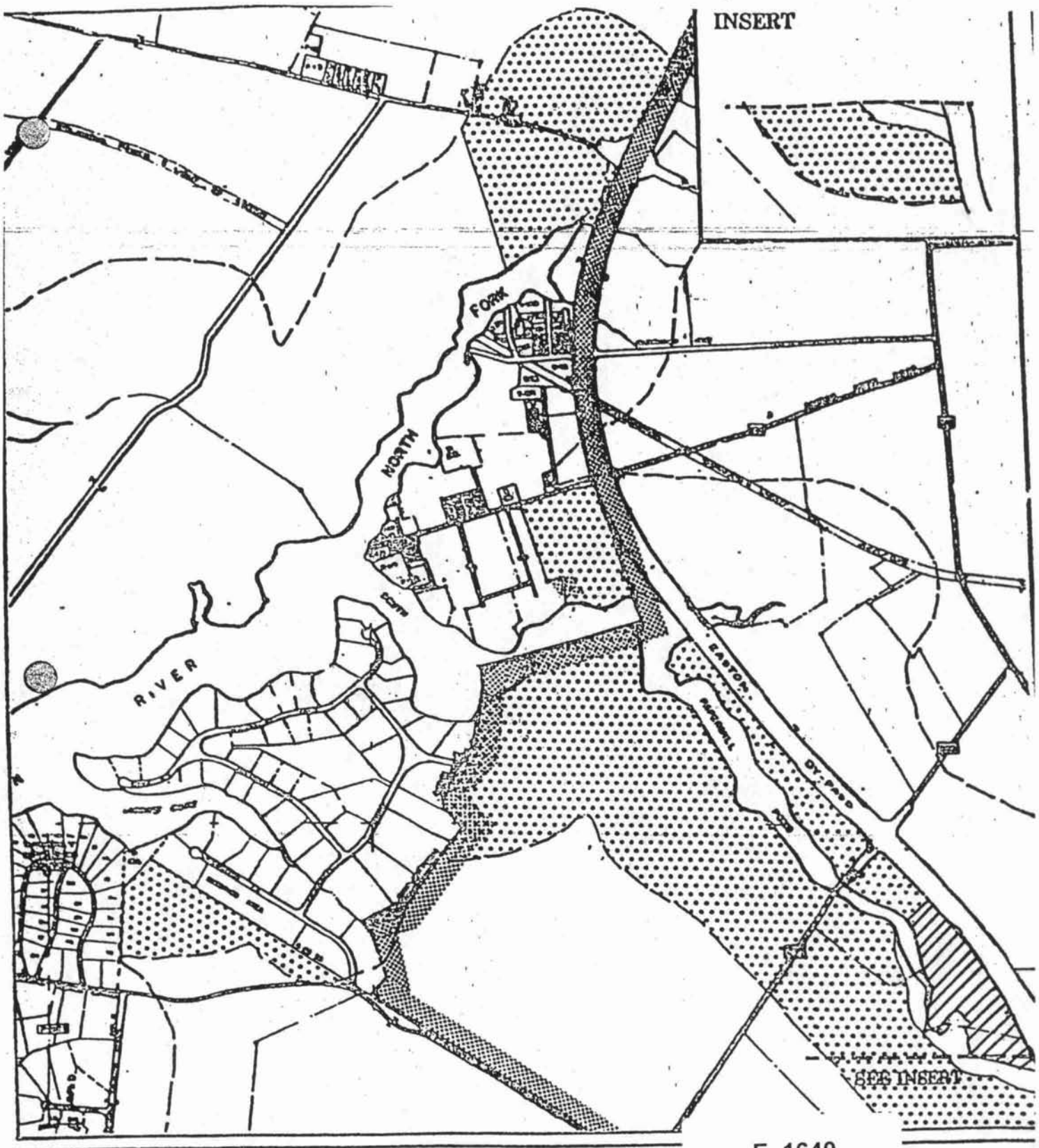
If the request for a variance arises under Section IV.B.3 regarding nonconforming lots of record, the applicant must demonstrate and the Board of Appeals must find that each of the above criteria have been met and further that, due to the pattern of lot ownership, it is not possible to reconfigure or consolidate lots so as to permit compliance with this ordinance.

3. Appeals

Variance decisions by the Board of Appeals may be appealed to the Circuit Court in accordance with the Maryland Rules of Procedure. Appeals may be taken by any person, firm, corporation, or governmental agency aggrieved or adversely affected by any decision made under this ordinance. The Chairman of the Critical Area Commission may appeal an action or decision even if the Chairman was not a party to or is not specifically aggrieved by the action or decision.

D. Severability

The sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable. Should any section, paragraph, sentence, clause, or phrase of this ordinance be declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of any other remaining portion of this ordinance nor shall it affect the validity of the ordinance as a whole.



Area Allocated for Town Development

TOWN OF EASTON

Talbot County, Maryland

RCA for Annexation or Rezoning

LDA for Rezoning

E. 1640

Map No 1

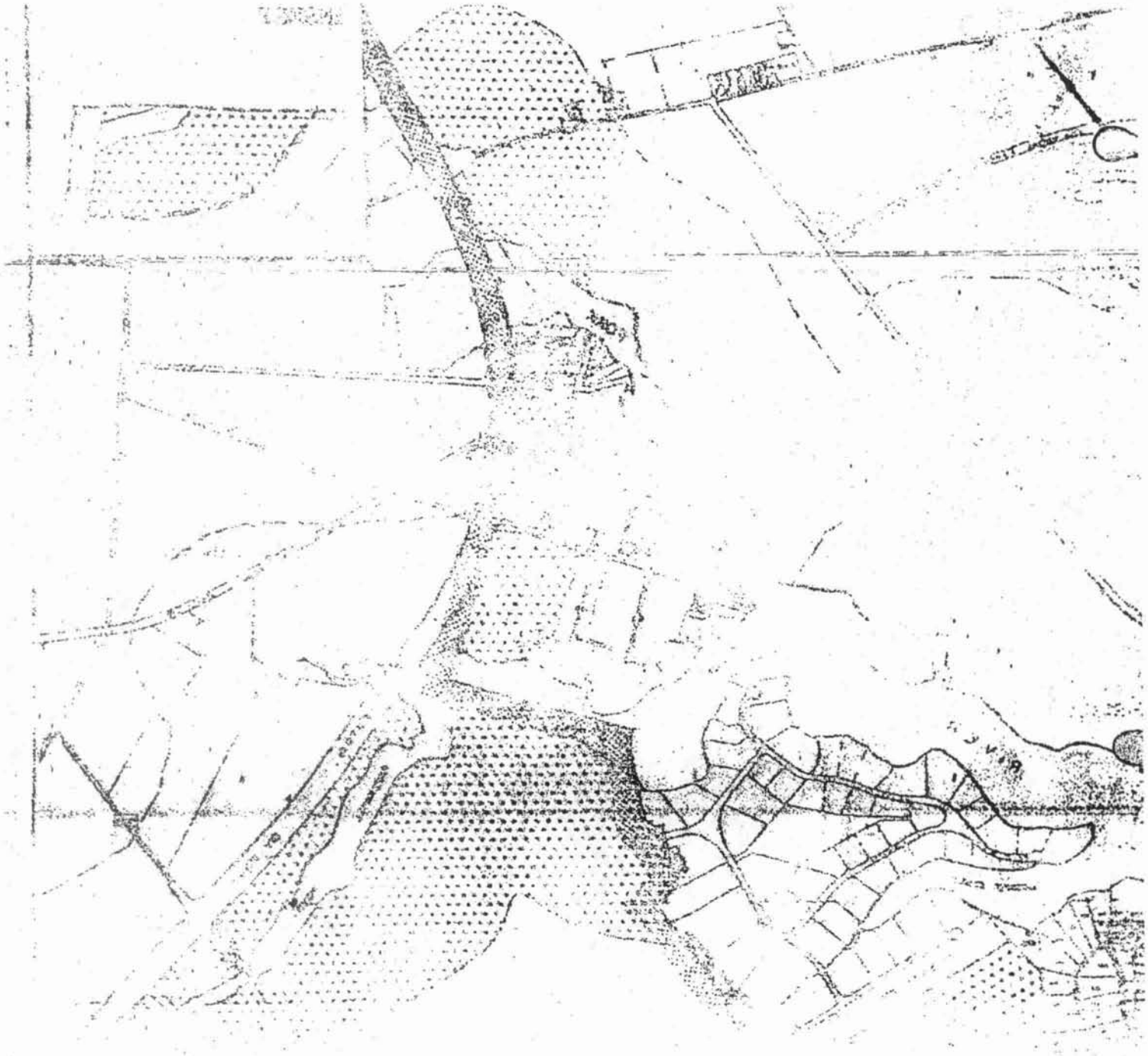
N

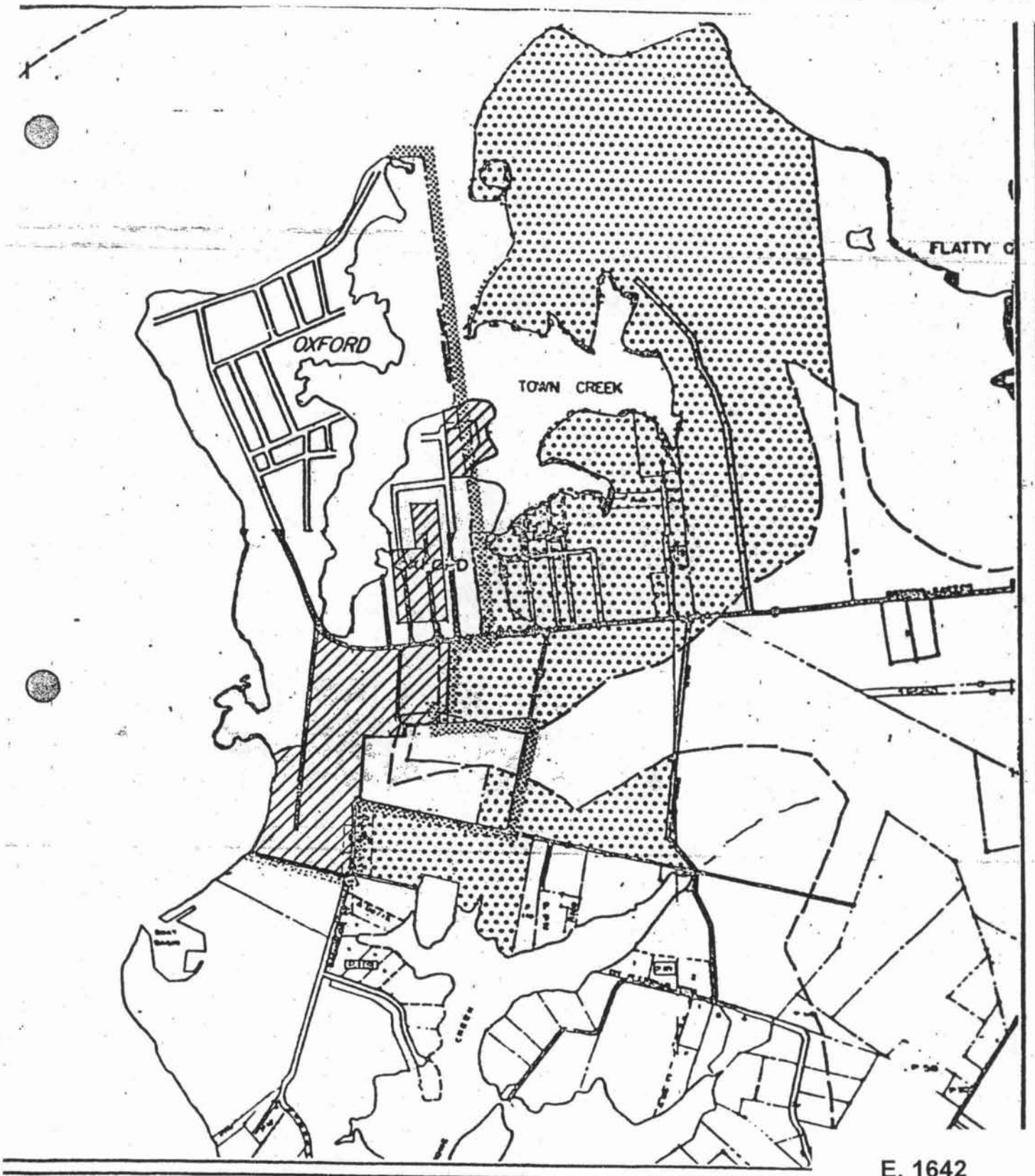
miles

1 0 2 4 6

Wiles Dailey Pronske

Reston Va Sarasota, Fla





E. 1642

Map No

Area Allocated for Town Development

TOWN OF OXFORD

Talbot County, Maryland

RCA for Annexation or Rezoning

LDA for Rezoning

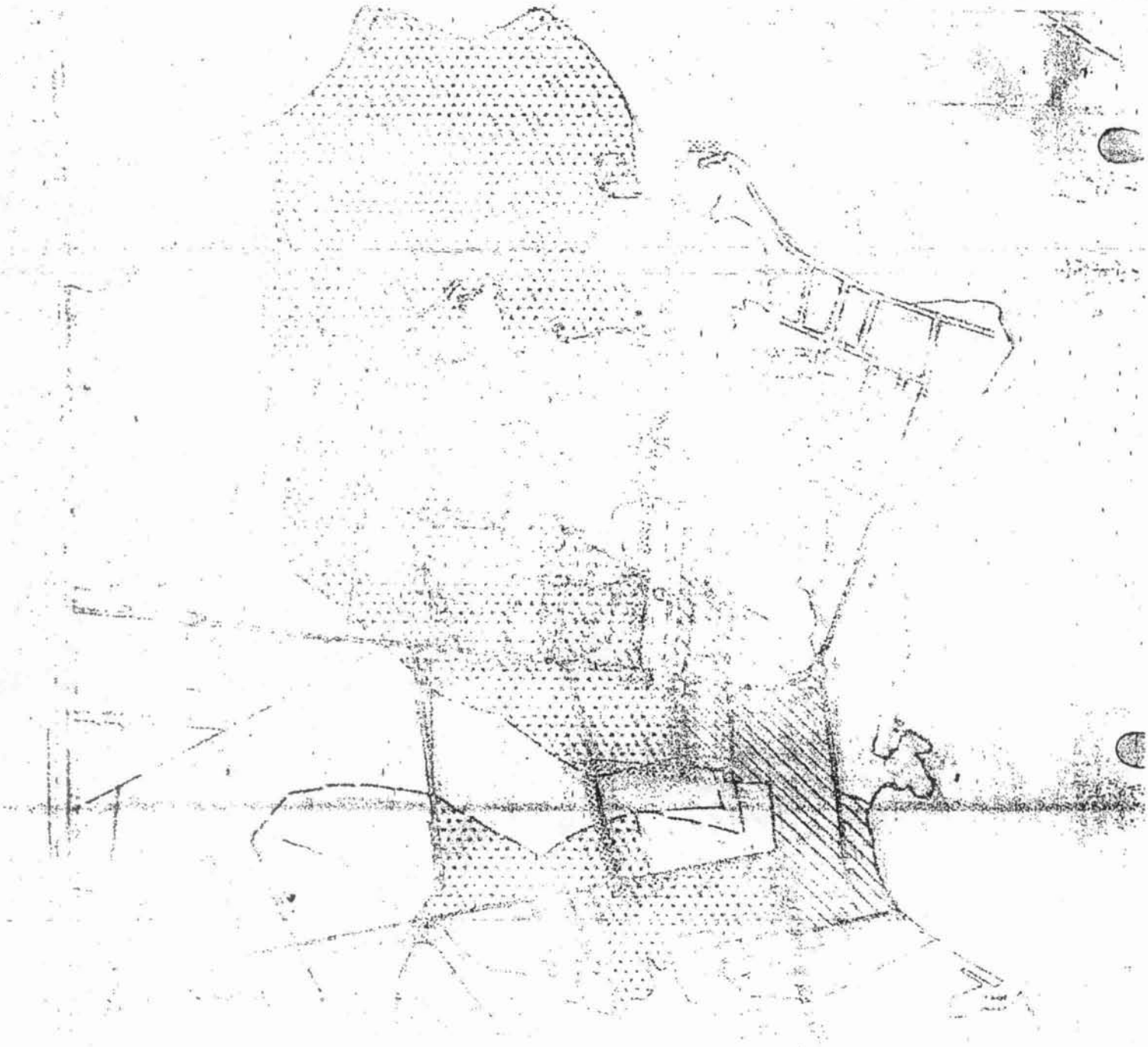
N

miles

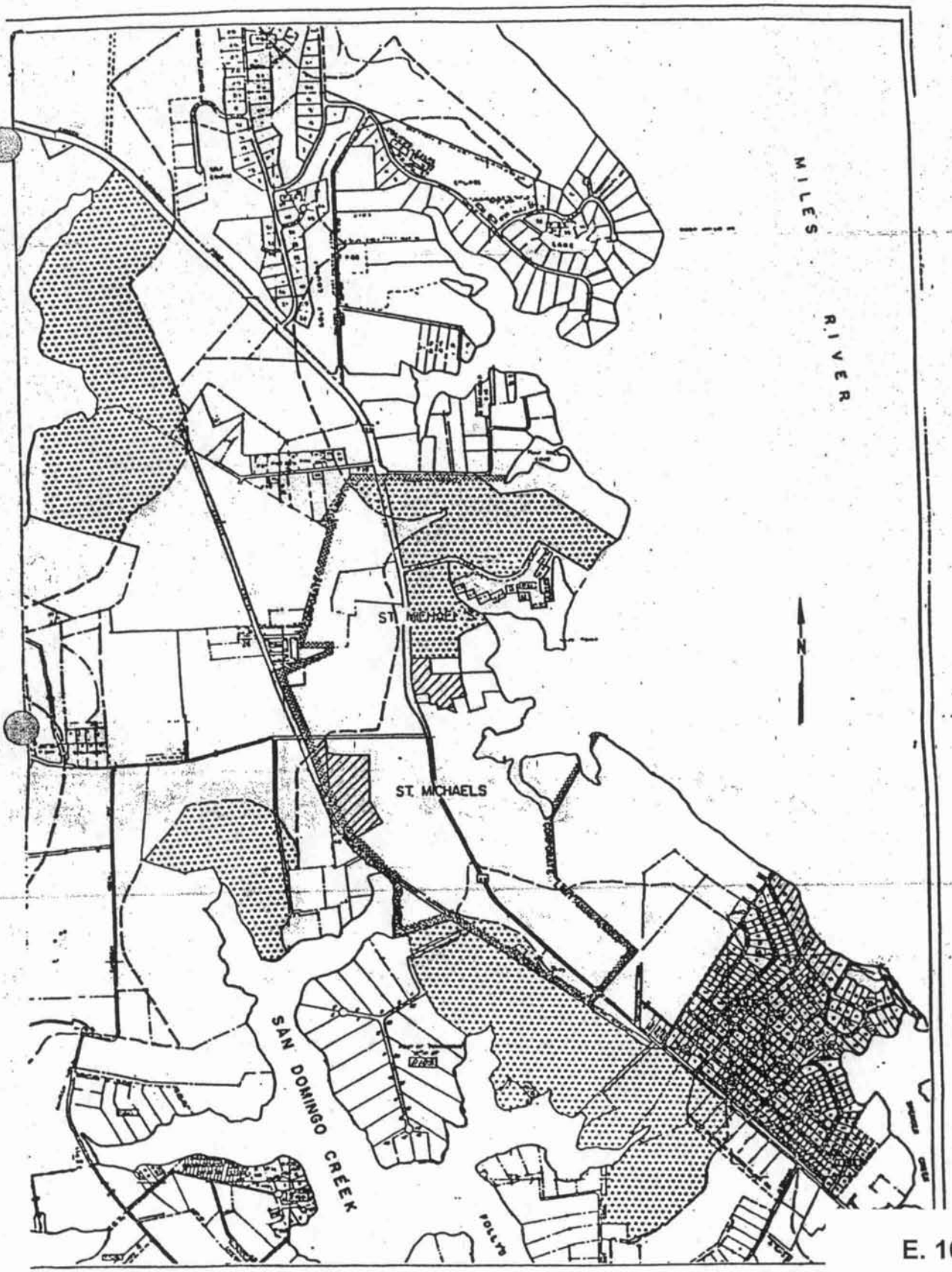
1 0 2 4 6

Wiles Dailey Pronske

Reston Va Sarasota, Fla.



E. 1643



E. 1644

Area Allocated for Town Development

TOWN OF ST MICHAELS

Talbot County, Maryland

RCA for Annexation or Rezoning

LDA for Rezoning

Map No 3

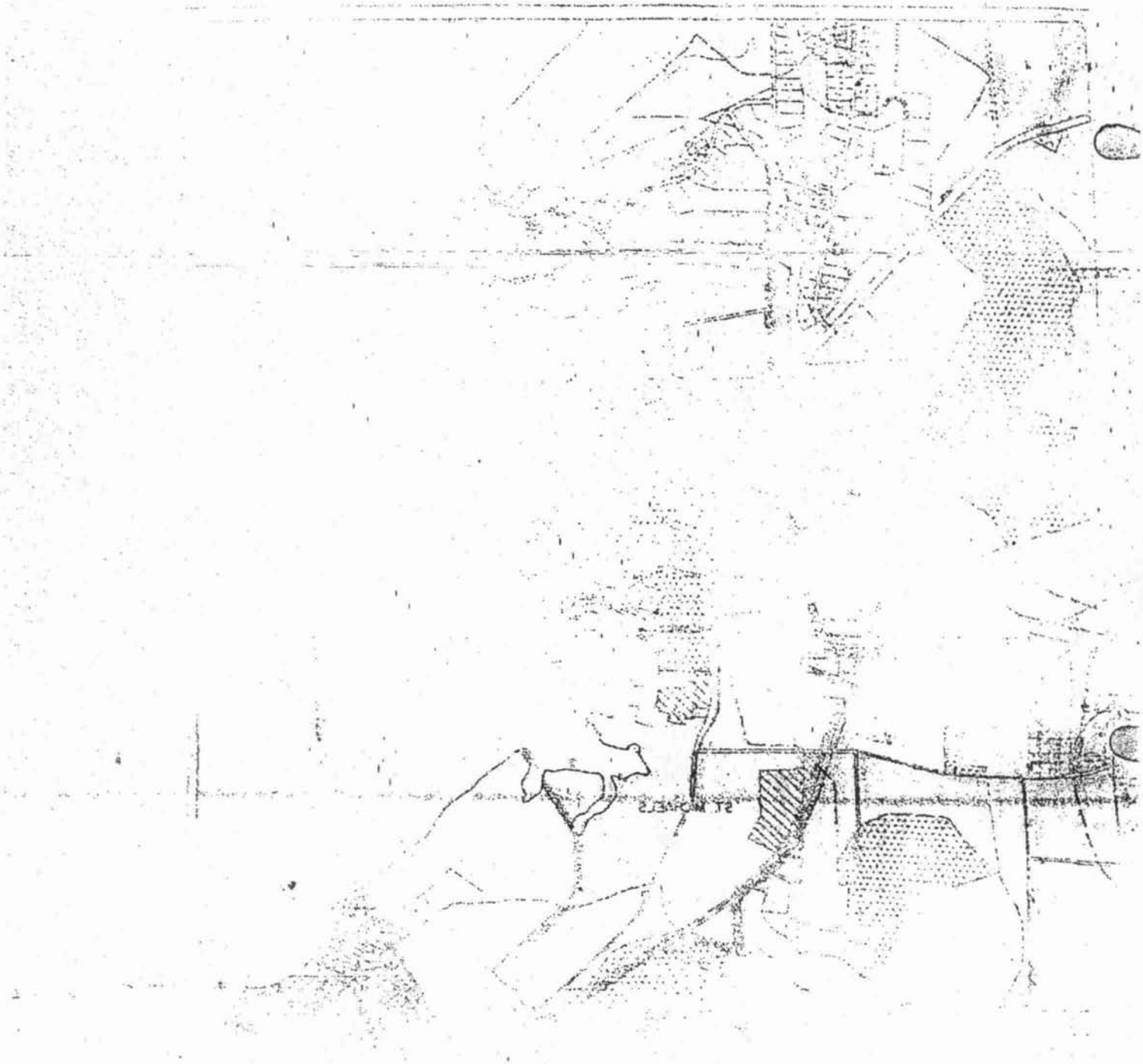
N

miles

2 1 0 2 4 6

Wiles Dailey Pronske

Reston, Va Sarasota, Fla



E. 1645

V. DEFINITIONS

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

Agriculture
All methods of production and management of livestock, crops, vegetation, and soil. This includes, but is not limited to, the related activities of tillage, fertilization, pest control, harvesting, and marketing. It also includes, but is not limited to, the activities of feeding, housing, and maintaining of animals such as cattle, dairy cows, sheep, goats, hogs, horses, and poultry and handling their by-products.

Agricultural Easement
A nonpossessory interest in land which restricts the conversion of use of the land, preventing nonagricultural uses.

Anadromous Fish
Fish that travel upstream (from their primary habitat in the ocean) to fresh waters in order to spawn.

Anadromous Fish Propagation Waters
Those streams that are tributary to the Chesapeake Bay where spawning of anadromous species of fish (e.g., rockfish, yellow perch, white perch, shad, and river herring) occurs or has occurred. The following bodies of water have been identified as spawning areas in Talbot County:

a. Choptank River Basin
(Bolingbroke Creek, Tuckahoe Creek, Norwich Creek, Miles Creek, Kings Creek)
b. Miles River
c. Wye River East

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

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

Barren Land
Unmanaged land having sparse vegetation.

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

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Best Management Practices (BMP's)
Conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics, and sediment. Agricultural BMP's include, but are not limited to, strip-cropping, terracing, contour stripping, grass waterways, animal waste structures, ponds, minimal tillage, grass, and naturally vegetated filter strips, and proper nutrient application measures.

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

Buffer
An existing, naturally vegetative area or an area established in vegetation and managed to protect aquatic, wetland, shoreline, and terrestrial environments from man-made disturbances.

Bulkhead
A wall or embankment constructed to protect against earthslides or shoreline erosion, not including riprap (see riprap).

Cadium, Arsenic & Heavy Metals
Metallic elements that have a high molecular weight. Heavy metals are generally toxic in low concentrations to animal and marine life.

Clearcutting
The removal of an entire stand of trees in one cutting.

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

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

Commercial Harvesting
A commercial operation that would alter the existing composition or profile, or both, of a forest, including all commercial cutting operations done by companies and private individuals for economic gain.

Community Piers
Boat docking and launching facilities associated with subdivisions and similar residential areas and with condominium, apartment, and other multiple-family dwelling units. Private piers are excluded from this definition.

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Comprehensive or Master Plan
A compilation of policy statements, goals, standards, maps, and pertinent data relative to the past, present, and future trends of the local jurisdiction including, but not limited to, its population, housing, economics, social patterns, land use, water resources, and their use, transportation facilities and public facilities prepared by or for the planning board, agency or office.

Conservation Easement
A nonpossessory interest in land which restricts the manner in which the land may be developed in an effort to reserve natural resources for future use.

Cover Crop
The establishment of a vegetative cover to protect soils from erosion and to restrict pollutants from entering the waterways. Cover crops can be dense, planted crops of grasses or legumes or crop residues such as corn, wheat, or soybean stubble which maximize infiltration and prevent runoff from reaching erosive velocities.

Critical Area
All lands and waters defined in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:

a. All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps and all State and private wetlands designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland, and

b. All land and water areas within 1,000 feet of the landward boundaries of State or private wetlands and the heads of tides designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland.

Modifications may be made to the boundaries of these areas through inclusions or exclusions proposed by the County and approved by the Critical Area Commission as specified in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland.

Critical Area Commission
The Chesapeake Bay Critical Area Commission.

Density
The number of dwelling units per acre within a defined and measurable area. In calculating the density of development that is permitted on a parcel located within the Rural Conservation District, the area of any private tidal wetlands located on the property may be included, subject to the following conditions: 1) the density of development on the upland portion of the parcel shall not exceed 1 dwelling unit per 8 acres; and 2) the area of private wetlands shall be estimated on the basis of vegetative information as designated on the state wetlands maps.

Developed Woodlands
Those areas of one acre or more in size which predominantly contain trees and natural vegetation and which also include residential, commercial, or industrial structures and uses.

Development Activities
Any activity shown on a subdivision plat, site plan, or building permit and resulting in the construction or substantial alteration of any residential, commercial, industrial, institutional, recreational (including golf courses), or transportation facilities or structures. The Planning Officer shall determine whether a proposed alteration is substantial. Generally, substantial residential alterations would cause the total impervious area on a lot to exceed 15% of the lot or 5,000 sq ft, whichever is less. Generally, substantial nonresidential alterations would add more than 5,000 sq ft of impervious area.

Diatomaceous Earth (Diatomite)
A siliceous material resembling chalk used in waste water treatment plants to filter solids out of sewage effluent. May also be used as an inactive ingredient in pesticide formulations applied as dust or powder.

Documented Breeding Bird Areas
Forested areas where the occurrence of interior dwelling birds, during the breeding season, has been demonstrated as a result of on-site surveys using standard biological survey techniques.

Dredging
A method for deepening streams, swamps, or coastal waters by removing solids from the bottom.

Easement
An interest in land owned by another that entitles its holder to a specific use or enjoyment.

Ecosystem
A more or less self-contained biological community together with the physical environment in which the community's organisms occur.

Ecotone
An ecological community of mixed vegetation formed by the overlapping of adjoining communities.

Endangered Species
Any species of fish, wildlife, or plants which have been designated as endangered by regulation by the Secretary of the Department of Natural Resources. Designation occurs when the continued existence of these species as viable components of the state's resources are determined to be in jeopardy. This includes any species determined to be an "endangered" species pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531 et seq., as amended. The Bald Eagle is an endangered species in Talbot County.

Erosion
The wearing away of the land surface by wind or water, usually intensified by land-clearing practices.

Escarpment
A steep slope or long cliff resulting from erosion or faulting and separating two relatively level areas of differing elevations.

Estuarine Flat Nursery Area
A low lying, partly flooded grounds such as tideland, where fresh water meets salt water and young marine life develops. These are delicate ecosystems.

Eutrophication
The process of change or "aging" of a water body in which the nutrient level (phosphates and nitrates) increases, encouraging the growth of algae with accompanying depletion of dissolved oxygen in the bottom waters.

Excess Stormwater Runoff
All increases in stormwater resulting from:

a. An increase in the imperviousness of the site, including all additions to buildings, roads and parking lots.
b. Changes in permeability caused by compaction during construction or modifications in contours, including the filling or drainage of small depression areas;
c. Alteration of drainageways or regrading of slopes;
d. Destruction of forest; or
e. Installation of collection systems to intercept street flows or to replace swales or other drainageways.

Fallow Land
Land that is plowed and tilled but left unseeded during a growing season.

Fastland
That portion of a coast behind the coastline which marks the seaward limit of permanently exposed coast and or the landward limit of effective wave action, often with a well-defined scarp or wave cut cliff defining the seaward edge of the fastland.

Fecal Coliform Bacteria
A group of organisms common to the intestinal tracts of man and animals.

Fisheries Activities
Commercial water dependent fisheries facilities including structures for the packing, processing, canning, or freezing of finfish, crustaceans, mollusks, amphibians, and reptiles and also including related activities such as wholesale and retail sales, product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquaculture operations.

Forest
A biological community dominated by trees and other woody plants covering a land area of 1 acre or more. This also includes forests that have been cut, but not cleared. The significant forests in Talbot County are:

a. The swamp, bottomland, and sloped forests adjacent to the tributary streams of the Upper Choptank River and Tuckahoe Creek;
b. The upland forests abutting the Bay shore on the Lower Choptank River basin and in high shoreline erosion ares including the Bay shore between Claiborne and Black Walnut Cove; and
c. The forest stands in the interior of the necks and the upland forested stands abutting the Miles River and Wye River East.

Forest Interior Dwelling Birds
Species of birds which require relatively large forested tracts in order to breed successfully (for example, various species of flycatchers, warblers, vireos, and woodpeckers).

Forest Management
The protection, manipulation and utilization of the forest to provide multiple benefits, such as timber harvesting, water transpiration, wildlife habitat, etc.

Forest Practice
The alteration of the forest either through tree removal or replacement in order to improve the timber, wildlife, recreational, or water quality values.

Forestry
The cultivation, maintenance, management, and development of trees on forested lands.

Groin
A stone or wooden jetty constructed perpendicular to shore in order to interrupt lateral shore sand movement and for the purpose of accumulating sand on the shore.

Habitat
The natural abode of a plant or animal.

Habitat Protection Areas
The Shoreline Development Buffer, Nontidal Wetlands, Habitats of Species in Need of Conservation, Threatened and Endangered Species, Plant and Wildlife Habitats, and [the drainage basin of] Anadromous Fish Propagation Waters.

Herbicide
A chemical used to destroy or control the growth of weeds, brush or other undesirable plants.

Highly Erodible Soils
Those soils with a slope greater than 15 percent; or those with a K value greater than .35 and with slopes greater than 5 percent.

Historic Waterfowl Staging and Concentration Area
An area of open water and adjacent marshes where waterfowl gather during migration and throughout the winter season. These areas are "historic" in the sense that their location is common knowledge and because these areas have been used regularly during recent times.

Hydric Soils
Soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition or growth, or both, of plants on those soils.

Hydrophytic Vegetation
Those plants cited in "Vascular Plant Species Occurring in Maryland Wetlands" (Dawson, F. et al., 1985) which are described as growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content (plants typically found in water habitats).

Impervious Surface
Nonporous ground covers or areas above grade level such as sidewalks, roads, parking areas, and roof tops that shed stormwater and hinder penetration of water into the ground.

Jetty
A pier or other structure projecting into a body of water to influence the current or tide or protect a harbor or shoreline.

Joint Subdivision
A type of subdivision by which residential density may be transferred within the Rural Conservation District. A joint subdivision includes property in a sending area and in a receiving area. The sending area is land within Plant and Wildlife Habitat Areas, Drainage Basins of Anadromous Fish Propagation Waters, natural park sites and recreation open space sites in the Rural Conservation District, excluding those portions of these areas that are within 500 feet (measured landward) of significantly eroding shorelines (with an erosion rate of at least 2 feet per year) plus adjacent shorelines within 100 feet. The receiving area is land in the Rural Conservation District which is within 500 feet (measured landward) of significantly eroding shorelines (with an erosion rate of at least 2 feet per year) plus adjacent shorelines within 100 feet. A joint subdivision allows the number of dwelling units permitted in the sending area to be shown in the receiving area in exchange for preserving the natural characteristics of the sending property by protecting it from future development. Such protection shall be accomplished by fee title donation, conservation easements, and/or cooperative agreements with landowners. The Planning Officer shall determine the protection method most appropriate to the subject property.

K Value
The soil erodibility factor in the Universal Soil Loss Equation. It is a quantitative value that is experimentally determined.

Landbased Aquaculture
The raising of fish or shellfish in any natural or manmade, enclosed, or impounded waterbody.

Land Clearing
Any activity that removes the vegetative ground cover.

Landforms
Features of the earth's surface created by natural causes.

Lot
A parcel of subdivided land that is shown on a duly approved and recorded subdivision map or other legal map.

Marina
Any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other non-commercial boat docking and storage facilities.

Mean High Water Line
The average level of high tides at a given location.

Mineral Extraction

a. The breaking of the surface soil in order to extract or remove minerals;
b. Any activity or process that removes minerals from their original location;
c. The extraction of sand, gravel, rock, stone, earth, or fill from borrow pits for highway construction purposes or other public facilities;
d. The processing of minerals at the site of extraction;
e. The mining of limited amounts of any mineral when done for the purpose of prospecting or to determine the location, quantity, or quality of natural deposits; or;
f. Extraction operations affecting more than 1 acre of land.

Natural Features

Components and processes present in or produced by nature, including but not limited to, soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, and wildlife.

Natural Heritage Area

Any communities of plants or animals which are considered to be among the best Statewide examples of their kind and are designated by regulation by the Secretary of the Department of Natural Resources.

Natural Parks

Areas of natural habitat that provide opportunities for those recreational activities that are compatible with the maintenance of natural conditions.

Natural Vegetation

Those plant communities that develop in the absence of human activities.

Nature Dominated

A condition where landforms or biological communities, or both, have developed by natural processes in the absence of human intervention.

Nonpoint Source Pollution

Pollution generated by diffuse land use activities rather than from an identifiable or discrete facility. It is conveyed to waterways through natural processes, such as rainfall, storm run-off, or ground water seepage rather than by deliberate discharge. Non-point source pollution is not generally corrected by "end-of-pipe" treatment, but rather, by changes in land management practices.

Nonrenewable Resources

Resources that are not naturally regenerated or renewed.

Nontidal Wetlands

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

a. At least periodically, the lands support predominantly hydrophytic vegetation;
b. The substrate is predominantly undrained hydric soils.

Excluded from this definition are existing farm ponds and other existing man-made bodies of water whose purpose is to impound water for agriculture, water supply, recreation, or waterfowl habitat purposes.

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

Offsets
Structures or actions that compensate for undesirable impacts.

Open Space
Land and water areas retained in an essentially undeveloped state.

Overburden
The strata or material in its natural state, before its removal by surface mining, overlying a mineral deposit, or in between mineral deposits.

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

Parcel
A discrete area of land, subdivided or unsubdivided, in a single ownership.

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

Permeability
The measure of a soil's ability to drain water.

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

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

Physiographic Features
The soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.

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

Plant and Wildlife Habitat Areas

A community of plants commonly identifiable by the composition of its vegetation and physiographic characteristics and features that provide food, water, and cover, nesting and foraging or feeding conditions necessary to maintain populations of animals in the Critical Area. Plant and wildlife habitats include:

a. Colonial water bird nesting sites;

b. Historic waterfowl staging and concentration areas in tidal waters, tributary streams or tidal and non-tidal wetlands;

c. Existing riparian forests (for example, those relatively mature forests of at least 300 feet in width which occur adjacent to streams, wetlands, or the Bay shoreline and which are documented breeding areas);

d. Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species (for example relatively mature forested areas within the Critical Area of 100 acres or more or forest connected with such areas);

e. Other areas which may in the future be identified by State and Federal agencies as important plant or wildlife habitat areas;

f. Other plant and wildlife habitats determined to be of local significance in Talbot County include the habitats of:

Geese and Swans	Dabbling Ducks
Canada goose	Mallards
Snow goose	Black ducks
Brant	Blue-winged teal
Mute swan	Green-winged teal
Tundra swan	American wigeon

Diving Ducks: Freshwater	Diving Ducks: Brackish/Open Sea
Canvasback duck	Black scoter
Redhead duck	Surf scoter
Greater scaup	Common scoter
	Red-Breasted merganser
	Common eider

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

Colonial Nesting Birds		Shellfish	
Herons	Terns	Oysters	Blue crabs
Egrets	Glossy Ibis	Crabs	Clams

g. Natural Heritage Areas which have been designated by the State of Maryland.

Port

A facility or area established or designated by the state or local jurisdictions for purposes of waterborne commerce.

Private Harvesting
The cutting and removal of trees for personal use.

Project Approvals
The approval of development, other than development by a state or local government agency, in the Chesapeake Bay Critical Area by the appropriate local approval authority. The term includes approval of subdivision plats and site plans; inclusion of areas within floating zones; issuance of variances, special exceptions, and conditional use permits; and issuance of zoning permits. The term does not include building permits.

Public Boat Dock Facility
A state or county facility open to the public. Not a private facility or one to be used only by the residents of a particular development.

Public Water Oriented Recreation
Shore dependent recreation facilities or activities provided by public agencies which are available to the general public.

Reach
The stretch of water visible between bends in a river or channel.

Reclamation
The reasonable rehabilitation of disturbed land for useful purposes, and the protection of the natural resources of adjacent areas, including waterbodies.

Redevelopment
The process of developing land which is or has been developed.

Reforestation
The reestablishment of a forest through artificial reproduction or natural regeneration.

Renewable Resource
A resource that can renew or replace itself and therefore with proper management can be harvested indefinitely.

Revetment
A sloped facing, as of masonry, used to support an embankment.

Riprap
A layer of stones, gravel, or boulders placed on a slope or shore to prevent loss of bank material by wave action or erosion.

Riparian Habitat
A habitat that is strongly influenced by water and which occurs adjacent to streams, shorelines and wetlands.

Runoff
The portion of rainfall, melted snow, or irrigation water that flows across ground surfaces and eventually is returned to water bodies. Runoff can pick up pollutants from the air or land and carry them to the receiving waters.

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Salt Water Intrusion
The invasion of salt water into a body of fresh water, including underground aquifers. When this invasion is caused by oceanic waters, it is called sea-water intrusion.

Sanitary Landfill
An engineered method of solid waste disposal on land in a manner that protects the environment. Waste is spread in thin layer, compacted to the smallest practical volume and covered with soil at the end of each working day.

Seasonally Flooded Water Regime
A condition where surface water is present for extended periods, especially early in the growing season. When surface water is absent, the water table is often near the land surface.

Seawall
A wall or embankment to prevent erosion of a shoreline.

Sedimentation
The settling out of solids by gravity.

Selection
The removal of single, scattered, mature trees, or other trees from uneven-aged stands by frequent and periodic cutting operations.

Setback
The minimum distance that a structure shall be set back from property lines, according to the relevant sections of this ordinance.

Shell Marl
A mixture of clays, carbonates of calcium and magnesium, and remnants of shells, forming a loam used as fertilizer.

Shoaling
The act of becoming shallow.

Shore Erosion
The wearing away of land by wind and water action resulting in a net loss of land over a given length of shoreline.

Shore Erosion Protection Works
Those structures or measures constructed or installed to prevent or minimize erosion of the shorelines.

Shoreline Development Buffer
The area at least 100 feet wide measured landward from the Mean High Water line of tidal waters, tidal wetlands, and from tributary streams. These areas are usually referred to as the Buffer.

Significantly Eroding Shoreline
Shoreline that erodes 2 feet or more per year.

Soil Conservation and Water Quality Plans
Land use plans for farms that show farmers how to make the best possible use of their soil and water resources while protecting and conserving those resources for the future. It is a document containing a map and related plans that indicate:

a. How the landowner plans to treat a farm unit;
b. Which Best Management Practices the landowner plans to install to treat undesirable conditions; and
c. The schedule for applying those Best Management Practices.

Solid Waste
Useless, unwanted, or discarded material with insufficient liquid content to be free flowing.

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

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

Spoil Pile
Rejected materials piled or deposited during surface mining or dredging.

Steep Slopes
Slopes of 15 percent or greater incline.

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

Thinning
A forest practice to accelerate tree growth of quality trees in the shortest interval of time.

Threatened Species means any species of fish, wildlife, or plants designated as such by regulation by the Secretary of the Department of Natural Resources which appear likely, within the foreseeable future, to become endangered, including any species of wildlife or plant determined to be a "threatened" species pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531 et seq., as amended. The Delmarva Fox squirrel and the Sedge wren are threatened species in Talbot County.

Topography
The existing configuration of the earth's surface including the relative relief, elevation and position of land features.

Transitional Habitat
A plant community whose species are adapted to the diverse and varying environmental conditions that occur along the boundary that separates aquatic and terrestrial areas.

Transportation Facilities
Anything that is built, installed, or established to provide a means of transport from one place to another.

Tree
A tall woody plant with a trunk of at least 4 inches in diameter measured 4 feet above grade.

Tributary Streams
Those perennial and intermittent streams in the Critical Area which are so noted on the most recent U.S. Geological Survey 7 1/2 minute topographic quadrangle maps (scale 1:24,000) or on more detailed maps or studies at the discretion of the County.

Utility Transmission Facilities
Fixed structures that convey or distribute resources, wastes, or both, including, but not limited to, electric lines, water conduits, and sewer lines.

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

Water Based Aquaculture
The raising of fish and shellfish in any natural, open, free flowing water body.

Water Dependent Activities
Those activities which can only be conducted on, in, over, or adjacent to water areas because the activity requires direct access to a water body for transportation, recreation, energy production or transmission, or source of water and where the use of the water is an integral part of the activity. An activity is water dependent if it cannot exist outside the Shoreline Development Buffer and is dependent on the water by reason of its intrinsic nature. These activities include, but are not limited to, ports, the intake and outfall structures of power plants, water use industries, marinas, and other boat docking structures, public beaches, and other public water oriented recreation areas, and fisheries activities. Excluded from this definition are individual private piers installed or maintained by riparian landowners, which are not part of a subdivision providing community piers. Nonwater dependent activities are all other activities not included in the definition of water dependent activities.

Water Table
The upper level of ground water.

Water Use Industry
An industry that requires location near the shoreline because it utilizes surface waters for cooling or other internal purposes.

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

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

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2000 Legislative Session, Legislative Day No. March 28, 2000

Bill No. 762

Introduced by: Ms. Spence

A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND

By the Council March 28, 2000

Introduced, read first time, ordered posted, and public hearing scheduled on Tues. April 18 at 1:35 p.m. at the County Council Chambers, Court House, South Wing, Easton, Maryland 21601.

By Order Jessica Morris
Secretary

E. 1660

EXHIBIT
3

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 Luiza Morris
Secretary

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

TOWN OF EASTON

RECEIVED
AUG 19 1999
TALBOT COUNTY COUNCIL

CHRISTOPHER B. KEHOE
TOWN ATTORNEY
EMAIL: CKEHOE@EDTKLAW.COM

16 SOUTH WASHINGTON STREET
EASTON, MARYLAND 21601
TELEPHONE: (410) 822-1988
FACSIMILE: (410) 820-5053

August 19, 1999

This looks OK to me. H.

C. Eugene Butler, Mayor and
Members of the Easton Town Council

Robert D. Higgins, President and
Members of the Talbot County Council

Members of the Easton Planing & Zoning Commission

Members of the Talbot County Planning & Zoning Commission

Re: Growth Allocation Procedures Within Municipalities

Dear Ladies and Gentlemen:

On August 9, 1999, Daniel Cowee, the County Planner, Michael Pullen, the County Attorney, Tom Hamilton, the Town Planner, Lynn Thomas, the Assistant Town Planner and I met to discuss issues relating to the County Council's enactment of Bill No. 699 which pertains to the procedures and standards which will govern the award of Chesapeake Bay Critical Area growth allocation within municipalities in Talbot County. It is a follow up to the joint Council/Commission meeting held in the spring to discuss these matters.

At the meeting, the following topics were discussed and the following matters decided pending upon your approval:

seems to go beyond growth all. questions

1. Application Process: Any development activity within the Town which would require growth allocation from the County will be reviewed by the Town according to the Town's subdivision regulations or the Town's site plan review process. The procedure utilized will vary according to the type of development proposed. We believe that it is most appropriate for the application for the development to be made to the Town. The Town in turn will refer copies of the application to the County Council for the County Council's consideration and review. Obviously, an applicant should provide all of the information necessary to allow for both Town and County joint review. We believe that there is already a close convergence between the Town zoning and subdivision regulations and the County zoning ordinance with regard to the type of information required to support a growth allocation request. The planning staff of the Town will make sure that the application requirements are completely compatible.

2. Staff Review: The project will be reviewed independently by County and Town staffs who will

EXHIBIT 4

Also – The issues relating to growth allocation are not necessarily the same as those relating to annexation or rezoning. Finally, under Bucktail, a growth allocation hearing has to be conducted differently than many other hearings

make recommendations to their respective planning commissions with regard to the project. We recommend that copies of staff reports generated by each jurisdiction be forwarded to the other jurisdictions planning commission to encourage comity and close cooperation.

3. Planning Commission Review: We recommend that the Town Planning & Zoning Commission and the County Planning & Zoning Commission hold a joint hearing on the application. We believe that there is a substantial advantage in allowing both commissions to hear the same presentation at the same time and to interact with one another to resolve questions prior to making formal recommendations. We do not believe that issues such as who will chair the meeting, etc. will prove to be a problem; if we are wrong, we recommend that the chair of the Town Commission conduct the first meeting; the Chair of the County Commission conduct the second etc.

Each Commission would vote separately and make its recommendations to its respective Council. In addition, each Commission would make its recommendations available to the other jurisdiction.

I would prefer for the Town to act first since the question is directed to them, & don't think the County should be in the position of issuing an advisory opinion on something the Town has yet to approve

4. For the same reason we recommend a joint hearing for the Town and County Planning Commission, we also recommend that the County Council and the Town Council hold a joint public hearing on the application. We do not believe that matters such as venues and rules of procedures will be problematic. Again, although the Councils will conduct a joint hearing, each Council will make its decision separately as an independent entity. The Councils' hearing will hopefully be coordinated with the Critical Area Commission hearing so as to eliminate additional hearings.

5. Conditions: Both the Town's subdivision and planned unit development process and the County's current growth allocation process permit the respective jurisdictions to attach conditions to an approval. We discussed the possibility that the review process could result in the Town and County granting an application for growth allocation but making the application subject to conditions which would be conflicting in some fashion. We feel that the procedures outlined above, with their emphasis on jointly held hearings and the exchange of staff reports and Planning & Zoning Commission recommendations, will minimize the possibility of this occurring.

6. Amendments to Approved Projects: The Town's land use regulations allow for amendments to approved projects. What role should the County have in the review of an amendment to a project involving an award of growth allocation? We believe that the best approach would be to require that any amendment to a project involving growth allocation be subject to County Council approval for a period of 5 years after the date of the initial approval. This time frame is analogous to the period of time over which the County can veto, under certain circumstances, Town zoning decisions upon an annexation and we feel that this proposal will allow the County to have some degree of confidence that the Town will not ignore its wishes and goals after the growth allocation is awarded.

Ok. Agree

Eg. The Easton Club

It was recognized that the County zoning ordinance relating to growth allocation awards to municipalities will need some minor amendments in order to incorporate these provisions. The Town's zoning ordinance provisions relating to growth allocation procedures will have to be substantially revised. This step will take place either separately or as part of an overall review and revision of the

Town's Critical Area zoning regulations.

If the respective Councils are in agreement that the procedure outlined above is appropriate and workable, the staff of each jurisdiction will draft the appropriate legislation.

Very truly yours,

Christopher B. Kehoe

CBK/lsh

cc: Michael L. Pullen, Esquire
W. Thomas Hamilton
Daniel Cowee
Lynn B. Thomas

I:\\SERVER\fm\Linda\me\Growth Allocation memo.wpd

TALBOT COUNTY, MARYLAND
COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601-3178
PHONE: 410-770-8010

R. ANDREW HOLLIS
County Manager

TTY: 410-822-8735
FAX: 410-770-8007
ahollis@talbgov.org

March 24, 2000

The Honorable Robert C. Willey, President
Board of Commissioners
Town of Easton
P.O. Box 520
Easton, Maryland 21601

Dear Mr. Willey:

Enclosed please find a copy of a bill entitled, "A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND" which will be introduced at the Talbot County Council meeting on Tuesday, March 28, 2000 at 1:30 p.m. The date of the public hearing will be announced at the meeting and advertised in the Star Democrat on Friday, March 31, 2000.

Should you have any questions, please feel free to contact me.

Sincerely,

R. Andrew Hollis
County Manager

RAH:jkm
Enclosure

Cc: Commissioners, Town of Easton

E. 1666

EXHIBIT
5

TALBOT COUNTY, MARYLAND
COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601-3178
PHONE: 410-770-8010

R. ANDREW HOLLIS
County Manager

TTY: 410-822-8735
FAX: 410-770-8007
ahollis@talbgov.org

March 24, 2000

The Honorable George Wilson, Jr.
Board of Commissioners
Town of St. Michaels
P.O. Box 206
St. Michaels, Maryland 21663

Dear Mr. Wilson:

Enclosed please find a copy of a bill entitled, "A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND" which will be introduced at the Talbot County Council meeting on Tuesday, March 28, 2000 at 1:30 p.m. The date of the public hearing will be announced at the meeting and advertised in the Star Democrat on Friday, March 31, 2000.

Should you have any questions, please feel free to contact me.

Sincerely,

R. Andrew Hollis

R. Andrew Hollis
County Manager

RAH:jkm
Enclosure

Cc: Commissioners, Town of St. Michaels

E. 1667

TALBOT COUNTY, MARYLAND
COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601-3178
PHONE: 410-770-8010

R. ANDREW HOLLIS
County Manager

TTY: 410-822-8735
FAX: 410-770-8007
ahollis@talbgov.org

March 24, 2000

The Honorable Ronald Fox, President
Board of Commissioners
Town of Oxford
P.O. Box 339
Oxford, Maryland 21654

Dear Mr. Fox:

Enclosed please find a copy of a bill entitled, "A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND" which will be introduced at the Talbot County Council meeting on Tuesday, March 28, 2000 at 1:30 p.m. The date of the public hearing will be announced at the meeting and advertised in the Star Democrat on Friday, March 31, 2000.

Should you have any questions, please feel free to contact me.

Sincerely,

R. Andrew Hollis
County Manager

RAH:jkm
Enclosure

Cc: Commissioners, Town of Oxford

E. 1668

1 term rentals, to establish minimal standards for short-term
2 rentals, to provide administrative remedies for failure to
3 adhere to such standards and to limit the use of short-term
4 rentals through December 31 in the year 2000.
5 I would like to introduce this bill. Are there
6 any other members of the Council that would also like to
7 introduce?
8 MR. HIGGINS: Yes.
9 MS. SPENCE: Mr. Higgins. Anyone else?
10 Mr. Dyott, Mr. Harrison.
11 MR. FOSTER: Council.
12 MS. SPENCE: Council bill. Okay. Introduced by
13 the Council. We will schedule this for public hearing on
14 Tuesday, April 11, at 1:35 p.m.
15 MR. FOSTER: Mr. Pullen, the only changes in this
16 were the two we talked about at the work session, the short-
17 term rental?
18 MR. PULLEN: Yes, that's correct.
19 MS. SPENCE: Next bill will be known as Bill
20 No. 762, a bill to establish procedures for awarding
21 supplemental growth allocation to municipalities in Talbot

1 County, Maryland. I'm going to put my name on this bill as
2 introducing this. Is this also by the Council?
3 Mr. Foster?
4 MR. FOSTER: I had one question, and maybe
5 Mr. Pullen can answer it. On No. 3, Council review, it says
6 the County and municipal councils shall hold a joint
7 hearing, co-chaired by the chairman, blah, blah, blah, which
8 shall be coordinated jointly with the Critical Areas
9 Commission. I'm wondering since we're talking about an
10 entity that would be beyond the control of either the Town
11 or the County if we should sort of put ourselves in a
12 difficult situation there. Would it be better to say may or
13 something that wouldn't hang us up if the Critical Areas
14 Commission decided to be -- Mr. Cowee is shaking his head
15 yes. I don't want to phrase this in the wrong way, but if
16 for some reason they were not as enthusiastic --
17 MS. SPENCE: Right.
18 MR. FOSTER: -- as the other two councils on
19 moving forward, it might be that the councils would want to
20 go ahead, have their public hearing, anyway, and then try to
21 work with the Commission as opposed to the preferrable

1 group, which would be for all three to be working together
2 from the beginning.
3 MR. PULLEN: Right.
4 MS. SPENCE: Go ahead.
5 MR. HIGGINS: And in fact, the "Critical Area
6 Commission" generally does not get involved with the whole
7 Commission on a growth allocation issue.
8 MR. FOSTER: Good point, and they may refuse to be
9 a part of this.
10 MR. HIGGINS: Well, and this would, in fact, be a
11 staff review issue that they would not be a party joint to
12 the hearing. You know, it would be a County Council
13 hearing, it would be a Town Council hearing, but it would be
14 up to review by the staff and then kind of rubber stamp from
15 the Commission. Dan.
16 MR. COWEE: They would hold a panel, what they
17 call a panel hearing, which is made up of like five members.
18 Net five, five members including the staff will hold the
19 hearing and then take back a recommendation on the basis of
20 what they heard from that, from the input back to the whole
21 Commission, but if that doesn't happen at the same time as

1 yours and the Town Council's happens, it could be months
2 before you ever got through the process, so I agree with
3 Mr. Foster. Having that as a may makes a lot more sense.
4 MR. FOSTER: And Mr. Higgins also makes I think a
5 very good point because I remember the letter we got from
6 Judge North on, I don't remember whether it was the
7 handicapped bill, but basically indicating they weren't
8 comfortable taking a position upfront or being a part of
9 that process, and I want to include them, but I don't want
10 the process to break down if they don't want to be included
11 at a particular part in it.
12 MR. HIGGINS: I think it's appropriate to put the
13 introduced with the may in it rather than have an amendment
14 later on --
15 MR. FOSTER: It would be simpler.
16 MR. HIGGINS: -- that they may be included, and
17 now, it'll be enough problem, just watch and see, getting
18 two bodies scheduled for a public hearing, being the County
19 Council and the Town Council. If you throw a third body in
20 with people that are comprised from all over the State, like
21 Dan said, you could end up being 60, 90, 120 days before you

1 could even set a time for a hearing, so I think that that
2 will effectuate us operating better.
3 MS. SPENCE: Okay. We'll make that change.
4 MR. FOSTER: Change that word to may before it's
5 introduced?
6 MS. SPENCE: Right.
7 MR. HARRISON: And we also had already changed
8 the --
9 MS. SPENCE: Yes, up in Section 1, No. 1.
10 MR. FOSTER: Oh, what is that?
11 MS. SPENCE: The municipality shall forward the
12 application to County Council for consideration, review
13 within five working days. Okay.
14 MR. FOSTER: Okay.
15 MS. SPENCE: So with those two changes, I'm going
16 to put that in this folder.
17 MR. FOSTER: What happens if they don't?
18 MS. SPENCE: Excuse me?
19 MR. FOSTER: There's nothing we can really do.
20 MR. HIGGINS: Send Batman over to them.
21 MR. FOSTER: Okay.

1 MS. SPENCE: So that's, with those changes, I'm
2 going to slip that in that folder. Okay.
3 MR. FOSTER: Is there similar legislation moving
4 through the Town?
5 MS. SPENCE: Should be.
6 MR. FOSTER: Is this coordinated with the --
7 MR. PULLEN: Yes, I'm sent him a copy of it, and
8 he's reviewed it.
9 MS. SPENCE: Right.
10 MR. PULLEN: But I'm not sure that he's prepared a
11 bill yet. I don't believe he has.
12 MS. SPENCE: But the notion is that will happen.
13 They will have the same procedure in place as we have in
14 ours.
15 MR. HOLLIS: We've also sent a copy of the
16 legislation to all the municipalities with critical area.
17 MS. SPENCE: Okay. So they all know. Great.
18 Okay. So this is known as Bill No. 762, public hearing on
19 Tuesday, April 11th, at 1:35. That will be in here.
20 We also have an administrative resolution to, to
21 introduce and read. A resolution to clarify the authority

3739

File
Bill No. 3/31
-32

The Star-Democrat
Easton, MD

This is to certify that the annexed

Notice was published in

The Star-Democrat,

One of the newspapers printed and

published in Talbot County,

Maryland,

1 times in each of 1

successive weeks beginning the

31 day of March

2000

and the last insertion on the 31

day of March 2000.

Chesapeake Publishing Corporation
Publishers of The Star Democrat
Per

BT

TALBOT COUNTY PUBLIC NOTICE

Notice is hereby given that a public hearing will be held by the County Council of Talbot County, on Tuesday, April 11, 2000 at 1:35 p.m. in the Council Hearing Room, Courthouse, Easton, Maryland, for consideration of Bill No. 762, A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND.

Copies of the Bill are available for review in the Office of the County Manager during regular office hours. If you require communications assistance, please contact the County Manager's Office at (410) 770-8010 or TTY (410) 820-9377 by Friday, April 7, 2000,

All interested parties are hereby notified and invited to attend.

COUNTY COUNCIL OF TALBOT COUNTY
E76478

E. 1675

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

DANIEL R. COWEE
Planning Officer

FRANK V. HALL
Assistant Planning Officer

RECEIVED
APR 14 2000
TALBOT COUNTY COUNCIL

MEMORANDUM

TO: County Council Members and County Manager

FROM: Dan Cowee, Planning Officer

RE: Recommendation on Allocation Bill No. 762

DATE: April 13, 2000

The Planning Commission reviewed proposed legislative bill No.762, a bill to amend the Zoning Ordinance to establish procedures for awarding supplemental growth allocation to municipalities in Talbot County, at their regularly scheduled meeting on April 6, 2000. Commission members were familiar with the proposal since they participated in a number of the joint workshops with the towns and the County Council.

Mr. Cowee noted that there were non substantive changes that needed to be made to the bill to correct the proposed language. He stated that under paragraph two line four "Planning Officers" needed to be changed to "Planning Staffs" since not all jurisdictions have a Planning Officer by title. Paragraph two line eight states that the Planning Commissions make recommendations to respective councils. Some municipalities have commissions rather than councils so this sentence should be changed to read as follows:

> Each Planning Commission shall vote separately and make its recommendations to its respective council <u>or commission</u>.

In addition to this change, paragraph [3] should be changed to read as follows:

[3] Council Review. The county and municipal councils <u>or commissions</u> shall hold a joint hearing on the application, co-chaired by the designated chairperson of each council <u>or commission</u> which shall be coordinated jointly with the Critical Area Commission. The county and municipal councils <u>or commissions</u> shall make their respective decisions separately as independent entities. The County Council shall evaluate the application in accordance with § 19.14 (c) (iv) [d].

E. 1676

EXHIBIT 7

Commission members briefly discussed the review process as proposed and indicated that it seemed like a workable solution to address the growth allocation issue.

A motion was made by Mr. Hutchinson, seconded by Mr. Boicourt and unanimously passed to recommend to the Council that this bill be passed with the minor changes noted by Mr. Cowee.

As the Planning Officer for the County, I concur with the Planning Commission recommendation and recommend that the Council pass this legislation.

THE COMMISSIONERS OF ST. MICHAELS

SETTLED 1670 - 80

INCORPORATED 1804

FACSIMILE TRANSMITTAL SHEET

TO: Andy Hollis

FAX NUMBER:

COMPANY:

PHONE NUMBER:

FROM: Cheril Thomas

DATE: 4 17 00

TOTAL NO. OF PAGES INCLUDING COVER:

RE: County Bill 762

NOTES/COMMENTS:
Per your request – please let me know if you think my input at the public hearing is necessary. Thanks!

CONFIDENTIALITY NOTICE

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P.O. Box 206 St. Michaels, MD 21663
Phone: (410)745-9535 Fax: (410)745-3463
TDD/TTY RELAY 1-800-735-2258

E. 1678

EXHIBIT 8

LAW OFFICES OF
BANKS, NASON & HICKSON
PROFESSIONAL ASSOCIATION
113 BAPTIST STREET
P.O. BOX 44
SALISBURY, MARYLAND 21803-0044
e-mail: banklaw@shore.intercom.net

EDWARD G. BANKS, JR.
JOHN C. NASON
H. MICHAEL HICKSON

NIC B. RUVSHINOFF

TELEPHONE
(410) 548-4044
FAX
(410) 548-2560

April 13, 2000

Michael L. Pullen, Esquire
P. O. Box 1928
Easton, Maryland 21601-1928

Re: Talbot County Bill No 762

Dear Mr. Pullen:

Thank you for your letter dated March 16,2000, enclosing therewith what is now Talbot County Bill No. 762.

As you know, I am the Town attorney for St. Michaels. As you may be aware, the Town of St. Michaels has been going through a series of hearings relating to applications for growth allocation. During that process, the Applicant has, through its attorney, Mr. DeTar, told the Town that the Town is obligated to grant growth allocation to his client for a project known as "Perry Cabin, Phase II". The Town has recently denied that application. If Mr. DeTar is true to his word, then there will be litigation in the near future involving the application for growth application relative to Perry Cabin Farm in St Michaels, Maryland

I note that Bill No. 762 is stated to amend Title 19-14(c)(iv)(c)[i]. There presently are no further subparagraph numbers or subparagraph letters in that section, so as to distinguish and indicate those unnumbered and unlettered paragraphs in that section which are not expressly addressed by Bill No 762, to indicate whether they are intended to be deleted or intended to remain in that section. One might infer from Bill No 762 that the remainder of Section 19-14(c)(vi)[i], which is not repeated in Bill No 762, is being repealed

I would respectfully request that the language of Bill No. 762 be changed, not to alter it substantively, but to include those paragraphs which I have highlighted in the enclosed copy of the present Section 19-14(c)(iv)(c)[i], so that there will be no doubt, in the future, as to whether they are intended to be deleted, or intended to remain, as a part of that section

E. 1679

Michael L. Pullen, Esquire
April 13, 2000
Page 2

Thank you for your attention and consideration of this matter. Please let me know whether it is your intention to accept my suggestion and furnish me with the most up to date copy of this Bill.

Please also copy me on any further proposed legislation involving growth allocation in the future.

Thank you for you attention to this matter.

Very truly yours,

H. Michael Hickson

HMH/pjh

Enclosure

cc. Cheril S Thomas, Town Clerk/Manager

f:\w\hmh\static\landuse\growth\hrs\hr042mpullen.doc

E. 1680

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).*

ARE THESE PARAGRAPHS INTENDED TO REMAIN OR BE REPEALED?

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

acres). Upon Critical Area Commission approval, the County shall reserve acreage for each town.

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

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

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

In determining whether the twenty (20) acre threshold has been reached, the contiguous areas of existing commercial and/or industrial zoning districts, whether located in the Critical Area or Non-critical Area, shall be considered. Of the 128 acres, twenty-four (24) acres is reserved for the Town of Easton, forty-four (44) acres for the Town of Oxford, twenty-four (24) acres for the Town of St. Michaels for growth allocation or growth allocation associated with annexations, and thirty-six (36) acres for the County for growth allocation for property outside of the Towns and outside of areas shown as possible annexation areas (See Maps 1, 2 and 3).*

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

[k] The number of reserved 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

1 elimination of language Section 4(iii)(b) as in this amended
2 version. Spence votes aye.
3 MR. DYOTT: Dyott, aye.
4 MR. FOSTER: Foster, aye.
5 MR. HIGGINS: Higgins, aye.
6 MR. HARRISON: Harrison, aye.
7 MS. SPENCE: Okay. And now, we need to vote on
8 the bill as amended. On -- where are we?
9 MR. FOSTER: 761.
10 MS. SPENCE: 761, thank you. On Bill No. 761,
11 Spence votes aye.
12 MR. DYOTT: Dyott, aye.
13 MR. FOSTER: Foster, aye.
14 MR. HIGGINS: Higgins, aye.
15 MR. HARRISON: Harrison, aye.
16 MS. SPENCE: Okay. Thank you, gentlemen. Next
17 bill -- we have now passed 7:30, at which time we need to
18 close the bids. Bids are now officially closed. Is there
19 anyone in the audience that has a bid? Last call. Okay.
20 Bids are now officially closed, and we'll go on with a vote
21 on Bill No. 762, a bill to establish procedures for awarding

EXHIBIT 9

1 supplemental growth allocation to municipalities in Talbot
2 County, Maryland.
3 There are some -- we have an amended version of that as
4 well. Do you want to address these, this amended version?
5 MR. PULLEN: The amended version includes two
6 unnumbered sections that were in the code originally that
7 were not mentioned in the proposed bill, and the omission of
8 their mention in the bill could have been interpreted as a
9 repeal of those sections --
10 MS. SPENCE: Okay.
11 MR. PULLEN: -- and for that reason, they were
12 specifically included verbatim in the new bill so that there
13 would be no confusion.
14 MR. FOSTER: This addresses the concerns of the
15 St. Michaels Town attorney?
16 MR. PULLEN: Yes.
17 MR. FOSTER: And goes no further than that?
18 MR. PULLEN: Correct.
19 MS. SPENCE: And a few little language changes in
20 part 3, Council review, where they would use the term
21 Commission as well as Council just to make sure everybody's

1 using the right language when we refer to the governing
2 bodies and the planning bodies.
3 MR. FOSTER: Move the amendments as proposed in
4 this amended draft.
5 MS. SPENCE: Do we have to vote on whether they're
6 substantive or not?
7 MR. FOSTER: Yeah, but I guess you have to have
8 them, a motion -- they have to be on the floor to make the
9 determination whether they're substantive or not.
10 MS. SPENCE: Well, they're on the floor.
11 MR. FOSTER: Somebody has to second that and
12 then --
13 MR. HARRISON: Second.
14 MS. SPENCE: Second, thank you. All right. We
15 need to vote on whether or not they are substantive. Can I
16 have a motion concerning that issue?
17 MR. HARRISON: I would move that the amendments to
18 this bill are not substantive.
19 MR. FOSTER: Second.
20 MS. SPENCE: Second, moved and seconded. Spence
21 votes aye.

1 MR. DYOTT: Dyott, aye.
2 MR. FOSTER: Foster, aye.
3 MR. HIGGINS: Higgins, aye.
4 MR. HARRISON: Harrison, aye.
5 MS. SPENCE: We now have to vote on approving the
6 amendments as written. Spence votes aye.
7 MR. DYOTT: Dyott, aye.
8 MR. FOSTER: Foster, aye.
9 MR. HIGGINS: Higgins, aye.
10 MR. HARRISON: Harrison, aye.
11 MS. SPENCE: And now, we need to vote on the
12 entire Bill No. 762 as amended. Spence votes aye.
13 MR. DYOTT: Dyott, aye.
14 MR. FOSTER: Foster, aye.
15 MR. HIGGINS: Higgins, aye.
16 MR. HARRISON: Harrison, aye.
17 MS. SPENCE: Okay. Thank you. We have two bid
18 openings. The first bid, No. 00-16, request for proposals,
19 construction management services, renovations and additonal,
20 Talbot County administrative complex, courthouse - south
21 wing.

TALBOT COUNTY, MARYLAND
COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601-3178
PHONE: 410-770-8010

R. ANDREW HOLLIS
County Manager

TTY: 410-822-8735
FAX: 410-770-8007
ahollis@talbgov.org

May 1, 2000

The Honorable Robert C. Willey, President
Board of Commissioners
Town of Easton
P.O. Box 520
Easton, Maryland 21601

Dear Mr. Willey:

Please be advised that at the Talbot County Council meeting on Tuesday, April 25, 2000, Bill No. 762, A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND, as amended, was enacted. This Bill will become effective on June 24, 2000.

A copy of the Bill has been enclosed for your review. Should you have any questions, please feel free to contact me.

Sincerely,

R. Andrew Hollis
County Manager

RAH:jkm
Enclosure

Cc: Dan Cowee, Planning Officer

E. 1687

TALBOT COUNTY, MARYLAND
COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601-3178
PHONE: 410-770-8010

TTY: 410-822-8735
FAX: 410-770-8007
ahollis@talbgov.org

R. ANDREW HOLLIS
County Manager

May 1, 2000

The Honorable Ronald Fox, President
Board of Commissioners
Town of Oxford
P.O. Box 339
Oxford, Maryland 21654

Dear Mr. Fox:

Please be advised that at the Talbot County Council meeting on Tuesday, April 25, 2000, Bill No. 762, A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND, as amended, was enacted. This Bill will become effective on June 24, 2000.

A copy of the Bill has been enclosed for your review. Should you have any questions, please feel free to contact me.

Sincerely,

R. Andrew Hollis
County Manager

RAH:jkm
Enclosure

Cc: Dan Cowee, Planning Officer

E. 1688

TALBOT COUNTY, MARYLAND
COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601-3178
PHONE: 410-770-8010

R. ANDREW HOLLIS
County Manager

TTY: 410-822-8735
FAX: 410-770-8007
ahollis@talbgov.org

May 1, 2000

The Honorable George Wilson, Jr.
Board of Commissioners
Town of St. Michaels
P.O. Box 206
St. Michaels, Maryland 21663

Dear Mr. Wilson:

Please be advised that at the Talbot County Council meeting on Tuesday, April 25, 2000, Bill No. 762, A BILL TO ESTABLISH PROCEDURES FOR AWARDING SUPPLEMENTAL GROWTH ALLOCATION TO MUNICIPALITIES IN TALBOT COUNTY, MARYLAND, as amended, was enacted. This Bill will become effective on June 24, 2000.

A copy of the Bill has been enclosed for your review. Should you have any questions, please feel free to contact me.

Sincerely,

R. Andrew Hollis
County Manager

RAH:jkm
Enclosure

Cc: Dan Cowee, Planning Officer

E. 1689

ir next hearing as this has already been drafted by the legal office. Larry Duket moved on panel recommendation to approve the legislative proposal for Anne Arundel County discussed by the staff with the condition that the minor error appearing on page 1, line 17 in the preamble of Bill #12-00 be corrected. The motion was seconded by Dave Cooksey and carried unanimously.

Tracey Green, Circuit Rider, CBCAC and Office of Planning, presented for VOTE the City of Fruitland's four year Comprehensive Review. Ms. Green explained that the City of Fruitland has a very limited amount of Critical Area and a total of forty acres of which thirty eight acres are undeveloped. She explained that because of the administrative burden of doing a typical comprehensive review, the City has adopted a streamlined Critical Area ordinance to replace their existing Program and Ordinance. It will contain only those aspects of the Criteria that are applicable to the City's Critical Area. The ordinance, along with the City's official Critical Area map, will be considered the City's Critical Area Program. Ms. Green reviewed the condensed document for the Commission. A joint public hearing with the Critical Area Commission panel and the city Planning Commission and Council was held on May 9, 2000 and no public comments were received. Sam Johnson ɔved to approve the Fruitland Comprehensive Review changes as presented. The motion was seconded by Bill Bradley and carried unanimously.

Ms. Hoerger, Planner, CBCAC presented for concurrence with the Chairman's determination of Refinement, Bill #762 which established procedures for awarding supplemental growth allocation in the municipalities in Talbot County. In anticipation of future growth the County has established a joint review process that will be conducted with each town when considering allotting additional growth allocation which will include the Planning Commission, the Talbot County Council, Town Commissions, and any other Commission involved at the local level. The Town of Easton has used up most of its original allocation since 1989. A request for additional acres was denied to the Town last year by the County. The Commission supported the Chairman's determination of Refinement.

Ms. LeeAnne Chandler, Planner, CBCAC presented for concurrence with the Chairman's determination of Refinement, the proposal for growth allocation by Wicomico County to change the Critical Area designation on Tax Map 46, Parcel 116 , River Woods, from RCA to LDA. The proposed use is for a residential subdivision with 5 lots in the Critical Area. She said that with the appropriate mitigation for forest clearing the project ıeets the requirements for growth allocation as stated in the Wicomico County ordinance and will be consistent with COMAR 27.01.02.06 and the Commission policy on growth allocation. The property includes the 100-foot Buffer to "My Lord's Creek" and is completely forested. This project is recommended for approval by the Commission Staff

E. 1690

722

EXHIBIT
10

Chesapeake Bay Critical Area Commission

STAFF REPORT
July 5, 2000

APPLICANT:	Talbot County
PROPOSAL:	Refinement - Talbot County Council Bill # 762 Joint Review Process
COMMISSION ACTION:	Concurrence
STAFF RECOMMENDATION:	Concur with Chairman's Determination
STAFF:	Lisa Hoerger
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article §8-1809 (p)

DISCUSSION:

The Talbot County Council Bill # 762 establishes procedures for awarding supplemental growth allocation to the municipalities in Talbot County. In 1989, the County provided each municipality with a limited number of growth allocation acres. Since 1989, the Town of Easton has used most of its original allocation. In anticipation of future growth, the Town will request additional acres in the near future. Last year the town requested additional acres but was denied by the County.

Subsequent to that time, the County has established a joint review process that it will conduct with each town when considering allotting additional growth allocation. The new joint review process will include the Planning Commissions, the Talbot County Council, Town Commissions, and any other Commission involved at the local level.

Bill No. 762 is consistent with COMAR 27.01.02.06 A (2) which states:

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

Chairman North requests your concurrence that Bill # 762 is a refinement to Talbot County's Critical Area Program since it is consistent with the Criteria.

RECEIVED
OCT 14 2003
TALBOT COUNTY MANAGER

TOWN OF EASTON
P. O. Box 520
Easton, Maryland 21601

October 14, 2003

Mr. R. Andrew Hollis
Manager
Talbot County
142 N. Harrison Street
Easton, Maryland 21601

Dear Mr. Hollis:

The Town Council of the Town of Easton respectfully request the Talbot County Council to consider granting growth allocation of 58.8 LDA, 97.2 IDA for a total of 156 acres for the Elm Street project.

The Town Council of the Town of Easton recently passed and the Mayor approved Ordinance No. 461, "AN ORDINANCE OF THE TOWN OF EASTON GRANTING THE APPLICATION OF ELM STREET DEVELOPMENT, LC FOR AN AMENDMENT TO AN EXISTING PLANNED UNIT DEVELOPMENT UNDER THE PROVISIONS OF THE EASTON ZONING ORDINANCE AND FOR AN AWARD OF GROWTH ALLOCATION."

We are awaiting the County Council's determination to grant growth allocation for the LDA and IDA.

Thank you for your consideration.

Very truly yours,

TOWN OF EASTON

Robert F. Karge
Town Clerk

RFK:kmr

E. 1691

EXHIBIT
11

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

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

Bill No. 925*

*** AS AMENDED**

Expiration Date: January 22, 2004

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

A BILL TO AWARD 156 ACRES OF SUPPLEMENTAL GROWTH ALLOCATION TO THE TOWN OF EASTON AND TO IMPOSE CERTAIN CONDITIONS, RESTRICTIONS, AND LIMITATIONS ON ITS USE

By the Council November 18, 2003

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, December 9, 2003 at 1:30 p.m. at the County Council Chambers, County Government Building, 142 North Harrison Street, Easton, Maryland 21601.

By Order Janice Morris
Secretary

E. 1692

EXHIBIT
12

A BILL TO AWARD 156 ACRES OF SUPPLEMENTAL GROWTH ALLOCATION TO THE TOWN OF EASTON AND TO IMPOSE CERTAIN CONDITIONS, RESTRICTIONS, AND LIMITATIONS ON ITS USE

WHEREAS, Talbot County Code § 190-109 D. (9) (d) provides that upon request for supplemental growth allocation by any municipal corporation within the County, the County Council may transfer growth allocation to the municipal corporation and may impose such conditions, restrictions, and limitations upon the use of any such supplemental growth allocation, if any, as the Council may consider appropriate; and,

WHEREAS, the Town of Easton has requested an award of supplemental growth allocation to increase the acreage reserved to the Town of Easton from 155 to 311 acres, which will decrease the available acreage remaining to the County from 317 to 161 acres; and,

WHEREAS, the Town of Easton has conditionally approved a PUD application and an application for growth allocation by Elm Street Development Company, LC to utilize 156 acres of growth allocation for a project located within the Town of Easton south of Md. Rt. 33; and,

WHEREAS, Talbot County Code § 190-109 D. (9) (d) [3] provides that the Council shall evaluate the application in accordance with § 190-109 D. (4), which provides that, after receiving the recommendation of the Planning Officer and Planning Commission and before approval or denial, the Council shall introduce a bill and hold a public hearing in order that interested parties and citizens shall have an opportunity to be heard; and,

WHEREAS, the Council has received the recommendations of the Planning Officer and Planning Commission regarding this application.

NOW, THEREFORE, in compliance with the requirement of Talbot County Code § 190-109 D. (4), the following bill is hereby introduced:

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that:

1. **Award.** Subject to the following conditions, restrictions, and limitations, Talbot County hereby awards 156 acres of supplemental growth allocation to the Town of Easton. This award shall include 97.20 acres to the Town for designation as an Intensely Developed Area (IDA), and 58.80 acres to the Town for designation as a Limited Development Area (LDA).

2. **Conditions, restrictions, and limitations.** This award of growth allocation is subject to the following conditions, restrictions, and limitations, and to the conditions set forth on Exhibit "A", which is incorporated by reference herein:

a. **Use.** The growth allocation shall be used exclusively for the project approved by the Town of Easton by Ordinance No. 461, effective October 9, 2003 (the "Project").

b. **Contingencies.** Easton Town Ordinance No. 461 incorporated Development Plans for the Project as Exhibit "A", and Findings of Fact as Exhibit "B". This award shall be contingent upon full compliance by Elm Street Development, LC, its successors and assigns, with the Development Plans, all requirements set forth in the Findings of Fact, and each of the "Conditions of Approval" attached as Exhibit "A" to the Town of Easton's Findings of Fact.

c. **Criteria.** Talbot County Code § 190-109 D (4) (b) provides that the Council may consider the following criteria in deciding whether to approve or disapprove an application for growth allocation, in addition to the specific requirements and purposes set forth elsewhere in Chapter 190, Zoning, of the Talbot County Code:

[1] Consistency with the purposes and intent of the Talbot County Comprehensive Plan;

[2] Compatibility with existing and proposed development and land use in the surrounding area;

[3] Availability of public facilities;

[4] The effects on present and future transportation patterns;

[5] The effect of population change within the immediate area;

[6] The past, present, and anticipated need for future growth of the county as a whole;

[7] The location, nature, and timing of the proposed growth allocation in relation to the public interest in ordered, efficient, and productive development and land use;

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

d. **Factual findings and approval.** This award of supplemental growth allocation is specifically conditioned upon the Council's review of information provided with regard to the forgoing criteria, and upon the Council's determination and adoption of written findings of fact that the Project, either as proposed or modified to mitigate impacts from the proposed development, satisfies the criteria and is otherwise in the public interest.

Notwithstanding any finding that the Project satisfies these criteria, the Council may nevertheless exercise its legislative discretion to deny the application in accordance with the provisions of Talbot County Code § 190-109 D (4) (c).

e. **Intersection improvements Rt. 322—Rt. 33, mitigation of off-site impacts to County roads, and road frontage improvements.** This award of supplemental growth allocation is specifically conditioned upon the County's review and approval of the proposed improvements to the Rt. 322—Rt. 33 intersection, including the applicant's proportional share of the costs for those improvements, and security for and timing of payment, and upon the Developer's agreement to mitigate off-site impacts to County roads, and the Developer's agreement to construct the road frontage improvements, all as set forth in the "Conditions" attached as Exhibit "A".

f. **Two year limit.** If the Project does not obtain final subdivision recordation or final site plan approval, as appropriate, within two years of approval by the Critical Area Commission, this supplemental award of growth allocation may revert to the County, upon recommendation of the Planning Officer and approval by the County Council in accordance with the provisions of Talbot County Code § 190-109 D (7) (b). Upon receipt of a written request by the property owner or the applicant, a time extension may be granted to the two-year period, upon a recommendation by the Planning Officer and approval by the County Council in accordance with Talbot County Code § 190-109 D (7) (c).

g. **Project amendments.** Any amendment to the Project shall be subject to County Council review and approval for a period of five years following the date of initial approval in accordance with Talbot County Code § 190-109 D (9) (d) [4].

3. **Reservation.** The Town of Easton annexed the subject property in 1999. Pursuant to Art. 23A § 9 (c) (1), Md. Ann. Code, no municipality annexing land may for a period of five years following annexation, place that land in a zoning classification which permits a land use substantially different from the use specified in the County master plan extant prior to annexation without the express approval of the County Council. Approval of this ordinance shall not operate to limit the Council's prerogative under that State law in the event the Project is materially changed hereafter.

4. **Non-performance or breach.** In the event of non-performance or breach of: (a) any condition, restriction, or limitation imposed in connection with the award of this supplemental growth allocation, or (b) any agreement executed by Elm Street Development LC, its successors or assigns, with Talbot County, Talbot County may, in its discretion, amend, repeal, rescind, suspend, annul or revoke this supplemental award of growth allocation by introduction and adoption of a bill for that purpose.

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

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 925 having been published, a public hearing was held on December 9, 2003.

BY THE COUNCIL

Read the third time.

ENACTED December 16, 2003*
AS AMENDED

By Order Jessica Mavus
Secretary

Duncan -	AYE
Harrington -	ABSTAIN
Foster -	NAY
Spence -	AYE
Carroll -	AYE

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

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

Bill No. 933*

AS AMENDED

Expiration Date: January 22, 2004

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

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

By the Council November 18, 2003

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

By Order Janice Mans
Secretary

E. 1697

EXHIBIT
13

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

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

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

PUBLIC HEARING

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

BY THE COUNCIL

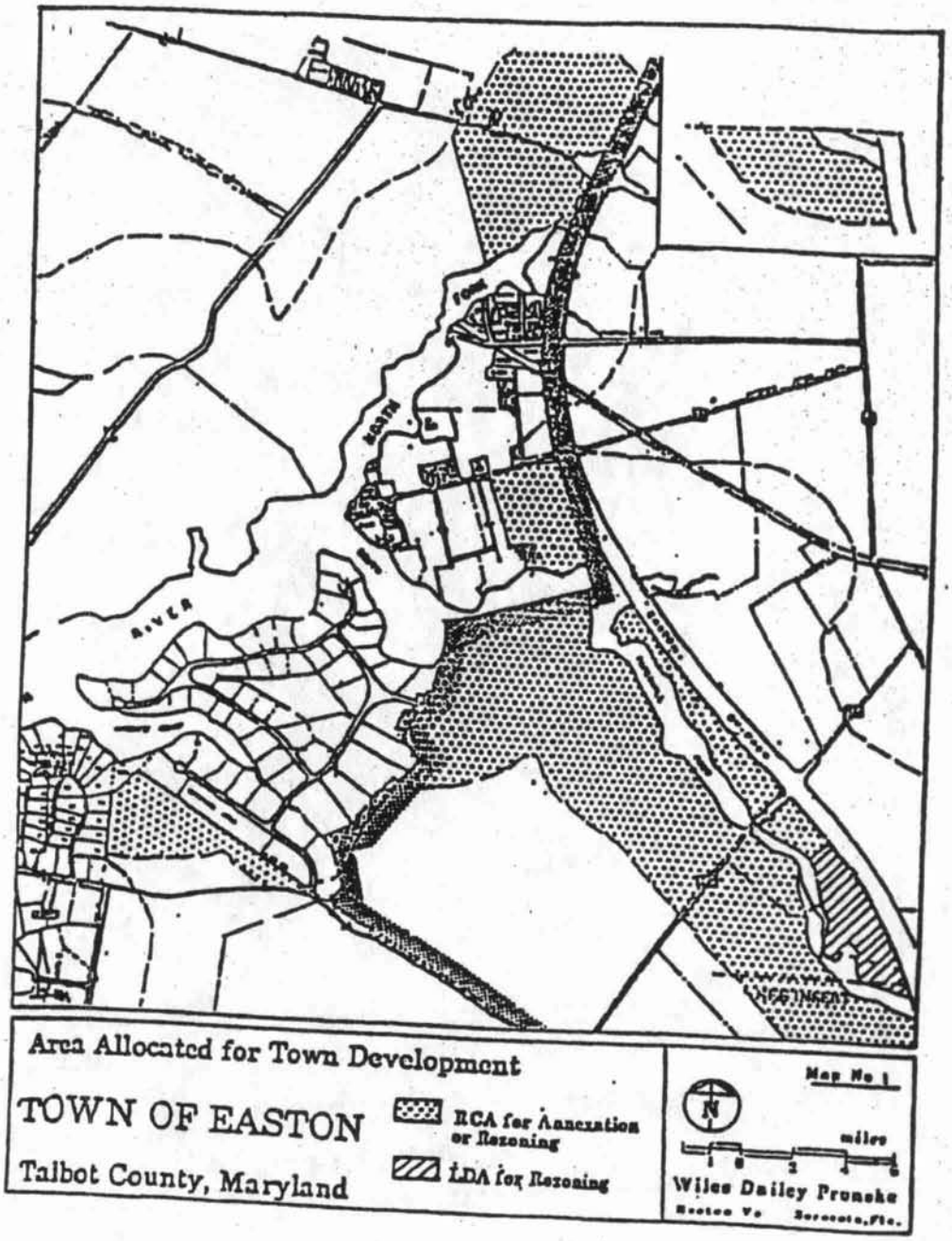
Read the third time.

ENACTED December 23, 2003*
AS AMENDED

By Order _____
Secretary

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

ZONING


Area Allocated for Town Development
TOWN OF EASTON
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
Map No 1
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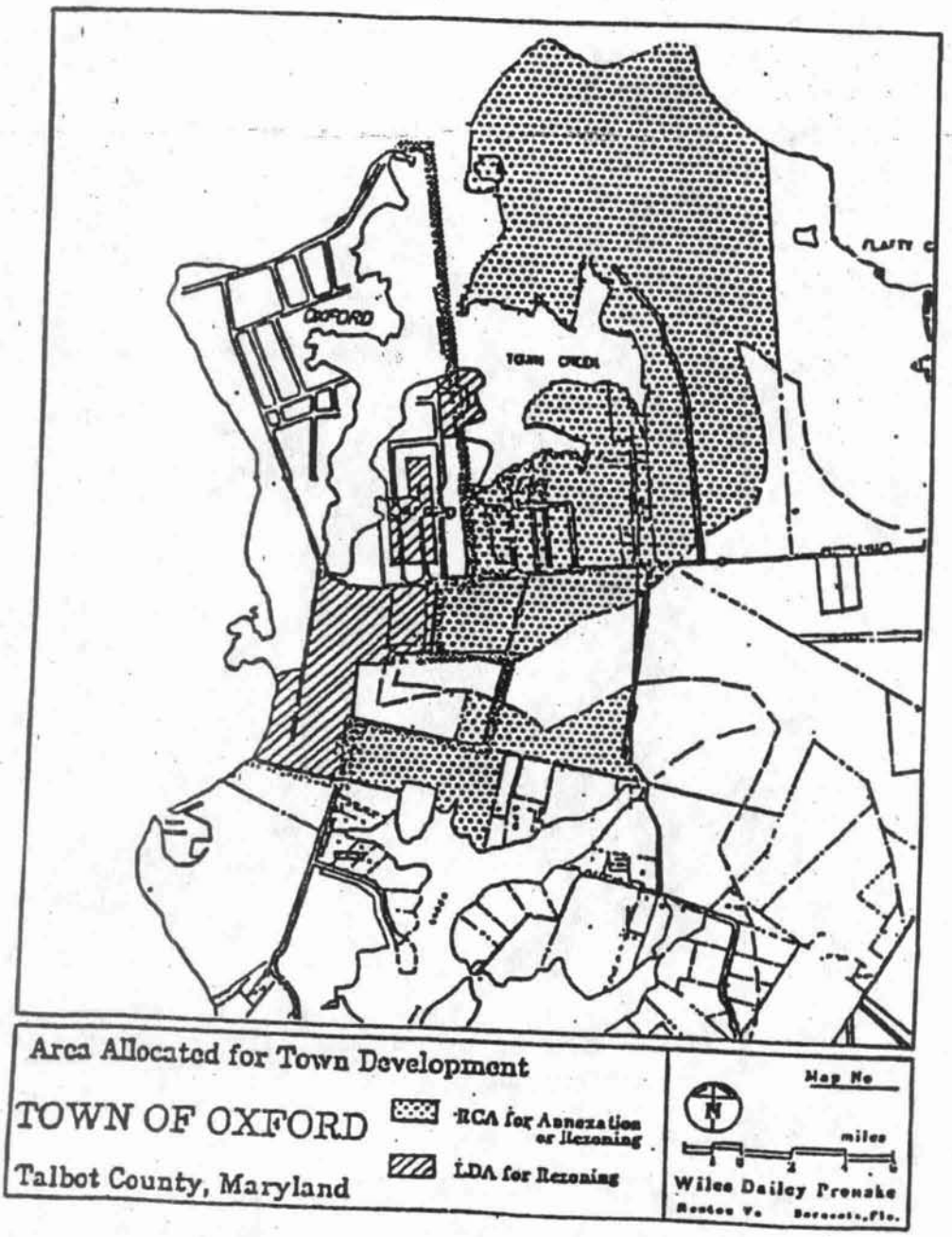
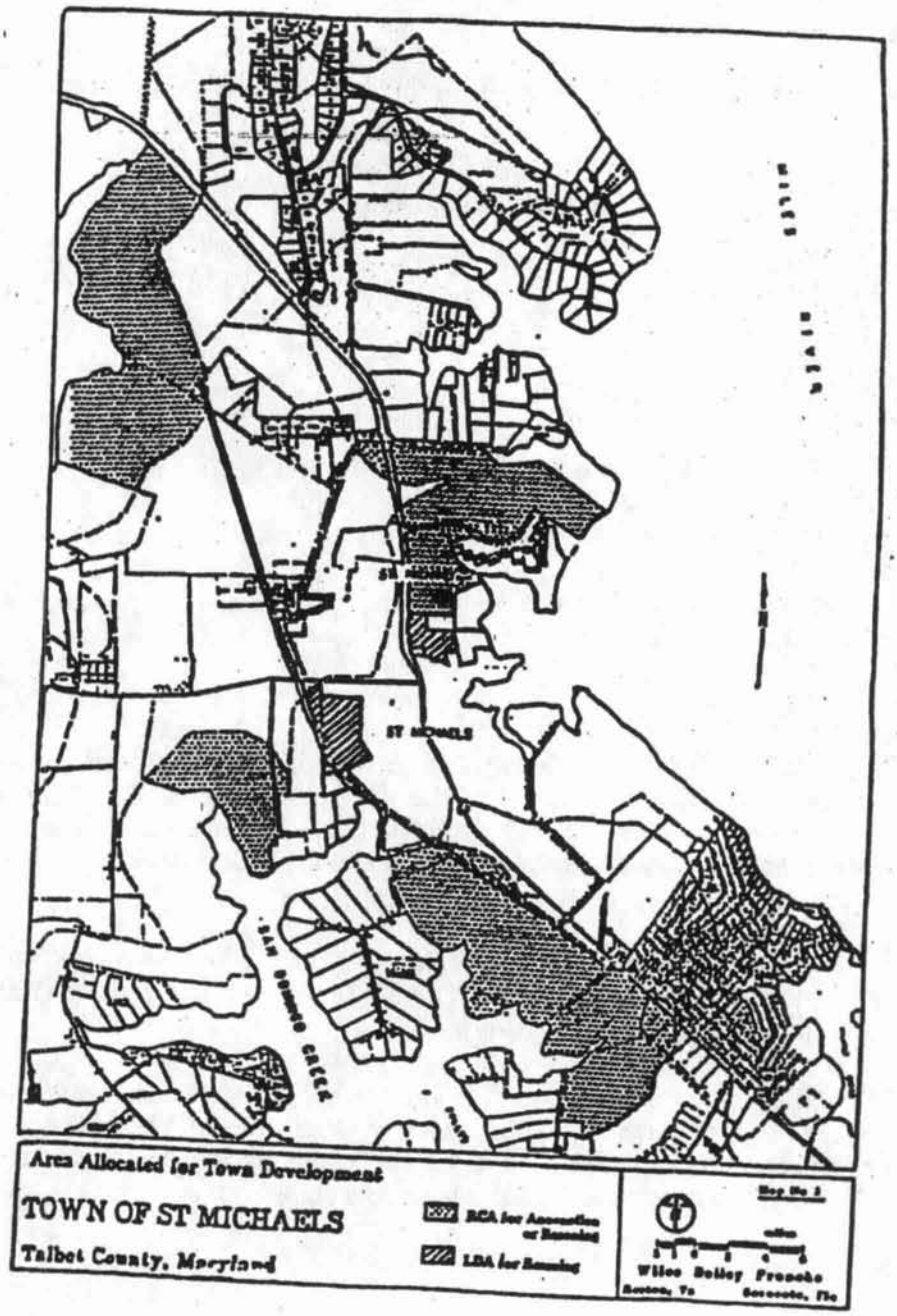
Wilee Dailey Pruneke

ZONING


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

ZONING



E. 1707

TALBOT COUNTY OFFICE OF PLANNING & ZONING

COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601

PHONE: 410-770-8030

FAX: 410-770-8043
TTY: 410-822-8735

December 29, 2003

Ms. Lisa Hoerger
Chesapeake Bay Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401

Re: Easton Supplemental Growth Allocation
Talbot County Bill 933

Dear Ms. Hoerger:

Enclosed you will find Talbot County Bill 933 serving to review and reallocate the number of reserved acres of growth allocation allocated among the Towns for rezoning. The Bill is brought consistent with §190-109D(11) of the Talbot County Zoning Ordinance in order to comply with the Chesapeake Bay Critical Area Commission four-year review requirement.

The Talbot County procedure for this review and zoning ordinance text amendment requires legislative action by the County Council similar to a Zoning Map Amendment and is treated as such in the process used for review.

Bill 933 and all other relevant materials are attached for your consideration. Please review these enclosed materials and let me know when and where you propose to have the public hearing for this project or if no public hearing is required when you will discuss it with the Commission. Thank you for your consideration.

Sincerely,

George Kinney, AICP
Talbot County Planning Officer

Cc: Andy Hollis, Talbot County Manager
Mike Pullen, Talbot County Attorney

Enc

E. 1708

EXHIBIT
14

DEC 29 2003

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

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

RECEIVED
JAN 1 2 2004
TALBOT COUNTY MANAGER

January 8, 2004

Mr. George Kinney
Talbot County Office of Planning and Zoning
11 N. Washington Street
Courthouse
Easton, Maryland 21601

Re: County Council Bill #925
Supplemental Award of Growth Allocation to the Town of Easton

Dear Mr. Kinney:

At its meeting on January 7, 2004 the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays unanimously approved County Council Bill #925 which awarded 156 acres of supplemental growth allocation to the Town of Easton. Please incorporate this amendment into the County's Critical Area program within 120 days from the date of this letter.

Thank you for attending the Commission's public hearing on County Council Bill #925 and for attending the monthly Commission meeting yesterday. If you have any questions, please telephone me at (410) 260-3478,

Sincerely,

Lisa A. Hoerger

Lisa A. Hoerger
Natural Resources Planner

cc: Mr. Andy Hollis, Talbot County Manager
Mr. Mike Pullen, County Attorney
Mr. Tom Hamilton, Easton Town Planner

E. 1709

EXHIBIT
15

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

TALBOT COUNTY OFFICE OF PLANNING & ZONING
COURT HOUSE
11 N. WASHINGTON STREET
EASTON, MARYLAND 21601

E: 410-770-8030

FAX: 410-770-8043
TTY: 410-822-8735

January 19, 2004

Mrs. Lisa Hoerger
State of Maryland Critical Area Commission
Chesapeake and Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, MD 21401

Re: Amendments to Talbot County Critical Area Program

Dear Mrs. Hoerger:

Enclosed you will find a copy of Legislative Bill 922, 926, 927, 929, 931, 932 and 933 submitted to the Critical Area Commission for their review as an amendment to the Talbot County Critical Area Program in compliance with the four-year review requirement.

The Talbot County Planning Commission reviewed the original legislation and forwarded their recommendation to the County Council. The County Council held their required public hearings and subsequently voted to pass the new legislation on the below listed enactment dates with an effective date of sixty calendar days from the date of its passage.

Bill 922 (as amended) – Notification to contiguous property owners - Enacted December 9, 2003.

Bill 926 – Article II Definitions and Word Usage – Enacted December 9, 2003.

Bill 927 – Article IV Land Use Regulations by Zoning Districts – Enacted December 9, 2003.

Bill 929 (as amended) – Article XI Critical Area Provisions – Enacted December 16, 2003.

EXHIBIT
16

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E. 1710

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
own of St. Michaels		**245 Acres**		
	Broad Reach Farm, Strausburg		20.1 Acres	**224.9 Acres**
'own of Easton		**155 Acres**		
	155 Acres of original reserve allocated			
	Ratcliffe Farm-Easton Village		156 Supplemental Acres	
				0 Acres
Town of Oxford		**195 Acres**		
	Bachlor's Point		13.223 Acres	
	Bachlor's Point		2 Acres	
				179.777 Acres
Talbot County				
		618 Acres		
	See Attached		301.771 Acres	
				316.229 Acres
TOTAL:		**1213 Acres**		**720.906 Acres**

* 1213 Original Limit, 1213 Potential Additional Limit, 128 Reserved LDA to IDA = 2554 Acres

2004 Jan

001547

E. 1712

L. Ehrlich, Jr.
Governor

ael S. Steele
Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

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

'ebruary 5, 2004

Mr. George Kinney, Planning Officer
Talbot County Office of Planning and Zoning
11 N. Washington Street
Courthouse
Easton, Maryland 21601

Re: Talbot County Bill 933

Dear Mr. Kinney:

This office has received County Council Bill 933 for processing. This bill pertains to the review and reallocation of growth allocation acres reserved for the towns in Talbot County.

The Critical Area Commission is today accepting Bill 933 for processing. The Chairman will make an amendment or refinement determination within 30 days of the date of this letter, and Commission staff will notify you of his determination and the procedures for review by the Critical Area Commission.

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

Sincerely,

Lisa A. Hoerger

Lisa A. Hoerger
Natural Resources Planner
LAH/jjd

cc: The Honorable Richard F. Colburn
The Honorable Jeannie Haddaway
The Honorable Adelaide C. Eckardt
The Honorable Sidney S. Campen, Jr.
The Honorable Robert C. Willey
The Honorable Cheryl Lewis
The Honorable Philip C. Foster, Esq.
The Honorable Robert T. Snyder
Mr. R. Andrew Hollis
St. Michaels Planning Commissio

E. 1713

001550

EXHIBIT
17

PUBLIC HEARINGS

COPY

Talbot County Council Bills

922, 926, 927, 929, 931 and 933

BEFORE A PANEL

OF

THE STATE OF MARYLAND

CRITICAL AREA COMMISSION

FOR THE

CHESAPEAKE AND ATLANTIC COASTAL BAYS

Minuscript

Date: Wednesday, March 24, 2004

Time: 7:00 p.m.

Location: Easton High School
Easton, Maryland

DISK
ENCLOSED

Reported by: David M. Schafer, AA, CCR

E. 1714

EXHIBIT
18

PUBLIC HEARINGS
Talbot County Council Bills

Y909

2, 6, 92 929, 931 and 933

BEFORE A PANEL
OF
THE STATE OF MARYLAND
CRITICAL AREA COMMISSION
FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: Wednesday, March 24, 2004
Time: 7:00 p.m.
Location: Easton High School
Easton, Maryland

Reported by: David M. Schafer, AA, CCR

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

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MEMBERS OF THE PANEL:

Dave Blazer, Chair
William Giese
Joseph Jackson
Gary Setzer
Edwin Richards
—
Marianne Mason, Assistant Attorney General

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E. 1715

4

1 P-R-O-C-E-E-D-I-N-G-S
2 PANEL MEMBER BLAZER: Good evening. We
3 are going to go ahead and get started.
4 Thank you all for being here. My name is
5 Dave Blazer. I'm with the Critical Area Commission.
6 We have two hearings tonight. The first
7 one, we'll be talking about several bills, and then
8 after we conclude that public hearing we will start
9 the second public hearing, dealing with Council Bill
10 933. I'll give us a little more detail as we go
11 through.
12 The purpose of this hearing, the first
13 hearing tonight, is to hear public comment on Talbot
14 County Council Bills 922, 926, 927, 929, 931 and
15 932, which comprise amendments to the County's
16 Critical Area Program associated with the
17 comprehensive review of their program.
18 Talbot County approved these changes to
19 their Critical Area Program on December 9 and
20 December 16, 2003, and they were submitted to the
21 Critical Area Commission.

5

1 On February 5, 2004, the Commission staff
2 determined that the submittal was complete.
3 On February 27, 2004, Chairman Madden
4 determined that this change was an amendment to the
5 Talbot County's Critical Area Program and appointed
6 a panel to hold a public hearing. That's why we are
7 here this evening. And this hearing is being
8 recorded.
9 As I mentioned, my name is Dave Blazer.
10 I'm with the Critical Area Commission, specifically
11 with Worcester County and the Coastal Bays
12 Watershed.
13 Seated over here to my left is Mr. Ed
14 Giese with Dorchester County – oh, I'm sorry –
15 Right. I'm sorry. Bill Giese with Dorchester
16 County; Joe Jackson with Worcester County, the
17 Chesapeake Bay side of the county; Marianne Mason,
18 who is the counsel for the Critical Area Commission;
19 Gary Setzer, who is the Maryland Department of the
20 Environment representative; and Ed Richards with
21 Caroline County.

6

1 We are the Panel that's assigned to –
2 for this public hearing this evening.
3 This hearing is conducted in accordance
4 with the provisions of the Annotated Code of
5 Maryland, Natural Resources Article 8-18090. This
6 section if the code requires a panel of Commission
7 members to conduct a public hearing in the local
8 jurisdiction submitting the proposed amendment to
9 its Critical Area Program. This hearing is a part
10 of the Critical Area Commission's duty under State
11 law to evaluate these changes.
12 This panel's purpose is to gather
13 information about the proposed amendments to the
14 County's Critical Area Program. The Panel will not
15 make a decision on these bills tonight. The Panel's
16 role is to hear comments and evaluate the
17 information received tonight and the information
18 that may be submitted by members of the public after
19 tonight until the record of hearing is closed.
20 The proceedings for tonight, we will have
21 a presentation by the County staff, we will allow

7

1 any town officials the opportunity for any
2 presentations, elected officials will be offered an
3 opportunity to provide comment, and then we'll hear
4 proponents and then the opponents of the bill.
5 We also have some additional people here
6 from the Critical Area Commission staff. Mr. Ren
7 Serey is the Executive Director of the Commission,
8 Lisa Hoerger is one of the staff members, and Mary
9 Owens is another staff. Our chairman of the
10 Critical Area Commission, former Senator Madden is
11 here, as well, in attendance tonight. Mr. Chairman,
12 thank you for being here.
13 We want to give everybody an opportunity
14 to speak this evening. There's a lot of you, so we
15 will try to keep this moving.
16 If you wish to speak tonight, please be
17 sure that you have signed the attendance sheet and
18 provided your full name and address. I believe that
19 was circulated before. Statements will be recorded,
20 and speakers should try to limit their comments to
21 five minutes if possible.

E. 1716

8

If several speakers from one group are in attendance, please choose a spokesperson for that group's comments.

This hearing was advertised in the Star Democrat on March 10, 2004.

The Panel intends to keep the record open until Monday, April 5, 2004, until the close of business. The deadline for receipt of written comments will be at the close of business on that Monday, April 5. Written comments should be sent to the Critical Area Commission, 1804 West Street, Suite 100, Annapolis, Maryland 21401.

As part of the Panel's duty to gather information about proposed amendments, the Panel may ask CA staff to investigate any pertinent issue further and to provide the Panel with written reports or memorandum. The Panel may also seek guidance or recommendations from other resource agencies, including the Maryland Department of Natural Resources and the Maryland Department of the Environment. The Panel may also seek the advice of

9

legal counsel.

The Panel will meet to discuss the proposed program amendment on Wednesday, April 14 – April 7 – I'm sorry – correct, Wednesday April 7, at the morning of the Critical Area Commission's regularly scheduled monthly meeting at the Department of Housing and Community Development in Crownsville, Maryland.

The Panel may need to schedule one or more additional discussion meetings, and the Panel will announce any further meetings at that April 7th regular Commission member meeting.

The Critical Area Commission will consider the proposed amendments to the Talbot County Critical Area Program at a future meeting. Those meetings are held the first Wednesday of each month at the Department of Housing and Community Development Building in Crownsville, Maryland. This panel will provide a recommendation to the full Commission concerning those bills.

At this point we will ask the County

10

staff to make a presentation. I believe Mr. George Kinney will be making that presentation to us. Mr. Kinney.

MR. KINNEY: Thank you. Members of the Panel, my name is George Kinney. I am the planning officer for Talbot County. I'd like to start out by saying that I'm fairly new to the Critical Area Program, so I have asked Mr. Dan Cowee also to join me tonight, who has a little bit more of a historical perspective, technical perspective with regard to the bill. However, I would like to run through each of the bills in a general Power Point presentation here and then respond to questions you may have afterwards.

Can you hear me alright over here?

THE COURT REPORTER: Mr. Chairman, do you mind if I move over?

PANEL MEMBER BLAZER: That's fine.

MR. KINNEY: With regards to the first set of bills before the Panel, you have listed Bill 922, 926, 927, 929, 931 and 932. Those bills

11

represent the Talbot County effort to update the local Critical Area Program and compliment the four-year program review requirement.

Bill 926, I guess in a nutshell what it does is it really gets into the definition section of our Zoning Ordinance. Some of the key components that came out of that legislation were some definition changes, modifications and eliminations, I suppose. And some of the key ones I've highlighted here.

Bill 926 in some respects clearly defines the forest preservation plan and clearly ties it to the disturbance of natural vegetation.

We did modify the normal maintenance definition in our Zoning Ordinance to restrict the removal of vegetation.

We included a new definition for mitigation.

And we also modified the definition for natural vegetation, and removed the definition for tree that was previously located in the code.

12

1 With respect to Bill 927, that's where we
2 got into analyzing our land-use table and the
3 consistency of the uses within the RC zoning
4 category. And for those of you that don't know the
5 RC zoning category, it really reflects the Critical
6 Area portion of the County.
7 Some of the highlights of those
8 amendments included, again, evaluating the uses that
9 would be permitted in that district and whether or
10 not they were appropriate and supported the goals
11 and initiatives of the Critical Area Program.
12 That evaluation led to the prohibition,
13 removal and/or modification of particular
14 quasi-commercial, institutional and/or utility uses
15 deemed to be incompatible with those goals set out
16 by the program.
17 One interesting provision of that is a
18 modification to several of those land-use
19 classifications that trigger at a 20,000 square foot
20 impervious limit the need to award growth allocation
21 once you get beyond that particular level.

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1 With respect to Bill 929, this got into
2 our Critical Area special provisions. And, again,
3 some of the highlights that resulted from that
4 legislation included really spelling out and
5 articulating requirements for removal of natural
6 vegetation and also for the need, when there's a
7 need and what kind of activities prompt securing a
8 forest preservation plan.
9 Secondly, this particular bill limits and
10 modifies the list of activities that are permitted
11 within the 100-foot buffer and really sets out more
12 stringent standards for mitigation.
13 And, finally, a new portion or what will
14 be a new addition to our Zoning Ordinance is a
15 provision for buffer management areas.
16 Bill 931, this was more of just – it was
17 in the general site plan requirements. It was
18 really just kind of a clean-up effort to get at some
19 of the concepts that came out of the other
20 legislation. Really, the only new language in here
21 is some comments regarding the conversion of

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1 farmland and the need to reestablish the buffer if
2 that activity takes place.
3 Bill 932 got into the growth allocation
4 section of our zoning code. And really what it did
5 was support some of the principles that came out of
6 927 with regard to the changes in the land-use
7 table. Where those prompted growth allocation, this
8 sets forth the process for awarding that allocation.
9 Also in support of the legislation that's
10 before you in this bundle our department and/or the
11 County has also included or has worked through –
12 and I can pass this around – has worked through a
13 Critical Area Forest Preservation Plan Application
14 with specific instructions, when it's needed and so
15 forth. And also to compliment that is a list of
16 native species, a native species list prepared by a
17 local landscape architect which includes and
18 incentivized mitigation credit table. And I'll pass
19 both of these around.
20 Finally, again, we'd like to thank your
21 Critical Area staff. A lot of these program

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1 amendments have been developed in concert with their
2 input and support.
3 We also wanted to just recognize the fact
4 that we have submitted growth allocation charts to
5 the Commission for your review and consideration
6 which show remaining acreage and number of acres
7 converted to an LDA or IDA designation.
8 We are continuing to work with the
9 Commission to update the habitat protection maps and
10 we are currently using our GIS capabilities to
11 develop those buffer management areas throughout the
12 county.
13 That's the review in a nutshell. I'd
14 like to go ahead and pass these around for you to
15 take a look at.
16 PANEL MEMBER BLAZER: Thank you. Mr.
17 Kinney. Would you like these to be part of the
18 record?
19 MR. KINNEY: Yes.
20 PANEL MEMBER BLAZER: Any questions from
21 the Panel for Mr. Kinney? (No response.) Thank

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1 you, Mr. Kinney.
2 We want to open it up to any
3 representatives from any of the towns who wanted to
4 comment on the first section of the public hearing
5 tonight. Are there any representatives who would
6 like to speak on this hearing? (No response) Okay.
7 Are there any elected officials who would
8 like to speak or make comments for the first public
9 hearing here this evening? (No response) You guys
10 are so quiet. No elected officials?
11 MS. SPENCE: A quick comment.
12 PANEL MEMBER BLAZER: Yes, ma'am. Would
13 you identify yourself?
14 MS. SPENCE: Yes. My name is Hilary
15 Spence. I'm a member of the Talbot County Council.
16 PANEL MEMBER BLAZER: All right.
17 MS. SPENCE: Very quickly, an awful lot
18 of work went into these revision, and I want to
19 thank Ren Serey and his staff for their tremendous
20 help in putting those provisions and kind of guiding
21 us through the process. And I'm sure the Commission

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1 is aware this was a quite long arduous process and
2 quite a bit overdue.
3 But I want to commend members of our
4 Council and our planning staff for working it
5 through and getting it to fruition.
6 And it is my sincere hope that the
7 Commission will act favorably on this group of bills
8 so that we do, indeed, have an updated local
9 program. Thank you.
10 PANEL MEMBER BLAZER: Thank you, Mrs.
11 Spence. Any other elected officials? (No response)
12 Okay. I only have one person signed up
13 for the Comprehensive Plan review bills, Mr. John
14 Jessup. Mr. Jessup, if you wouldn't mind coming up
15 to the microphone. Thank you.
16 MR. JESSUP: I'm John Jessup, treasurer
17 of Talbot River Protection Association.
18 And my comments are on Bill 922, which
19 can be abbreviated to be a contiguous property owner
20 notification.
21 This bill goes beyond just contacting the

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1 people that one might think would be interested, and
2 requires that people within a certain distance – I
3 think it's one mile – I'm not sure – contiguous
4 property owners be notified when a general site plan
5 review or an application for a major subdivision has
6 been accepted by the Planning office and before
7 technical advisory committee meetings.
8 Now, in the course of the public hearing
9 of this in October, I got somewhat interested in
10 this because as a public organization which takes
11 part in deciding whether we favor or don't favor a
12 development because of its impact on the quality of
13 the water, we need to know when these things are
14 coming upon us; therefore, I suggested that one
15 thing we could do, to put as an amendment to the
16 bill that the County's website, under the Technical
17 Advisory Committee, publish a schedule of all
18 subdivision plans as they are scheduled to be heard.
19 That means that we are alerted and we can go to that
20 website and we can say, uh-huh, this big company is
21 planning a huge development or a big store and we

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1 need to be on top of what they are doing with their
2 stormwater and other aspects of water quality.
3 And that amendment passed. And we are
4 very grateful to the County Council for doing that.
5 But I think it's very important, if this
6 to is be considered part of the Critical Area
7 consideration, that it applies to all zoning areas,
8 not just the Critical Areas. It's very important it
9 be preserved.
10 A case in point is the Ratcliff Farm
11 area. It's called the Elm Street Developers. It's
12 called Easton Village. There was a lot of conflict
13 about that because of the number of houses that set
14 back from the impaired Tred Avon River and other
15 aspects.
16 Our organization and others got together
17 with the developers before the plans were finally
18 approved and were able to work out and to negotiate
19 improvements in their plans because we knew in
20 advance what they were planning to do. So almost
21 for that reason alone I think this bill needs to be

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1 approved. Thank you.
2 PANEL MEMBER BLAZER: Thank you, Mr.
3 Jessup. Are there any other speakers on the
4 comprehensive review bills? (No response)
5 Then we shall close the public hearing
6 for those review bills from Talbot County, for the
7 Talbot County Council Bills 922, 926, 927, 929, 931
8 and 932.
9 The public hearing, we will accept
10 written comments through April 5th, through the
11 close of business on Monday, April 5, so if you'd
12 like to send comments to the Critical Area
13 Commission, please do so by that date. And the
14 address, again, is 1804 West Street, Suite 100,
15 Annapolis Maryland 21401.
16 We shall close the public hearing for
17 those bills. And if we can take about a five-minute
18 break, is that all right? Two minutes, so we can
19 kind of get a little bit organized with some stuff,
20 and we'll get started right away. All right.
21 Thanks.

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1 (Meeting recessed 7:25 p.m. to 7:28 p.m.)
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11 TALBOT COUNTY BILL 933
12 PANEL MEMBER BLAZER: All right. We're
13 going to get started again. Thank you. Thank you.
14 Good to see you all again. It's been so long.
15 FROM THE FLOOR: Two minutes.
16 PANEL MEMBER BLAZER: Actually three.
17 Thank you all for being here this evening. We are
18 going to call the public hearing to order.
19 The purpose of this hearing tonight is to
20 hear public comment on Talbot County Council Bill
21 933, which withdraws reserves of growth allocation

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1 acreage granted to the municipalities in the
2 original Critical Area Program in Talbot County.
3 The County approved these changes to
4 their Critical Area Program on December 23, 2003,
5 and they were submitted the Critical Area
6 Commission.
7 On February 5, 2004, Commission staff
8 determined that the submittal was complete, and on
9 February 27, 2004, Chairman Madden determined that
10 this change was an amendment to Talbot County's
11 Critical Area Program and appointed a panel to hold
12 a public hearing. This hearing is being recorded.
13 My name is Dave Blazer. I'm the chair of
14 this panel. I'm from Worcester County, the Coastal
15 Bays Watershed.
16 With me this evening is Bill Giese from
17 Dorchester County; Joe Jackson from Worcester
18 County, the Chesapeake Bay side of the county;
19 Marianne Mason, who is the counsel for the Critical
20 Area Commission, and not a member of the Panel, I
21 might say; Gary Setzer from the Maryland Department

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1 of the Environment; and Ed Richards from Caroline
2 County.
3 We also have Commission staff present;
4 Ren Serey, the Executive Director; as I mentioned,
5 Marianne Mason; Lisa Hoerger of the Commission
6 staff; and Mary Owens, also of the Commission staff.
7 Our Chairman, Senator Madden, is here as
8 well, who we introduced before. Again, thank you
9 for being here, Mr. Chairman.
10 This hearing is conducted in accordance
11 with the provisions of the Annotated Code of
12 Maryland, Natural Resources Article Section 8-18090.
13 This section of the code requires a panel of
14 Commission members to conduct a public hearing in
15 the local jurisdiction submitting the proposed
16 amendment to be its Critical Area Program.
17 This hearing is part of the Critical Area
18 Commission's duty under State law to evaluate these
19 changes.
20 The Panel's purpose is to gather
21 information about the proposed amendments to the

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1 County's Critical Area Program.
2 This panel will not make a decision on
3 Bill 933 tonight. The Panel's role is to hear
4 comments and evaluate the information received
5 tonight and information that may be submitted by
6 members of the public after tonight, until the
7 record of hearing is to be closed.
8 The order of proceedings; we will have a
9 representative of the County, Michael Pullen, will
10 speak and then we'll offer the Towns an opportunity
11 to give presentations; we'll open the floor to any
12 elected officials who would like to make comments,
13 and then we'll open it up for the general public to
14 provide comments, as well, this evening.
15 If you wish to speak tonight, please be
16 sure that you have signed up the attendance sheet.
17 We've got a list here that's still on the corner of
18 the stage up here, so make sure you complete that
19 out with your full name and address.
20 The statements will be recorded this
21 evening.

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1 And speakers should limit their time to
2 about five minutes, if possible.
3 If there are several speakers from one
4 group in attendance, please choose a spokesperson
5 for your group's comments.
6 This hearing was advertised in the Star
7 Democrat on March 10, 2004.
8 The Commission has already received
9 written comments that will be passed on to the Panel
10 members here.
11 The Panel intends to keep the record open
12 until Monday, April 5, 2004, until the close of
13 business on that Monday.
14 Written comments will be accepted up
15 until that time, and you should send those comments
16 to the Critical Area Commission at 1804 West Street,
17 Suite 100, Annapolis Maryland 21410.
18 As part of the Panel's duty to gather
19 information about proposed amendments, the Panel may
20 ask the Critical Area Commission staff to
21 investigate any pertinent issue further and to

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1 provide the Panel with written reports or
2 memorandum. The Panel may also seek guidance and
3 recommendations from other resource agencies,
4 including Maryland Department of Natural Resources
5 and Maryland Department of the Environment. The
6 Panel may also seek the advice of legal counsel.
7 This panel will meet to discuss the
8 proposed program amendment on Wednesday April 7,
9 2004, and the morning of the Critical Area
10 Commission's regularly scheduled monthly meeting at
11 the Department of Housing and Community Development
12 in Crownsville, Maryland. The Panel may need to
13 schedule one or more additional meetings, and the
14 Panel will announce any further meetings on that
15 April 7th date when we meet.
16 The Critical Area Commission will
17 consider the proposed amendments to the Talbot
18 County Critical Area Program at a future meeting.
19 Those meetings are held the first Wednesday of each
20 month at the Department of Housing and Community
21 Development Building in Crownsville, Maryland.

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1 This Panel will provide recommendations
2 to the full Commission concerning Talbot County Bill
3 933.
4 At this point we will ask Michael Pullen
5 with Talbot County to give a presentation. Mr.
6 Pullen.
7 MR. PULLEN: Thank you, Mr. Chairman and
8 members of the Panel. My name is Michael Pullen.
9 I am the County attorney for Talbot County. And
10 thank you for the opportunity to speak to you this
11 evening.
12 I'd like to talk briefly about Talbot
13 County's Critical Area. We have 600 miles of
14 shoreline. And to make that real, if we were to
15 drive down I-95 south, when you travel 600 miles
16 you'd be in Charleston, South Carolina. So we've
17 got a tremendous amount of shoreline in the county.
18 We have over 51,000 acres of land in the
19 Resource Conservation Area and nearly 40 percent of
20 the county is in the Critical Area.
21 Now, our program was adopted in 1989, and

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there was growth allocation given to the towns at that time in accordance with the maps that were adopted, and the maps anticipated four-year reviews.

Since that time no reviews have taken place. The maps became outdated. And the Town of Easton has now used all of its growth allocation it was originally allocated in 1989. Oxford and St. Michaels have not.

Bill 933 repeals those outdated 1989 maps and it makes the process that has already been adopted, which I'll discuss in a minute, for supplemental awards of growth allocation to municipalities applicable to all the municipalities in the county.

Talbot's process for awarding supplemental growth allocation was enacted in April of 2000. It was Bill 762. What that bill did was established that process for supplemental awards of growth allocation. At that time it was directed primarily to the Town of Easton, which had used all of its growth allocation and needed this process,

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and this process was adopted and worked on in conjunction with the town at the time. And now this process has been in place since 2000. It has been approved by the Critical Area Commission.

This is Bill's 762 process. The process starts with an application filed in the town planning office. That application gets routed over to the County planning office and also to the Town Planning Commission.

The Town Planning Commission -- from the County planning office goes to the County Planning Commission. They schedule a joint hearing. That's the first of two public hearings on the application. The idea is that both Planning Commissions receive a common platform of factual information from which to make their decisions.

The separate -- the Planning Commissions meet separately and make separate recommendations; The town Planning Commission to the Town Council, the County Planning Commission to the County Council.

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After receipt of those recommendations the two councils, the Town and the County Council, schedule a second public hearing. This is a joint public hearing at which the public is invited to attend and provide testimony and information.

The respective councils then deliberate separately and each make findings of fact and take a vote, and the result on the application requires the joint approval of both the Town and the County Council.

The County's role in that process is equal to the Town, and the process requires interjurisdictional cooperation and collaboration. And the result of that process is, of course, subject to the Critical Area Commission's review and approval.

In summary, Bill 762, which was adopted in 2000, creates that process to accommodate the growth needs of municipalities. That process is actually required by COMAR, which I'll discuss in a moment. But to date Bill 762 has worked well and

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has a proven track record of success.

The first application to be approved using that process was the Cook's Hope. That was 36 acres within the Town of Easton.

The second application to be approved was Easton Village, only recently approved, and also approved by the Critical Area Commission for 156 acres, also within the Town of Easton.

The Easton Village project resulted in an net improvement, a net gain in the nonpoint-source pollution from that site, so at the end of that process, which began somewhat contentiously between various citizen groups and the developer and the Town, it ended collaboratively with approval the developer was happy with and the Town and the County and the citizen groups were apparently pleased with. So the County believes that that process worked very well and collaboratively and ended up with a very good project that has been approved by the Critical Area Commission.

This is the COMAR regulation that I

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1 alluded to earlier in my comments, and it says it
2 requires counties, when planning future expansion of
3 Intensely Developed and Limited Development Areas,
4 the counties, in coordination with affected
5 municipalities, shall -- mandatory -- establish a
6 process to accommodate the growth needs of the
7 municipalities.
8 This is Judge North's testimony before
9 the Talbot County Council when they were considering
10 whether to enact Bill 933. Judge North brought this
11 particular COMAR reg to the County's attention
12 during the course of his testimony and indicated
13 that that COMAR regulation dictates that it is the
14 responsibility of the County to work with
15 municipalities to accommodate municipal growth. So
16 unless you do this, unless you adopt Bill 933, you
17 are not complying with what the law requires you to.
18 The point I think that Judge North was
19 making is that COMAR requires a process. Counties
20 are required to establish that process. And that
21 process is designed to accommodate the growth needs

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1 of the municipalities. Simply writing a blank check
2 to the municipalities is not a process and doesn't
3 comply with that COMAR requirement. That process is
4 established by Bill 762. And Bill 933 makes that
5 process apply equally to all the municipalities
6 within the County.
7 Currently what has happened, since Easton
8 exhausted their growth allocation, St. Michaels and
9 the Town of Oxford have not, there were really two
10 separate ways for municipalities to obtain and award
11 growth allocation in Talbot County. If you were a
12 person in the Town of Easton you would be required
13 to apply under the procedures of Bill 762 and follow
14 that joint review process. If, on the other hand,
15 you were from -- you were in St. Michaels or Oxford,
16 you would not. Those decisions would be made
17 exclusively by the respective Town Councils of those
18 two jurisdictions.
19 The County believes that COMAR requires
20 that joint review process, or at least permits the
21 County to adopt it as a local option. And in this

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1 case the County has done that with the view towards
2 promoting this interjurisdictional cooperation, with
3 the idea that the protection of the Chesapeake Bay
4 is a universal ethic, that the large amount of
5 shoreline in the County, the large amount of land in
6 the Critical Area in the county made the County's
7 land-use policies, give them a greater effect on the
8 overall health of the Chesapeake Bay than any
9 particular municipality's land-use policies simply
10 because of the difference in size of the respective
11 jurisdictions.
12 We think that State law gives the
13 counties the primary responsibility under the 5
14 percent calculation formula and under the COMAR reg
15 that we just talked about, gives the counties the
16 primary responsibility to set this process up and,
17 likewise, requires counties to remain a part of that
18 process rather than simply writing a blank check to
19 the municipalities.
20 Environmental protection by its nature is
21 collaborative. The State of Maryland has entered

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1 into the Chesapeake Bay Compact with the states of
2 Virginia, West Virginia, Pennsylvania, New York,
3 Delaware, District of Columbia. If those states can
4 cooperate as they are required to do to protect and
5 promote the health of the bay, the County believes
6 that we and our municipal neighbors who are
7 interdependent because of our physical proximity and
8 location can do the same and that, in order to
9 protect the bay, that we are required to do that.
10 So the County would ask for your approval
11 of 933 as a measure that's designed to promote and
12 enhance the Chesapeake Bay protection.
13 I'd be happy to answer any questions that
14 the Panel may have.
15 PANEL MEMBER JACKSON: Any questions from
16 the Panel members?
17 PANEL MEMBER SETZER: I do.
18 PANEL MEMBER BLAZER: Okay.
19 PANEL MEMBER SETZER: Mr. Pullen, you
20 talked about 933 establishing a process.
21 FROM THE FLOOR: We can't hear you.

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1 PANEL MEMBER SETZER: You talk about 933
2 establishing a process for the County to deal with
3 the growth allocation.
4 Under the initial program that was
5 adopted by the County, you had a process that was
6 established, basically a four-year review process.
7 That, in your mind, that doesn't satisfy the COMAR
8 requirement for the County to establish a process?
9 MR. PULLEN: No, sir. I think that that
10 four-year review requirement was a comprehensive
11 requirement for the entire program to make changes,
12 to fine-tune the program, the substance of the
13 program, to bring it in line with evolving notions
14 of environmental protection, evolving technologies,
15 evolving land-use policies. So I don't think that
16 four-year review requirement was necessarily a
17 process to award growth allocation to the Town.
18 Initially what the County did was to
19 simply write a blank check, in effect, and give the
20 decision exclusively to the town.
21 It's almost like herding the cats, I

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1 guess. If you are trying to enforce consistent
2 rules and regulations and polices across the board,
3 I think that the ability for a municipality to act
4 unilaterally impairs the effectiveness of those
5 policies.
6 So the County believes that it has the
7 obligation to participate in the process.
8 PANEL MEMBER SETZER: Thank you.
9 PANEL MEMBER BLAZER: Yes, sir.
10 PANEL MEMBER RICHARDS: Is it on?
11 FROM THE FLOOR: No.
12 PANEL MEMBER RICHARDS: Well, we're going
13 to get some feedback, I guess.
14 Mr. Pullen, I had some problems getting
15 through all of the whereases there were so many of
16 them in this bill, which led me to believe that you
17 were trying to say something important in the
18 whereases that were not included in the top part of
19 the bill. In reading them I felt that you were
20 indicating that you and the Council were indicating
21 that there were problems created by the 1989 maps

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1 and the allocation. And you've identify a couple of
2 them in the whereases.
3 You also indicated that you felt that
4 there was a potential of an even bigger problem down
5 the road.
6 Was this part of the discussion when the
7 bill was adopted by the Council? And have I
8 correctly identified the whereases?
9 MR. PULLEN: Yes, you have, Mr. Richards.
10 Since drafting that legislation, I have -- and I
11 drafted it, so I can tell you that the whereas
12 clauses were really the product of my own analysis.
13 I think that some of those whereas clauses were
14 probably ill-conceived and probably -- the problems
15 that were addressed could be addressed in other
16 ways. But at the time of the legis -- at the time
17 it was drafted, those were perceived to be real
18 problems. But since then, on reflection, some of
19 those problems can be addressed without adopting
20 933.
21 But the fact remains that the policy that

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1 933 promotes, I think, is consistent and is actually
2 required by the COMAR reg that we discussed and is
3 consistent with sound principles of environmental
4 protection.
5 PANEL MEMBER RICHARDS: But you also
6 mention whereases, the comprehensive planning
7 process requirements of Article 66B. Do you have an
8 alternate set of growth maps as a result of that
9 process?
10 MR. PULLEN: We do, and I have copies
11 which I'm going to make available to the Panel as
12 exhibits.
13 The County and the towns are currently --
14 the County is currently nearing the end of its
15 comprehensive planning process for a comprehensive
16 update. I think some of the towns are closer to the
17 end -- and perhaps have reached the end -- than the
18 County. But in that process the County planning
19 staff and the towns' planning staff, it's my
20 understanding, have worked closely together to
21 redefine the growth areas around the towns. And

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1 those maps, as I indicated, will be made available
2 to you. And they are – I think when you compare
3 them with the 1989 maps that Bill 933 repeals you
4 will see quite a difference, quite a change in
5 thinking from then to now and the town boundaries
6 have changed and they'll be useful.
7 PANEL MEMBER RICHARDS: Thank you.
8 PANEL MEMBER JACKSON: At the end of the
9 process on Bill 762, when you have the final
10 findings by both the municipality and the County
11 government, let's just say the findings are not
12 concurrent. Who has the tie breaker in that?
13 MR. PULLEN: Well, if – let me restate
14 your question so I'm sure I understand it. If, for
15 example, the Town imposes a condition and the County
16 imposes a different condition?
17 PANEL MEMBER JACKSON: That is one set.
18 Let's just say that you have conceptual approval by
19 the Town but County does not or has other conditions
20 that the Town doesn't agree on.
21 MR. PULLEN: Well, the developer is

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1 subject to the joint review of both the Town and the
2 County; therefore, if the conditions were different
3 but supplemental, I believe the developer would be
4 required to comply with all of the conditions.
5 If the conditions were different and
6 inconsistent, that would be a problem. And I don't
7 think that – well, that's never occurred thus far.
8 The problem that that might create would be a
9 situation where a developer, in complying with one
10 set of conditions, by definition couldn't comply
11 with the other. I would hope that the process
12 wouldn't create that dilemma for the developer. It
13 is possible.
14 I think each particular case would have
15 to be assessed on its own merit, depending on the
16 type of conditions and the type of facts that were
17 produced in the record. It is a problem potentially
18 but not necessarily a fatal one.
19 PANEL MEMBER JACKSON: But it has not
20 been addressed as far as this bill is concerned?
21 MR. PULLEN: 933?

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1 PANEL MEMBER JACKSON: Yes.
2 MR. PULLEN: No. 933 doesn't address
3 that situation because 933 operates by default
4 because it removes the growth allocation from the
5 1989 maps from other towns. 762 then comes into
6 play automatically. So 933 doesn't itself deal with
7 that process.
8 PANEL MEMBER JACKSON: Okay.
9 PANEL MEMBER BLAZER: Thank you.
10 MR. PULLEN: Mr. Chairman, if I may, I
11 would like to yield the balance of the County's
12 presentation at this point to a person who needs no
13 introduction to the Panel, the Honorable John C.
14 North.
15 JUDGE NORTH: Good evening, Mr. Chairman,
16 ladies and gentlemen. I'll lower the microphone a
17 bit. Welcome to Talbot County.
18 PANEL MEMBER BLAZER: Thank you.
19 JUDGE NORTH: It's a pleasure to see
20 familiar faces.
21 You have already observed on the screen

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1 the comments which I made some weeks ago before a
2 hearing of the Talbot County Council. My comments
3 center around a code of Maryland regulations known
4 as COMAR, which to me seems quite clear in that it
5 reads, "When planning future expansion of Intensely
6 Developed and Limited Development Areas,
7 counties" – underline counties – "in coordination
8 with affected municipalities, shall establish a
9 process to accommodate the growth needs of the
10 municipalities."
11 And so I concluded from the reading of
12 that, that essentially Talbot County had made an
13 error years ago when, without condition or
14 understanding, it granted a block of growth
15 allocation to the several municipalities within the
16 county. I think in hindsight, as with so many
17 things in hindsight, one can argue that by doing
18 that the County really abrogated its responsibility
19 under COMAR, which requires the county, in effect,
20 to remain in control.
21 In an effort to do a bit of research into

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1 the background of the history of the COMAR
2 regulation and how it had been applied, I thought it
3 appropriate to speak with a number of people who
4 were involved early on with the Critical Area
5 legislation. And, accordingly, I have in hand
6 copies of correspondence in the form of faxes from a
7 number of individuals, whose names I think will
8 largely be familiar to you. I will quote not
9 everything that they have written, but the pertinent
10 parts and will submit their correspondence in toto
11 to you for your consideration.
12 The first person with whom I spoke was
13 Doctor Tori Brown, who resides in Baltimore and who
14 was the chairman of the Department of Natural
15 Resources when the Critical Area law was
16 implemented. The Critical Area Commission, of
17 course, is a part of the Department of Natural
18 Resources.
19 Doctor Brown's response to my inquiry as
20 to his understanding with respect to the COMAR
21 citation in question reads as follows in his letter

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1 of March 22. It is addressed to Whom it May
2 Concern. I write to comment on the dispute between
3 the Town of St. Michaels and Talbot County that's
4 currently before the Critical Area Commission. As
5 secretary of the Department of Natural Resources, I
6 was responsible for introducing the original
7 Critical Areas Bill and for shepherding it through
8 the legislature.
9 The Commission was at first located in
10 the Department, the Department of Natural Resources.
11 I was one of the original members of the Commission
12 and responsible for the initial implementation of
13 the law.
14 We spent a great deal of time and thought
15 on the original organizational structure, the
16 regulations and the processes that would make this
17 new law function. Obviously, all future disputes
18 and difficulties could not have been foreseen at
19 that time.
20 This present dispute is a result of St.
21 Michaels suggesting that it was granted its growth

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1 allocation by Talbot County and may do now with it
2 as it wishes despite the objections of the County.
3 This was clearly not intended to be the result of
4 the original law or the regulations.
5 We intended that the counties would, in
6 coordination with affected municipalities, plan
7 future expansion of Intensely and Limited
8 Development Areas. Emphasis mine. Quoted from
9 COMAR 27.01.02.06A2.
10 The growth allocation was intended to
11 belong to the counties, who, on a ongoing basis,
12 would coordinate with the subdivisions, and not
13 grant the growth allocation in total and have no
14 continued control over its use.
15 I hope these comments are helpful.
16 Sincerely, Tori C. Brown.
17 I thought that Doctor Brown showed great
18 insight in his comments, and I took the liberty of
19 faxing those comments to a number of early
20 Commission members for their comment and their
21 recollection.

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1 I have before me a letter from William H.
2 Corkran Jr., who for many years was the town
3 engineer for the Town of Easton and one of the
4 original Commission members.
5 It is addressed to Whom it May Concern.
6 I represented Talbot County as a member of the
7 Chesapeake Bay Critical Area Commission for
8 approximately ten years during the nineties.
9 My understanding has been and continues
10 to be that the County must establish a process by
11 which the growth requirements request of a
12 municipality must be considered. Further, the
13 County and the municipality must use the guidelines
14 as established by the State of Maryland.
15 Respectfully, William H. Corkran, Jr.
16 I have a second letter from a second
17 resident of Talbot County, another early member of
18 the Critical Area Commission, Doctor Sheppard Kreck,
19 who says, To Whom it May Concern: My name is
20 Sheppard Kreck, Jr. I'm sorry not to be able to
21 attend the hearing and present my comments in

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1 person. I've asked Judge North to do this for me.
2 I'm a retired physician who has lived in Talbot
3 County for the past 56 years.
4 I served on the original Critical Areas
5 Commission from 1984 through 1994, when my tenure
6 expired by law.
7 I have been following the Miles Point
8 development project over the past four years and
9 realize how difficult it has been for the
10 municipality of St. Michaels, the Talbot County
11 Council and Critical Area Commission to arrive at a
12 consensus; however, I feel very strongly that COMAR
13 27.01.06.02.06 explains clearly -- and I quote --
14 when planning future expansion of ID and LTD areas,
15 counties -- and I underline counties -- in
16 coordination with affected municipalities, shall
17 established a process to accommodate the growth
18 needs of the municipalities.
19 Further, I again quote from COMAR. New
20 IDA's and LDA's should be located in order to
21 minimize impacts to habitat protection areas in a

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1 manner that optimizes benefits to water quality.
2 Bill 933 applies uniformly throughout
3 Talbot County and not explicitly to one municipality
4 or another. There are two or three counties in the
5 State that have never given growth allocation to
6 municipalities. These municipalities must request
7 growth allocation from the counties. This
8 arrangement assures that the counties and
9 municipalities jointly meet the goals and objectives
10 of the Critical Areas law.
11 I ask that Bill 933 be approved. The
12 Chesapeake Bay cannot speak for itself, as it
13 gradually loses the raise against time. Thank you.
14 Doctor Sheppard Kreck.
15 I conferred with a third Talbot County
16 resident, Delegate, former Delegate Samuel Q.
17 Johnson, III, who writes as follows: To Whom it May
18 Concern: There is currently an issue regarding
19 Critical Area growth allocation procedures in Talbot
20 County. As someone who has been involved with this
21 program for almost 20 years, I feel comfortable in

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1 stating what I believe to be fact. Briefly, my
2 involvement is as follows: In the early nineteen
3 eighties I was a member of the Maryland General
4 Assembly, when the Critical Areas legislation was
5 introduced by Governor Hughes. Serving on the
6 Environmental Matters Committee, I participated in
7 all of the hearings and negotiations which followed
8 for several years.
9 I was appointed by the Speaker to serve
10 on the Critical Areas Legislative Oversight
11 Committee, which was composed of four delegates and
12 four senators.
13 After leaving the legislature in 1995, I
14 was appointed by the governor to serve on the
15 Critical Area Commission, which I did until my term
16 expired in June of 2003.
17 Obviously, there were many issues debated
18 in the two years it took to establish and implement
19 the program. Those of us from the areas impacted
20 the most wanted to be sure that there, indeed, was
21 growth allocation and that it be controlled by the

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1 county and not the State. After being joined by the
2 Maryland Association of Counties endorsing our
3 position, the governor's staff agreed and it was put
4 in the final draft. The county would not only have
5 final control over who and how much allocation was
6 granted, they also would determine the application
7 process to be followed.
8 This letter is not intended to be for or
9 against any project. Sincerely, Samuel Q. Johnson.
10 Now, following the receipt of the letter
11 from Doctor Tori Brown, I took it upon myself to fax
12 copies of that letter to a number of former
13 Commission members to the get their comments. And I
14 have received back the following comments from
15 Andrew Meyers of Denton. To Whom it May Concern. I
16 have served eight years on the Critical Area
17 Commission, and I agree with the opinion of Tori C.
18 Brown. My address is Landing Road, Denton,
19 Maryland.
20 A second letter. I agree with and
21 support the position presented in this letter from

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1 Doctor Brown. Counties were to utilize the growth
2 allocation on the merits of each case.
3 Municipalities were to coordinate and request growth
4 allocation from the counties on the merit of each
5 project. Howard W. Zanheiser, Critical Area
6 Commission member from origin to 1991, Solomons,
7 Maryland.
8 To Whom it may Concern: Having served on
9 the Chesapeake Bay Critical Area Commission for 11
10 years, and now retired, I still have great interest
11 in the Bay. I agree with Doctor Tori Brown's
12 comments. Phillip J. Barker, Havre de Grace, former
13 Mayor of Havre de Grace.
14 As an original member of the Critical
15 Area Commission from 1983 to 1993, I endorse the
16 comments of Doctor Brown regarding growth allocation
17 as above set forth. Robert R. Price Jr., attorney
18 at law, Centreville.
19 In the 11 years I served on the
20 Chesapeake Bay Critical Area Commission, 1984 to
21 1995, I represented Charles County. During my

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1 service all the Critical Area plans in the state
2 were adopted.
3 It is my recollection that growth
4 allocation was granted to the counties. Following
5 specific criteria, the counties were to assign
6 growth allocation within their jurisdiction.
7 Thank you for sharing the letter from
8 Tori Brown, dated March 22. I concur with his
9 evaluation as to the intention of the law with
10 respect to the use of growth allocation.
11 I spent ten years as a member of the
12 Commission and was pleased to serve on the program
13 Amendments Committee and, as such, I was involved in
14 drafting a number of position papers regarding the
15 use of growth allocation.
16 I also was a member of and chaired a
17 number of panels in my time on the Commission
18 regarding the use of growth allocation.
19 And this is from Michael Whitten of
20 Leonardtown, Maryland.
21 A further comment. I agree with Doctor

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1 Brown's letter above concerning growth allocation.
2 My understanding on the procedure used for granting
3 growth allocation when municipalities are involved
4 is the same as defined by Doctor Brown. Roger
5 Williams, Kent County treasurer, Commission member
6 1988 to 2000.
7 To whom it may concern. I served as a
8 member of the Critical Area Commission from 1987
9 until 1998, and was involved in the review of
10 Critical Area plans for several counties and
11 municipalities.
12 I agree with Doctor Brown as to the
13 intended coordination between counties and
14 municipalities with respect to growth allocation.
15 Sincerely, Russell Blake, Pocomoke City.
16 Following those comments, I communicated
17 with Doctor Sarah Taylor Rogers, who was the first
18 executive director of the Critical Area Commission,
19 who served initially under Judge Solomon List, later
20 under my – in my term of office, and she later, of
21 course, became the secretary of Department of

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1 Natural Resources.
2 Doctor Rogers' letter reads as follows:
3 To Whom it may Concern: The Chesapeake Bay Critical
4 Area Protection Act was passed by the General
5 Assembly in 1984 because of concern about the
6 decline of the natural resources of the Chesapeake
7 Bay.
8 Skipping several of her other comments by
9 way of background, the Commission members knew that
10 16 counties and 44 municipalities were affected by
11 the Critical Area law. Keeping the intent of the
12 law in mind, as well as the numerous jurisdictions
13 affected by it, the Commission members developed
14 criteria that would not only provide for the
15 examination of existing patterns of land use but
16 also would provide for the location and extent of
17 future growth and a process to follow in locating
18 that growth.
19 The Commission understood that the
20 counties and municipalities needed the flexibility
21 to determine how growth would be handled and where

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1 it would be located; thus, the only provisions that
2 the Commission developed was a percentage amount for
3 future growth based on a county's Resource
4 Conservation Area and guidelines as to where the
5 growth county -- where the -- where to locate the
6 growth. Counties had the flexibility to choose how
7 much to use, where to use it and what municipality
8 to use it in a cooperative manner.
9 The majority of county program
10 submittals, these growth areas were identified on
11 the Critical Area maps. Other counties chose not to
12 map the areas beforehand but use the growth as the
13 need would arise within the county or from a
14 municipality.
15 It is my understanding that Talbot County
16 initially provided for specific areas of growth
17 allocation to the municipalities, and has recently
18 made the decision to withdraw these allocations.
19 Given what I know to have been the nature and intent
20 of the Commission in developing the criteria, such
21 an action on the part of Talbot County would not be

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1 considered as being in violation of the criteria or
2 the law.
3 I offer this perspective as the former
4 executive director of the Chesapeake Bay Critical
5 Area Commission from the time of the program's
6 inception in 1984 until 1993. Sarah Taylor Rogers,
7 Ph.D.
8 I then communicated with --
9 PANEL MEMBER BLAZER: Judge North --
10 JUDGE NORTH: Yes.
11 PANEL MEMBER BLAZER: We've allocated a
12 certain amount of time for the County, and we are
13 almost up.
14 JUDGE NORTH: I am sorry if I have
15 rambled on at length. I'm virtually finished.
16 PANEL MEMBER BLAZER: Okay.
17 JUDGE NORTH: I have a second letter from
18 J. Charles Fox, known as Chuck Fox, the recent past
19 secretary of the Department of Natural Resources.
20 And I will -- I will cut short his comments to this:
21 It is my conclusion that the State's Critical Area

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1 Program conveys ultimate growth allocation authority
2 to counties, not municipalities.
3 And finally a letter from the father of
4 Critical Areas, Governor Harry Hughes. To Whom it
5 may Concern: The legislation to save the Chesapeake
6 Bay was initiated and sponsored by my administration
7 during my second term as governor.
8 The keystone of that legislation was the
9 Critical Area law. Realizing the significant effect
10 of this law on the traditional land-use laws of
11 Maryland, which historically gave major
12 responsibility of this area to county governments,
13 it was our firm intent that county government would
14 play the primary role in growth allocation. It was
15 also intended that counties would coordinate with
16 municipalities in carrying out that responsibility
17 but that the counties would be in control.
18 Whereas the municipalities act
19 unilaterally, the county has the responsibility --
20 has the responsibility -- to withdraw the
21 municipality's right to grant growth allocation.

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1 Basic responsibilities for growth
2 allocation is the county, subject to the approval of
3 the Critical Area Commission. Respectfully, Harry
4 Hughes.
5 Thank you, ladies and gentlemen. I'll
6 submit these if I may. Thank you.
7 PANEL MEMBER BLAZER: Thank you, Judge
8 North. Thank you.
9 Are there any representatives of the
10 towns that would like to make a presentation? If
11 you'd come up and identify yourself and who you are
12 with, please.
13 MR. HICKSON: Thank you. My name is
14 Michael Hickson. I'm attorney for the Town of St.
15 Michaels, and I would like to respond.
16 First of all, the Town would oppose Bill
17 933.
18 Mr. Pullen, the County attorney, took you
19 600 miles down Route 95 to Charleston. I would like
20 to take you, instead, a couple of hundred years
21 back, to 1804, when the village people of St.

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1 Michaels decided that their interests were not
2 exactly the same as those of the county as a whole
3 and they decided to incorporate.
4 And I think there is the crux of the
5 problem. Some people like to live with lots of land
6 around them and they have one perspective. Other
7 people like to live with lots of people around them
8 and they have a different perspective.
9 The interests of the County and the
10 interest of the Town are not the same.
11 The difficulty that the Town has with 933
12 is that it takes back all of the growth allocation
13 that was previously reserved for the counties and
14 puts it completely in the control of the county;
15 that's to say, the county has the last word.
16 St. Michaels would not mind if the growth
17 allocation were taken back and put in a common pool.
18 But the difficulty here is not just the taking back
19 of the reserve, but the fact that it then throws the
20 process -- it throws the current process for the
21 awarding of growth allocation out which has been

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1 totally within the control of the town, subject to
2 all the criteria of its laws and its local program
3 which was approved by the Critical Area Commission,
4 and instead sets up a different process for what the
5 County calls supplemental growth allocation, in
6 which the County, in effect, carries on a dual
7 process.
8 It may be carried on in the same rooms
9 with the members of the St. Michaels town bodies,
10 but in effect it's an entirely separate decision
11 making process. While on the one hand the Town
12 officials look at the Town's laws, the Town's
13 Comprehensive Plan, the Town's local program, if you
14 look at the County program, the County officials are
15 looking at things that are completely different.
16 They are looking at the County's Comprehensive Plan,
17 which does not control the Town under State law.
18 And they are looking at other things that are not
19 a part of the Town's decision-making process and the
20 Town's concerns.
21 Judge North took a considerable amount of

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1 time reading letters about one particular COMAR
2 provision. And I was thinking to myself, why all
3 these letters about the same thing; he doeth protest
4 too much.
5 I would commend the panel and the
6 Commission to a careful reading of COMAR
7 27.01.02.06A2, and I'll quote. "When planning
8 future expansion of intensely developed and Limited
9 Development Areas, counties, in coordination with
10 affected municipalities, shall establish a process
11 to accommodate the growth needs of the affected
12 municipalities.
13 All we are talking about here is creating
14 a process. We are not talking about sitting in on
15 the judgment.
16 And, secondly, we are talking about
17 creating a process in coordination with the town;
18 that is, the process of establishing the procedures
19 should be done in coordination with the town.
20 And, thirdly, it says that it should be
21 done to accommodate the Town's needs.

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1 Now, I've prepared a memorandum and
2 supplied a copy of it to your counsel and other
3 counsel, and I'll submit an original tonight with
4 copies, and I've also prepared written testimony
5 that I'll submit tonight that goes into some of the
6 details, but I want to hit some of the high points.
7 Some of it is legalese and legal oriented. I want
8 to hit the high points of the important facts and I
9 want to focus on this section. That was my intent
10 from the beginning.
11 Coordination, cooperation, and
12 accommodation. I don't see any of these things in
13 here which, in effect, throws out the current
14 process and throws the towns into a joint decision-
15 making process in which the counties do what the
16 State law, in my opinion, does not permit and what
17 the village people in 1804 wanted to avoid.
18 The process of the arriving at Bill 933
19 goes something like this. In 1997 the Town of St.
20 Michaels had never received an application for
21 growth allocation at all. In that year for the

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1 first time it received an application from Midland,
2 a developer that wanted to do a substantial
3 development in Talbot -- in the Town. During that
4 process Midland submitted successive Applications
5 which the Town successively denied, which were
6 successively litigated. There were in all six
7 Circuit Court cases, two of which went to the Court
8 of Appeals. All of this was very highly publicized
9 in the local newspaper.
10 Three of those Applications were
11 completed, the three cases litigated; all the while
12 the Town is denying growth allocation applications
13 and all the while the County does absolutely nothing
14 but let the Town swing in the breeze and spend more
15 than a million dollars in legal fees, consultants'
16 Fees, time, conducting procedures, participating in
17 litigation to defend its position.
18 Seeing that nothing was going to happen,
19 the Town took ahold of reality and initiated a
20 nonbinding mediation process with a professional
21 mediator who is, in fact, the head of the department

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1 in land use at the University of Virginia. And
2 Doctor Collins mediated between a group of citizen
3 representatives and the developer all during the
4 summer of, I believe it was 2002, to come up with a
5 rough consensus. Not everybody was in agreement,
6 but they came up with some general principles, one
7 of which was a traditional neighborhood development
8 plan would be preferable to a cookie cutter, old
9 style development, it would fit better with the
10 Town. And there were some environmental
11 discussions, be assured.
12 After that mediation process, the Town
13 then conducted a public workshop with the developer.
14 And at the close of the public workshop the Town
15 announced some principles of what it would want to
16 see in a development, including traditional
17 neighborhood development, taking care of the
18 shoreline and some other things, open spaces. And a
19 as a result of that the developer submitted his
20 forth application.
21 (Change audiotape)

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1 This was in the fall of 2003. At that
2 time the application process commenced. The Town
3 Planning Commission received the Application and
4 commenced its public hearing in September of 2003.
5 Those public hearings were heavily participated in
6 by citizens and noncitizens alike; those public
7 hearings ended, I believe, on November 6, 2003, and
8 a written fifty-some page decision was issued, I
9 believe on November 24 of 2003.
10 Now, what the Town didn't know at that
11 time and, in fact, didn't know until today, that on
12 October 29, 2003, the County representatives had
13 contacted the staff at the Critical Area Commission
14 and, in fact, it advised them of the existence of
15 County Bill 933, predicted when it would be
16 introduced, when a hearing would be conducted on it,
17 when it would be adopted and when it would be ready
18 for the State Critical Area Commission.
19 No contact, no consultation, no request
20 for input, no advice even that there was a problem
21 from the County to any of the towns in this county.

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1 Subsequent to that there were additional
2 contacts by County representatives with the State
3 Critical Area Commission, and they are in my legal
4 memo and my prepared testimony. Those contacts
5 started, as I said, October 29, 2003, and go into
6 November and December, all relating to either Bill
7 933 or the Easton and Midland projects.
8 Now, I submit to you that 933 has its
9 very existence based upon the County's opposition to
10 the Midland Application and the project known as
11 Miles Point, because none of this even started until
12 it appeared that the Town was going to consider,
13 seriously consider granting growth allocation.
14 As you may know -- let me back up. The
15 fourth Application, which is known as Miles Point
16 II, included 72 acres that was annexed to the Town
17 in 1980 pursuant to an Annexation Agreement, but it
18 also included 18 acres outside of the town that was
19 annexed in the fall of 2003. So, according to State
20 law, the Town cannot change the zoning of land that
21 is newly annexed for five years without the Town's

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1 express permission. That's contained in Article
2 23A, Section 9C of the Maryland Code.
3 The Town requested that the County
4 relinquish the zoning control so that this 18 acres
5 could be zoned to fit in with the proposed Miles
6 Point II project. And on December 16, I believe it
7 was, the County refused that request.
8 The County also -- I should back up.
9 There was a Planning Commission hearing on 933, I
10 believe it was on Octob -- November 2. I testified
11 for the Town. I said at that time that there had
12 been no input, no dialogue. And I asked that there
13 simply be dialogue, that we step back, let us know
14 what the problem is and see if we can't find a
15 better solution.
16 The Planning Commission of Talbot County
17 opined to the County commissioners that 933 was not
18 necessary.
19 But the Bill went forward and there was a
20 public hearing on, I believe it was December 16. I
21 testified at that hearing on behalf of the Town. At

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1 that time, on that very day, during that very
2 hearing, a new version of 933 was brought out. Now,
3 we were told at that time that there were no
4 substantive changes, and the County Council voted to
5 that effect. But at very least there was a whole
6 new set of whereas clauses.
7 Again I asked that we step back, that we
8 have a dialogue, let us know what the problem is,
9 we'll be happy to sit down, talk about it, try to
10 work it out. What the County Council did on that
11 date was -- and I'm certain now that it was the 16
12 of December, because they voted to postpone the vote
13 on that particular legislation for a week. And, in
14 fact, they did postpone it. On December 23 they
15 voted and passed that bill. Again, no dialog, no
16 contact, no nothing.
17 But as a result of the County refusing to
18 relinquish it's five-year control over that 18 acres
19 that was newly annexed, the developer withdrew it's
20 fourth application known as Miles Point II, redrew
21 it, left out the 18 acres that was annexed, scaled

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1 it down to only the 72 acres that had been in town
2 since 1980 pursuant to an Annexation Agreement that
3 described R1 zoning and, in fact, that's what the
4 Town -- that's what was agreed to in that Agreement,
5 R1 zoning. So it's not like anybody thought this
6 land wasn't going to be developed. But, anyway,
7 they scaled down the development. It's now called
8 Miles Point III, it's 72 acres, it's a TND, and it's
9 submitted to the Town in late December or early
10 January of this year.
11 It's very similar to the previous
12 project, except it's smaller, that's all; less
13 units, same features, same environmental stuff, good
14 stuff, really. I mean, we beat each other to death
15 and came out with a pretty good plan.
16 It's processed, the Planning Commission
17 holds it's hearings and so forth. I mean, we are
18 really up to date. As far as 933, that's the end of
19 it; no consultation, no requests, no accommodation
20 into establishing a new process, and that's what
21 that -- I really commend you to read it. It's not

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1 talking about participating down the road in future
2 decisions on applications, it's talking about
3 process.
4 And I want to talk about the process that
5 933 throws us into. One of your members asked about
6 it, and I couldn't see which one from the back, but
7 they were good questions, because this supplemental
8 growth allocation process is not the same as what we
9 have been dealing with, what we've been going
10 through all this time when the County let us goes
11 through at our expense and then yanks it away from
12 us.
13 It's two separate processes, as I said,
14 that occur at the same time in the same room with
15 different people looking at different laws.
16 In the end, in my opinion, if the County
17 Council doesn't agree to grant growth allocation, it
18 doesn't happen. If either side -- if the County
19 says no, there is no growth allocation; if the Town
20 says no, there is no growth allocation.
21 But the interesting thing in here is that

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1 the County in this process, in the County plan it
2 says that the County Council has complete
3 discretion. In other words, they can ignore all the
4 rules and say no.
5
6 PANEL MEMBER BLAZER: We're going to have
7 to kind of wind it up.
8 MR. HICKSON: Okay, I'll try to do that.
9 Counsel for the County pointed to Easton
10 Village. That's what was happening in Easton
11 Village. I've attached the Easton Village decision
12 to my memorandum of law. It shows that there's a
13 dual process, it shows they can ignore it each
14 other. In the end the developer for Easton Village
15 to make it happen went to the County and said what
16 do you want. And what the County wanted was
17 improvements on Glebe Road, which I'm told exceed a
18 million dollars. Glebe Road is at least a mile and
19 a half from the subject project and, in my opinion,
20 has nothing to do with it.
21 That's how – that's the definition of

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1 cooperation, that's the definition of coordination,
2 is the way I've explained to you, totally ignoring
3 us, going to the Critical Area Commission behind our
4 back, yank – making us twist in the wind when they
5 could have rescued us at that time, and now the
6 yanking away from us when we want to go through with
7 it. That's not my definition of cooperation. And
8 if they can't see it then, how are they going to
9 cooperate in the future? We don't have the same
10 interest.
11 And State law, in Article 66B, gives us
12 control in planning and zoning. The County does not
13 have control in incorporated municipalities, and
14 that's what this is all about. Thank you.
15 PANEL MEMBER BLAZER: Thank you.
16 MR. HICKSON: I will submit by material.
17 PANEL MEMBER BLAZER: Okay.
18 MR. HICKSON: I will also submit a letter
19 that I have from Senator Coulburn.
20 PANEL MEMBER BLAZER: Okay.
21 MR. HICKSON: And a schedule showing that

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1 84 percent of our town, 84 percent of the
2 undeveloped land in our town is in the Critical
3 Area; 68 percent of the town as a whole is in the
4 Critical Area.
5 PANEL MEMBER BLAZER: I think we have
6 some questions from the panel members.
7 MR. HICKSON: Yes, absolutely.
8 PANEL MEMBER RICHARDS: With your
9 re-reading of the COMAR regulation, I take it that
10 you challenge Judge North's reading of that
11 particular section.
12 MR. HICKSON: I disagree with his
13 interpretation. And I commend you to read it.
14 PANEL MEMBER RICHARDS: What do you think
15 of his statements that the County abrogated its
16 responsibility by making the allocation in 1989?
17 MR. HICKSON: I don't agree with that.
18 Every award of growth allocation by a local
19 jurisdiction goes to the State Critical Area
20 Commission. The purpose is not to re-decide the
21 case, but oversight to make sure that the local

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1 jurisdictions are applying the criteria, not
2 necessarily that you agree with them on the fact
3 that they are applying the law.
4 I think there is already a dual process
5 here. It's not the same process, but it's a dual
6 process. We don't need three processes.
7 PANEL MEMBER RICHARDS: Also, Judge North
8 read the letter from Governor Hughes. And if I
9 heard correctly, Governor Hughes' letter said that
10 Governor Hughes felt that the County has the right
11 to withdraw the allocation. Do you agree with that
12 statement?
13 MR. HICKSON: I think that's a confused
14 area of the law. I think that while the Critical
15 Area laws have been in effect for well over a
16 decade, getting toward two decades, there is a lot
17 of it that is confusing. I will be frank to admit
18 that I had a great deal of time figuring it all out
19 when I had to deal with this because in my town we
20 are dealing with the Zoning Ordinance, a separate
21 local program, the Subdivision Ordinance, the State

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1 regs, the State law, and you are trying to figure
2 out what all that means. And sometimes, frankly, it
3 just -- it's not always consistent.
4 I don't necessarily -- I don't know what
5 the answer to that question is, frankly. But if
6 they get it back, if you will, I think it then
7 becomes a common pool that every jurisdiction in
8 this County can draw on by granting growth
9 allocation. I don't think anybody owns it.
10 I think that the -- the determination of
11 how much growth allocation in Talbot County as a
12 whole is, is obviously based on 5 percent of the
13 Critical Area in the County. But it would be
14 inconsistent with not only the critical area laws
15 but some other laws in this state if most of the
16 growth allocation were not granted and used in and
17 around the municipalities. Otherwise, we would be
18 perpetuating sprawl, we would have long, long sewer
19 and water lines, and that's the opposite of what
20 Smart Growth and another initiative that was signed
21 by our current governor in this past October, and

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1 it's quoted in my brief but I don't remember what
2 he's calling it, Priority Places or something like
3 that, those two programs, the same thing with
4 different names, attempt to get most development in
5 and around municipalities for environmental reasons
6 and for economic reasons, in my opinion.
7 So they may take it back. But if they
8 take it back, it becomes part of a common pool, in
9 my opinion.
10 PANEL MEMBER RICHARDS: Thank you.
11 PANEL MEMBER BLAZER: Any other
12 questions? Great. Thank you Mr. Hickson.
13 Are there any other town representatives?
14 MR. FORD: I'm John Ford. I'm the
15 president of the Easton Town Council.
16 Easton is unique among the municipalities
17 in Talbot County in that it has used all of its
18 originally allocated growth allocation for approved
19 developments and has also so gone through a
20 cooperative process of review with the County
21 Council in order to get additional growth allocation

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1 acres approved.
2 Perhaps the most notable growth
3 allocation award is the most recent one where Easton
4 and Talbot County reviewed and ultimately approved
5 the growth allocation request for the Elm Street
6 development on Ratcliff Farm.
7 The end product of that review process is
8 something I believe this community can be proud of
9 and will serve as a benchmark for future
10 development. There will be a well-designed,
11 environmentally sensitive PUD of very high quality,
12 along with a number of its actions that will benefit
13 the community both on site and off.
14 I do not believe, however, that the
15 process used to get to that final approval should
16 serve as a model for future applications. The Town
17 and County Councils did hold joint public hearings
18 on two occasions to consider growth allocation for
19 this project, but the project actually moved forward
20 through a series of individual separate negotiations
21 at several levels.

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1 I think the argument could be made that
2 this project made it through the review process
3 mainly because of the persistence and flexibility of
4 the developer and because of the individual efforts
5 of some elected officials and the efforts of the
6 Talbot Preservation Alliance and the Talbot River
7 Protection Association.
8 One of the things that the Easton Town
9 Council will be focusing on through the review and
10 update of our Zoning Ordinance is the development of
11 a clearer understanding of what is expected from
12 future developers.
13 I feel that with the process followed for
14 the Elm Street project we moved in an opposite
15 direction. I suspect that any developer looking at
16 the two-and-a-half-year review of that project would
17 wonder what exactly was expected from the Town and
18 the County.
19 I'm not suggesting that negotiations with
20 developers can be or should be completely
21 eliminated, but those negotiations should have a

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1 basis from which to begin.
2 I do not believe that Bill 933 moves us
3 closer to a clearer definition of what is expected
4 from development. In its present form it merely
5 adds another separate level of review, with no
6 guarantee that what a municipality wants will be
7 allowed to occur.
8 Cooperative planning between the County
9 and the municipalities is essential and it should
10 occur throughout the planning process, not only at
11 the very end of that process. Thank you.
12 PANEL MEMBER BLAZER: Thank you, Mr.
13 Ford. Any questions? (No response)
14 Any other town representatives? Good
15 evening.
16 MR. KEHOE: Good evening. My name is
17 Christopher Kehoe. I'm the Town attorney for
18 Easton. I know you have a long agenda and a long
19 hearing tonight, and I'll be as brief as possible.
20 First, for the record, I would like to
21 adopt the arguments made by Mr. Hickson on behalf of

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1 the Town of St. Michaels with regard to the argument
2 he makes, and very ably, in his memorandum that
3 Maryland zoning law codified in Article 66B and
4 Article 11E of the Maryland Constitution would
5 prohibit Talbot County or any other county from
6 exercising planning and zoning authority within the
7 boundaries of a municipality, as would be an
8 inevitable consequence if Bill 933 becomes law.
9 Secondly, I listened with a great deal of
10 interest and respect, of course, to Judge North's
11 comments about what I'm going to characterize here
12 as the original intent of the members of the
13 Critical Area Commission with regard to growth
14 allocation, and I was struck by the fact that the
15 arrangement that's now under challenge here by the
16 County; namely, the allocation of specific acreages
17 back in 1989 to Easton, to St. Michaels and to
18 Oxford, was approved by the very same Commission
19 that these people, individuals were members of at
20 the time.
21 And I think the Commission today has to

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1 put this into the context of that this is a change
2 from a previously approved arrangement that has been
3 in existence for a number of years.
4 Easton has used all of its growth
5 allocation, so in one sense we have and we'll deal
6 with in the future the supplemental procedures that
7 Mr. Pullen has outlined. They have worked for
8 Easton and the County in the past. Mr. Ford has
9 suggested, and I certainly agree with him, that they
10 perhaps are not the best model for a way to proceed
11 in the future; nonetheless, they do function for the
12 Town and the County at this point. However, simply
13 because they work for Easton – Easton has used up
14 it's growth allocation – it's not a justification
15 for the removal of the growth allocation allotments
16 that have been made to Oxford and St. Michaels.
17 And with that I will simply submit some
18 written comments and leave you in peace for the
19 evening. Thank you very much.
20 PANEL MEMBER BLAZER: Thank you, Mr.
21 Kehoe. Any other town representatives?

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1 MR. CAMPEN: Good evening. My name is
2 Sid Campen. I'm here on behalf of the Commissioners
3 of Oxford, of which I'm president.
4 I would like to address several factual
5 issues that have been raised with you and others
6 about the 750 or so hearty souls that make up the
7 Town of Oxford, perhaps the smallest jurisdiction
8 that is affected by the Critical Areas mandate and
9 933.
10 If you look at the map of Oxford you will
11 see that practically all of Oxford is within the
12 Critical Area. I can show you that map. There is
13 probably 5 acres that may not be in the Critical
14 Area.
15 So 933 really affects Oxford in a rather
16 unique way, because it says to Oxford that all
17 additional growth that will take place within the
18 corporate limits of Oxford will be under 933 and the
19 County will determine whether Oxford will get growth
20 allocation or not.
21 We've heard a lot tonight about

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1 cooperation and all that is supposed to take place
2 and it may have worked in the earlier bill with the
3 Town of Easton.
4 There is an opinion or a feeling that the
5 people of Oxford have no appetite for growth. And
6 that may be partially true with respect to extra
7 territorial growth, annexation, expansion of the
8 corporate limits of Oxford. But as a Commissioner I
9 can tell you that growth is inevitable and there is
10 not one part hearty soul in Oxford that disfavors
11 infill growth within that town. And the reason for
12 that is because Oxford has very limited sources of
13 revenue and without some growth we're going to have
14 considerable problems in maintaining the
15 infrastructure that is being provided for the people
16 of Oxford.
17 And contrary to the belief of a lot of
18 people, Oxford is not comprised of all wealthy
19 people who have just moved here. There are a number
20 of people who have lived in Oxford all their lives,
21 some of them quite old, in their nineties, who are

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1 struggling to pay the taxes that are increased every
2 year so that we can meet our obligations.
3 There is a critical need in Oxford to see
4 infill expansion within the Town of Oxford, and
5 therein is our problem with 933. We feel that the
6 County Council should have given some consideration
7 to the infill needs of the various towns,
8 particularly Oxford, because we have no ability to
9 expand or to infill in that town without growth
10 allocation. That is significant, because if we are
11 left with the, if you will, coming to the table with
12 our hat in our hand and asking this Council to
13 provide us with growth allocation, we don't know
14 whether we are going to get it or not.
15 We say, well, the Council is as
16 interested in growth allocation and good Smart
17 Growth as anyone. I suggest to you that no member
18 of this Council or a council of recent memory has
19 been a resident of the Town of Oxford or, for that
20 matter, the Town of St. Michaels.
21 Consider, if you will, the needs of a

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1 town to govern itself; its Planning and Zoning
2 Commission, it's appeals board, its government that
3 will be run by people who -- it will be controlled
4 by people who have no particular interest in the
5 Town.
6 People in Oxford are members of Talbot
7 County, but the Commissioners of Talbot County
8 aren't necessarily members of the boards and the
9 committees in the Town of Oxford.
10 Consider, if you will, that the needs of
11 that small town, the budgetary needs, the wastewater
12 treatment needs, all the other things that we are
13 required to maintain are determined by a council
14 that has no particular interest or, indeed, is not
15 responsible to the people of Oxford or St. Michaels
16 or the towns that they have no part of.
17 Our concern is jurisdictional and the
18 results, the practical result of what 933 does. We
19 have no quarrel with, nor do we contest the right of
20 the County to take back whatever growth allocation
21 it designated in 1986.

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1 I disagree with my brother who spoke a
2 little earlier. I think that the County Council
3 did, in fact, adopt the original 1989, rather,
4 growth allocation consistent with COMAR, as has been
5 stated by Judge North. It was done then. They have
6 now elected to undo that.
7 What we ask is that they simply undo the
8 portion outside of the territorial limits of the
9 corporate Town of Oxford, leaving in the areas for
10 infill.
11 I found it very interesting that the
12 justification for 933 has sort of taken full circle.
13 At first it was to help Easton. Then I read
14 something about, well, Oxford and St. Michaels hold
15 a pocket veto in that if they don't use their growth
16 allocation, then the County cannot get to the 90
17 percent mark in order to trigger the balance of the
18 twelve hundred acres that it might need for future
19 growth.
20 Well, consider, if you will, that if the
21 needs -- if the County needs 90 percent in order to

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1 figure the balance of the twelve hundred acre growth
2 allocation that it may wish to hold in a bank or
3 whatever it wants to do, that leaves 10 percent.
4 Ten percent of twelve hundred acres is 125 acres.
5 Our problem with the County is that all
6 they needed to do was come to us or invite us to
7 come to them and say, look, what are your infill
8 needs, what will you need in the future, in the
9 immediate future, in the next three to five to ten
10 years; and, yes, if you need 20 acres or 30 acres or
11 St. Michaels may need 20 or 30 or 50 or 75, whatever
12 it was, they could have reached that threshold; 125
13 acres would have provided Oxford and St. Michaels, I
14 suspect, with whatever the infill needs may be in
15 the not too distant future.
16 We also have a problem in that we were
17 told very specifically in 1989, you have, Oxford,
18 190 acres of growth allocation and that's all you're
19 going to get, use it wisely. And I dare say Oxford
20 has. We have used 15 acres, I think.
21 You cannot say that the towns have

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1 squandered or used the growth allocation that they
2 had or that they were allotted unwisely. That is
3 certainly not the case.
4 We would ask that you reconsider 933 in
5 that it has not taken into consideration the needs
6 of the town, particularly the infill needs, and it
7 does do violence to Article 66B and Article 23,
8 which give the towns zoning authority, 66B does and
9 23A, gives the towns exclusive jurisdiction over
10 planning and zoning. This bill conflicts with that
11 significantly.
12 Thank you.
13 PANEL MEMBER BLAZER: Thank you, Mr.
14 Campen. Another town representative.
15 MR. THOMPSON: Mr. Chairman, my name is
16 Dave Thompson. I represent the Town of Oxford and
17 the Town of Trappe. I will be very brief.
18 The Town of Trappe, as you know, has no
19 Critical Area within it at this time, has no
20 Critical Area plan. But as you also may know if
21 you've looked at a map, the Critical Area is 800

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1 feet from the borders of the Town of Trappe. The
2 town's existing sewer facility utilizes as a
3 discharge point a tributary stream.
4 Trappe is very interested in issues of
5 municipal growth. We have had a substantial
6 annexation within the last year. We are still
7 dealing with the legal issues that pertain to that.
8 The fundamental problem that both the
9 Town of Oxford and the Town of Trappe have with Bill
10 933 is its failure to take into account Article 66B
11 and Article 23A. Other speakers made the point, so
12 I will not dwell on it.
13 But municipalities in the State of
14 Maryland have the same home rule that counties have
15 in the State of Maryland. Municipalities,
16 especially in the area of planning and zoning, have
17 exclusive jurisdiction.
18 Municipalities grow only two ways; by
19 infill, as Mr. Campen talked about, and by
20 annexation.
21 Article 23A, Section 9, defines the

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1 relationship between the County and The town as it
2 relates to annexation. It allows the County five --
3 it allows what I call a transition period of five
4 years by which the County has the right to veto a
5 change of use that is a change from the existing
6 County Comprehensive Plan.
7 But once land is annexed, it becomes
8 a part of the town. Each of the towns that have
9 Critical Area; Easton, the Town of Oxford and the
10 Town of St. Michaels, have Critical Area plans
11 approved by the Critical Areas Commission, approved
12 by the very gentlemen that Judge North quoted. All
13 of those plans have provisions for the granting of
14 growth allocation and have provisions for review by
15 the Critical Area Commission.
16 It is my opinion that the way the law
17 works when you read those provisions together, as a
18 judge would do, as a court would do, that once land
19 becomes annexed, subject to the annexation
20 provisions of Article 23A, the town has exclusive
21 zoning control. If that land happens to bear a

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1 Critical Area land-use classification of RCA,
2 therefore making it potential growth allocation
3 conversion land, that the town, without the express
4 consent of the county government, could not
5 authorize a dwelling density of greater than one per
6 20 for five years. But other than the five-year
7 transition period, the zoning control is exclusively
8 within the towns.
9 And what Bill 933 purports to do is to
10 give the County the ultimate veto power of land-use
11 classification changes, RCA changes --
12 (Change audiotape)
13 -- RCA conversions within the towns.
14 We don't believe that that will survive
15 judicial review, and we believe, in an exercise of
16 global view, the right thing for the Commission to
17 do is to not approve Bill 933 to the extent that it
18 purports to apply within town boundaries.
19 I don't think there is any question that
20 the County has the authority to say we're going to
21 change that pre-map growth allocation area. That's

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1 fine. That's County jurisdiction. They can do
2 that. That doesn't change the fundamental right of
3 the town to go through an annexation process, and
4 consistent with 66B, consistent with 23A, to rezone
5 that land, subject to the five-year transition
6 period.
7 The other thing I would point out and I
8 would offer for the record are a copy of the minutes
9 of Talbot County Planning Commission.
10 We are fortunate to have a Planning
11 Commission that are very active, they understand
12 these principles, they work hard and they looked at
13 Bill 933. They recognized that it was unnecessary,
14 they recommended to the County Council that they
15 withdraw 933 and that they permit -- and there be
16 some discussions among the towns. You all may or
17 may not have seen some of the tense correspondence
18 that has passed back and forth among Town
19 representatives. That tension is a reflection of
20 the fact that there has been absolutely no dialogue,
21 zero, none, no cooperative effort between the county

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1 government and the towns in coming up with a
2 cooperative approach to the growth management and
3 growth allocation issues.
4 I think everyone would agree at this
5 point that that discussion, that dialogue between
6 the planning officials of the towns, between the
7 elected officials of the towns would have been
8 preferable.
9 So we would ask you to not approve this
10 amendment.
11 I would adopt the legal memorandum that
12 Michael Hickson submitted on behalf of the Town of
13 St. Michaels on behalf of the Town of Oxford, and
14 would offer for the record a copy of the Planning
15 Commission minutes.
16 PANEL MEMBER BLAZER: Thank you, Mr.
17 Thompson.
18 MR. THOMPSON: Thank you.
19 PANEL MEMBER BLAZER: Any other town
20 representatives? (No response)
21 Any elected officials who would like to

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1 make comments? (No response) I see movement in the
2 back, but nobody is coming forward. Okay. No
3 elected officials. Okay. Thank you.
4 The Maryland Department of Planning, I
5 think, has a representative here.
6 MR. DUKET: How are you doing, Mr.
7 Chairman, ladies and gentlemen of the panel, staff,
8 counselor. For the record, I'm Larry Duket of the
9 Maryland Department of Planning.
10 And I know what's going through your
11 heads; here comes State Planning again.
12 But I want you all to think about the
13 Critical Area law, but I want you to think about a
14 little bit more than the Critical Area law.
15 I've been involved in State growth
16 planning for nearly 30 years now. And if I had a
17 couple hours to explain it all, you'd be amazed at
18 how well all of our growth and environmental
19 protection and funding laws fit together to form a
20 pretty good growth strategy for Maryland.
21 I'm going to go ahead and read this

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1 statement rather than just speak extemporaneously,
2 just to get this over with.
3 The Maryland Department of Planning
4 appreciates the opportunity to offer comments on
5 Council Bill 933.
6 The Bill would create a significant
7 change in the manner in which Talbot County
8 addresses the growth allocation needs of
9 incorporated municipalities, or towns as they've
10 been referred to tonight.
11 The bill is of significant interest to
12 this department because it comes at a time when the
13 State is committing its planning functions, its
14 regulatory programs, its funding, its technical
15 assistance and its capital programming in
16 furtherance of directing growth towards both county
17 designated growth areas and incorporated
18 municipalities, which we now call County and
19 Municipal Smart Growth and Priority Funding Areas,
20 if you will.
21 With the current governor's Priority and

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1 Places initiative, this department is committed to
2 participate in the debate on issues fundamental to
3 the implementation of a sound growth strategy for
4 Maryland.
5 The growth allocation process was
6 principally created to allow county and municipal
7 governments to reconcile the comprehensive planning,
8 zoning and capital programs with the new resource
9 conservation rules of the Critical Area law.
10 The RCA category limits development to
11 only one dwelling unit per 20 acres. From a
12 land-use planning perspective it's unusual and
13 economically inefficient to have land within
14 municipalities relegated to one dwelling unit per 20
15 acres standard. Yet the Critical Area RCA had this
16 effect on farm and forest lands not yet having
17 public water and sewer that were located within
18 municipalities, within municipal growth boundaries
19 and on adjacent lands eligible for municipal
20 annexation.
21 Municipal governments in particular when

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1 the law was being written were given assurances in
2 the Critical Area law that their need for growth
3 allocation would be accommodated.
4 Under Council Bill 933 specific amounts
5 of growth allocation reserved for towns would be
6 deleted from the Talbot County Critical Area program
7 and consequently the County will have approval
8 authority over all future growth allocation requests
9 in town. This would occur through the supplemental
10 growth allocation process that is now part of the
11 County's program.
12 This process was really originally
13 created for narrower purposes through Council Bill
14 762, the supplemental growth allocation process, and
15 was approved as a refinement by the Commission, I
16 believe circa 2000.
17 Looking back on it, it seems unlikely
18 that in 2000 the Commission would have treated such
19 a significant change to the growth allocation
20 process as a mere refinement were it not for the
21 retention at that time of specific language giving

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1 allocations to the town.
2 Under Council Bill 933, the County and a
3 town with an applicant seeking growth allocation
4 would use a joint hearing process to ostensibly
5 assure that both municipal and county planning and
6 growth issues are considered. And, as a matter of
7 fact, this department supports the use of tools and
8 processes that promote interjurisdictional
9 coordination and cooperation, and appreciates that
10 this is the primary goal of Council Bill 933.
11 Our concern, however, is that 933, by
12 striking reserve amounts of allocation to each town,
13 places the County as the final decision maker for
14 all municipal requests for growth allocation.
15 Now, the County's process for
16 accommodating the needs of municipalities for growth
17 allocation should not operate as a blank check for
18 towns. That's not what we are saying; that is, we
19 do not believe that the rule calls for
20 municipalities to always get what they purport to
21 need.

E. 1739

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1 But Council Bill 933 effectively makes
2 the supplemental growth allocation process the
3 primary and only process, and contains no
4 decision-making criteria or standards to account for
5 or accommodate municipal growth needs. Not even the
6 municipal Comprehensive Plan or the municipal zoning
7 map, nor a municipal Critical Area Program, nor a
8 growth allocation map prepared by the town is
9 relevant under the terms of Council Bill 933.
10 Council Bill 933 can result in the denial
11 of a specific bona fide, good-faith request for
12 growth allocation which meets the accounting and
13 locational criteria of the Critical Area law. It
14 appears that the Commission's growth allocation
15 policy is consistent with Town planning and zoning
16 laws and the Critical Area programs. It's
17 difficult, if a denial should occur in such a
18 situation, how that process accommodates the growth
19 allocation needs of the towns.
20 Now I'm going to throw you a curve ball
21 here because I want to talk about the Regional

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1 District Act just for a second just to clarify
2 something.
3 Under the Regional District Act certain
4 incorporated municipalities in Prince George's and
5 Montgomery Counties are under the zoning authority
6 of their respective counties because these
7 municipalities have never been given the authority
8 by the General Assembly to exercise their own zoning
9 powers. That set aside, the concept of county
10 control over municipal land-use decisions is not
11 contemplated in Maryland's planning and zoning law.
12 County and municipal planning and zoning programs
13 are created on equal, separate and, at times,
14 competitive footings. No mystery.
15 And the General Assembly has been careful
16 to address county-municipal relationships in writing
17 Maryland's planning, growth and environmental laws
18 and, in doing so, uniformly the legislature has both
19 preserved the sanctity of municipal land-use
20 decisions and created laws that embody preferences
21 for continued growth in municipalities that plan and

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1 zone for growth.
2 Even in that case where municipal
3 annexation of land previously under county
4 jurisdiction occurs the General Assembly has created
5 a pretty clear rule that says that the county can
6 control the zoning the municipal wants to put on
7 there for five years, but after five years there is
8 no longer any county control over municipal land use
9 or zoning.
10 Now, when the Critical Area law was being
11 drafted there was a lot of legitimate concern that
12 was voiced over the application of the RCA category
13 to farm and forest land that was either within
14 municipal boundaries or at its edges where growth
15 and expansion were planned. Such concerns were
16 based on property interests, public infrastructure
17 investments, long-range capital plans and
18 professional land planning principles, but these
19 concerns were answered very clearly by the creation
20 of the growth allocation law.
21 The concerns of municipalities in

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1 particular were addressed by the rule that the
2 counties shall have a process to accommodate the
3 growth allocation needs of municipalities.
4 Now, in hindsight the issue of county
5 control over municipal growth allocation should have
6 been raised in the context of Council Bill 762;
7 however, given that 762 retains specific allocations
8 for each town, perhaps the issue was not as well
9 defined as now presented in the context of Council
10 Bill 933.
11 We also recognize the many approved
12 programs in other counties with similar practice.
13 We think these programs need to be revisited.
14 Perhaps this can be evaluated during the six-year
15 review process or perhaps it needs to be evaluated
16 sooner if municipalities report to you they are not
17 being accommodated.
18 Now, much has changed since the first
19 generation of the Critical Area programs. The
20 Commission and local governments know more, they
21 have greater experience with much of the detail and

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1 technical nature of the Critical Area law and the
2 criteria. And also since the adoption of the
3 Critical Area law many new State laws have been
4 enacted; the 1992 Planning Act, which applies to all
5 State agencies and promotes eight different visions
6 or goals for growth in the State; Forest
7 Conservation Act, Priority Funding Areas, Rural
8 Legacy, Smart Codes, on and on it goes. If you look
9 at the details of each of these laws you will find
10 that they favor growth directed to county-designated
11 growth areas and incorporated municipalities.
12 Indeed, these new laws reflect the same spirit as
13 the Critical Area's growth allocation rule. Growth
14 within muni that plan and zone for it should be
15 accommodated.
16 The Maryland Department of Planning
17 offers its assistance to the County, several towns
18 and the Critical Area Commission to work to resolve
19 issues that show that municipal needs for growth
20 allocation are accommodated.
21 I thank you for your attention. If

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1 there's any questions, I'll be glad to try to answer
2 them.
3 PANEL MEMBER BLAZER: Thank you, Mr.
4 Duket, we appreciate it.
5 MR. DUKET: Would it be alright to --
6 I'll give this to the staff.
7 PANEL MEMBER BLAZER: Okay. We'll move
8 on to the general public comments. I've got -- I
9 have most of the names. If you didn't sign up,
10 there's still one over here. We can take names as
11 we are going through.
12 We're just going to go first come, first
13 served with this. Come up to the front, identify
14 yourself and if you are with any particular
15 organization and approximately where you live.
16 First, Edward Doyle. Mr. Doyle.
17 MR. DOYLE: Mr. Chairman, I'm coming
18 up -- I'm coming down with a cold. It's very
19 difficult to speak, so I'd prefer to wait and see if
20 other comments need clarification, then I'll speak
21 then.

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1 PANEL MEMBER BLAZER: That's fine. Thank
2 you, Mr. Doyle. Thomas Alspach.
3 MR. ALSPACH: If you do Mr. Deming, I'll
4 follow him.
5 PANEL MEMBER BLAZER: Mr. Deming, do you
6 want to go now?
7 MR. DEMING: Thank you, Mr. Chairman,
8 members of the Panel. My name is Thomas Deming.
9 I'm an attorney from Annapolis, Maryland, and I've
10 been retained by the St. Michaels Bay Hundred
11 Alliance. And this is an alliance of community
12 groups that include Friends of Bay Hundred, Inc.;
13 St. Michaels Preservation Council; Save Our St.
14 Michaels; Talbot County Historical Trust, Inc;
15 Talbot County Taxpayers Association; Talbot
16 Preservation Alliance; and Talbot River Protection
17 Association. All of these groups support the
18 amendment proposed by Talbot County in the form of
19 Ordinance 933.
20 I would just like to speak briefly to a
21 couple of the legal points that have been raised in

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1 prior testimony this evening, and others will
2 address more specific benefits of 933 for Talbot
3 County.
4 There have been several suggestions from
5 attorneys representing towns that somehow there is a
6 legal right among the towns to manage growth
7 allocation within their boundaries even when the
8 towns are expanded through annexation of areas that
9 were previously in the county. I would submit to
10 you that the most direct answer to that question is
11 found in the Critical Areas law, specifically in
12 Section 8-1808.1.
13 Now, This section was enacted by the
14 General Assembly in 1986, after the criteria had
15 been presented to the General Assembly, including
16 the criteria which developed the whole concept of
17 growth allocation in the first place.
18 And on the subject of growth allocation,
19 the General Assembly decided in 1986 -- and I'm
20 reading from Subsection B of that law -- the growth
21 allocation for a local jurisdiction shall be

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1 calculated based on 5 percent of the total Resource
2 Conservation Area in the local jurisdiction at the
3 time of the original approval of the local
4 jurisdiction's program.
5 So under the Critical Area law what a
6 local jurisdiction in the form of a municipality can
7 claim as a matter of right is 5 percent – or is
8 growth allocation equal to 5 percent of the Resource
9 Conservation Area that was located within their
10 boundaries at the time of their initial program
11 approval. There is nothing in the Critical Area law
12 which speaks to the question of subsequent
13 annexation of areas from the county which are
14 designated RCA.
15 And, in fact, in my experience with local
16 programs in other jurisdictions, this is a foreign
17 concept. For example, I've been involved in a
18 number of cases over in Annapolis which the City of
19 Annapolis has annexed lands from Anne Arundel County
20 which bore an RCA designation. Nobody ever
21 suggested in the context of those annexations that

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1 some portion of Anne Arundel County's growth
2 allocation automatically goes to the City of
3 Annapolis along with the annexation. Yet that is
4 what the towns in Talbot County seem to be
5 suggesting here tonight.
6 That raises a second point that I'd like
7 to suggest to you, and that is that I think this
8 panel to fully evaluate the proposal of Talbot
9 County needs to look at what, in fact, is going on
10 in other local programs within the overall Critical
11 Area with respect to the questions that are posed.
12 It is, after all, the Commission's responsibility,
13 under 8-1801B2 of your statute, to implement the
14 resource protection program on a cooperative basis
15 with State and affected local governments, with the
16 local governments establishing and implementing
17 their programs in a consistent and uniform manner,
18 subject to State criteria and oversight.
19 Well, that raises the question how are
20 other local jurisdictions dealing with these
21 questions of growth allocation in annexed lands. In

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1 my experience there is no other local jurisdiction
2 in Maryland that is handling it quite the way that
3 municipalities in Talbot County have been allowed to
4 handle it under the provisions that were originally
5 part of Talbot County's local program.
6 I would suggest that, as Judge North and
7 all the people he cited spoke to the original intent
8 of the statute, there is a lot to be said for those
9 comments. I think they are right in terms of what
10 the original intent of the law and criteria were.
11 But, furthermore, I think you need to consider that
12 what Talbot County did in giving, as the county
13 attorney said, a blank check to municipalities,
14 measured in hundreds of acres of lands that could be
15 annexed and automatically have growth allocation go
16 with them, that was unique. That's a situation that
17 I don't think was repeated anywhere else in the
18 State of Maryland.
19 And so it would be, I think, moving
20 Talbot County and the municipalities in Talbot
21 County more back into the uniform and consistent

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1 approach that characterizes the implementation of
2 programs throughout the Chesapeake Bay region of
3 Maryland to approve 933 as an amendment to the
4 Talbot County program.
5 I'd be happy to answer any questions.
6 PANEL MEMBER BLAZER: Thank you, Mr.
7 Deming. Any questions of Mr. Deming? Great. Thank
8 you. Christopher Britton. Mr. Britton?
9 MR. ALSPACH: May I take Mr. Britton's
10 spot since I deferred to Mr. Deming.
11 PANEL MEMBER BLAZER: You're Mr. Alspach?
12 MR. ALSPACH: Yes sir.
13 PANEL MEMBER BLAZER: Real quick.
14 MR. ALSPACH: Well, I'll wait if you –
15 PANEL MEMBER BLAZER: No, go ahead. Come
16 on up.
17 MR. ALSPACH: Good evening.
18 PANEL MEMBER BLAZER: Go ahead. State
19 your name and affiliation.
20 MR. ALSPACH: Yes, sir. Good evening,
21 members of the Panel. My name is Tom Alspach. I'm

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1 a resident of Talbot County. I am president of
2 Talbot Preservation Alliance, which is a nonpartisan
3 volunteer citizens organization. We have some 300
4 active members who are involved in and concerned
5 with growth and development issues in the county.
6 We take an active role in development projects; we
7 testify at hearings; we, from time to time, hire
8 consultants, when necessary, to offer expert
9 testimony; and we've been involved in a number of
10 the projects that you've heard a little bit about
11 tonight.
12 What I would like to do is just shift the
13 focus a little bit and talk to you briefly about the
14 specifics of a couple of projects that we've had
15 here in Talbot County that, on the one hand, are
16 examples of how 933 would work and how it has -- how
17 762 has worked effectively, we believe, and also an
18 example of why 933, in fact, is needed very much in
19 this community.
20 The earlier speakers from the towns, I
21 think, uniformly expressed reservations about 933.

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1 In fact, I think they went further than that. I
2 think it's quite natural and to be expected that the
3 towns would prefer not to have Talbot County
4 involved, quite frankly, in their decision making on
5 growth issues.
6 I respectfully suggest to you that the
7 Critical Areas law obligates the County to be
8 involved, notwithstanding that there may be some
9 necessary tension as those issues are worked
10 through. But that tension can be a good thing
11 because many times it can produce a much better
12 result. We've had that experience in Talbot County.
13 You've heard some testimony about what's
14 known as the Easton Village project, which is a site
15 at the corner of Route 33 and the Easton bypass.
16 That site also happens to be at the very head of the
17 Tred Avon River. The Tred Avon River is listed as
18 an impaired river by the E.P.A. We've had
19 independent analysis done of the water there. The
20 water off that site basically is unsafe to go into;
21 there's a serious problem with all sorts of

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1 pollutants, in particular hydrocarbons.
2 Now, as a result of the joint process
3 that 762 put into place, as you've heard tonight,
4 Talbot County also was involved in the approval of
5 growth allocation for that project. And I think one
6 of the speakers stated that Talbot County
7 effectively had extracted a million dollars worth of
8 road improvements for Glebe Road as a result of
9 their involvement in the project. That's not
10 exactly correct.
11 It wasn't Glebe Road. There were monies
12 that the developer agreed to pay as a result of the
13 County's involvement in the project, and they are
14 monies that are specifically directed towards
15 improving the circulation and flow at the part of
16 the road that passes along the Tred Avon River. Why
17 is that important?
18 One of the objections that we, the Talbot
19 Preservation Alliance and Talbot River Protection
20 Association, had to this project was that there's a
21 massive cuing problem at that intersection;

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1 automobiles back up there, there's hydrocarbons that
2 are coming off those vehicles, they're going right
3 into the river, and the results are obvious in the
4 tests that have been done.
5 The objective and the accomplishment of
6 the County Council in reviewing the growth
7 allocation request was to require that developer to
8 do something about that situation to try to improve
9 the traffic situation there that, in turn, would
10 reduce the hydrocarbon emissions into that river.
11 And that's a good result. And that would not have
12 happened, I submit to you, if we did not have this
13 process of joint review. There were some other
14 improvements to the project that occurred as a
15 result of joint review. I won't take you through
16 all them.
17 But I want to emphasize to you that this
18 fear that you are hearing from the towns that
19 somehow this process will halt their growth in its
20 tracks is utterly unfounded. All the evidence to
21 date is just to the contrary. There has been no

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1 instance of Talbot County under 762 denying growth
2 allocation that has been requested. All their
3 involvement has done is to improve the growth
4 allocation application.
5 There was another example besides Easton
6 Village that was on the board earlier tonight, where
7 the County was involved in the process. And as a
8 result of that joint review we got a 54-acre
9 easement on property on Oxford Road that will be
10 perpetual as part of negotiations for, I believe, 40
11 acres of growth allocation.
12 So these are good things that come out of
13 this process, and these are reasons why we believe
14 this process should be expanded to include the other
15 municipalities in the county who are on the rivers.
16 It's very important to remember that the
17 growth allocation decisions made by the
18 municipalities affect everyone in the county, they
19 affect everyone's Critical Area.
20 We have a big problem with the Miles
21 River. What happens with growth allocation in St.

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1 Michaels affects everyone who uses the Miles River
2 and the Critical Area around St. Michaels, whether
3 they be watermen, tourists, people who live there or
4 folks just passing through.
5 Now, I told you I'd give you an example
6 of why 933 is needed, and I'm going to do that. You
7 heard some testimony to the effect that this County
8 Bill is presumably driven by this Midland project in
9 St. Michaels. I submit you to that's not the case.
10 There is a much broader problem than that, and it's
11 illustrated by another annexation and growth
12 allocation that was just approved by the Town of St.
13 Michaels recently.
14 What I'm showing you is a map of the Town
15 of St. Michaels. This is the Town of St. Michaels,
16 this light yellow area. Recently St. Michaels
17 annexed, by doing what they call a pipe stem,
18 actually, everything in the gold here. So they
19 brought this into the Town and then they awarded
20 growth allocation. They awarded growth allocation
21 for this property. It hasn't come to you yet. I've

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1 heard some rumors it may be withdrawn. I don't know
2 the ins and outs. But that was annexed and growth
3 allocation was awarded to that property.
4 Now, what is the planning rationale for
5 that? You heard from the Department of Planning
6 tonight about their concerns about Smart Growth,
7 driving development into the towns. This is just
8 the opposite from that.
9 You heard the attorney for St. Michaels
10 talking about not wanting to extend sewers, not
11 permitting commercial sprawl, and requiring
12 development to occur in and around municipalities.
13 That's not what they're doing. They are putting an
14 annexation out in the middle of Talbot County. This
15 annexation – the Critical Area in this annexation
16 is completely surrounded by county Critical Area.
17 The blank line is the Critical Area. This is all
18 county Critical Area. They had decided to put this
19 property, this annexation, out here in the middle of
20 the county.
21 I submit to you that if a municipality is

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1 going to engage in this kind of planning, this kind
2 of growth, it is absolutely essential for the people
3 who live in this county on both sides of this
4 project to have some say in what they do and
5 decisions that are made with regard to growth
6 allocation. So that is, I think, a very clear
7 example of why 933 is needed.
8 What I'd like to do – I know that time
9 is running short, so I'll cut my remarks short.
10 I've got a lot more to say, but I won't go on.
11 PANEL MEMBER BLAZER: Thank you.
12 MR. ALSPACH: I would like to submit this
13 for the record, though, if I may, because I think
14 this is probably as good a graphic example as you
15 are going to see of why 933 should be approved by
16 the Critical Area Commission.
17 Thank you very much for the time.
18 PANEL MEMBER BLAZER: Thank you, Mr.
19 Alspach. Gretchen Panuzio.
20 I would like to say real quick, while
21 Mrs. Panuzio is coming up – I think I'm saying that

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1 right. I don't if I am.
2 MS. PANUZIO: And you are.
3 PANEL MEMBER BLAZER: We have got about
4 15 more people and it's about 9:30 right now, so if
5 somebody has said something that you would agree
6 with, you can just say, I agree with that speaker
7 before, and try to address some of the new issues
8 that may come up or that you want to present.
9 MS. PANUZIO: My name is Gretchen
10 Panuzio, P-A-N-U-Z-I-O. I live at 708 Riverview
11 Terrace in St. Michaels, Maryland.
12 My husband, Nicholas Panuzio, asked me to
13 read this letter on his behalf tonight. He had to
14 be out of town and was not able to come. But he is
15 a former mayor of Bridgeport, Connecticut, and he
16 has a viewpoint that is a little different from some
17 of the people.
18 He said, gentlemen and ladies, I am sorry
19 that I will not be able to attend your hearing at
20 the Easton School auditorium because I will be
21 traveling to Connecticut on business. I will attend

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1 your meeting concerning St. Michaels' Midland
2 request next week.
3 I am submitting this letter for the
4 record because of my concern about the process that
5 was used by the County Commissioners in their
6 enactment of Bill 933.
7 As a former mayor of a large community in
8 an urban setting, I am concerned about the need to
9 maintain the rural and small community environment
10 that we all love in Talbot County. I did not move
11 here to have another Northern Virginia evolve.
12 I know that growth of some nature is
13 going to take place and I am interested in positive
14 growth. If there is anyone that believes that
15 growth can be stopped, they are wrong.
16 While I live the county, my home is one
17 block from the city line of St. Michaels. I believe
18 that I have some knowledge of the concerns of the
19 people of St. Michaels. I would like to express my
20 concerns for the following reasons:
21 Number one. The approval of Bill 933 was

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1 done without a public hearing and was rushed through
2 to stop St. Michaels from making their own decisions
3 on the Critical Area decision. This was a complete
4 reversal of many years of having the local towns
5 handle their own decisions.
6 Number two. If the towns do not have the
7 ability to manage their own growth, then they will
8 not be able to have managed growth which will
9 increase their tax base. Consequently they will not
10 be able to support the services that are required
11 without killing the local residents with high taxes.
12 The tax burden on the residents of the town is twice
13 as much as that of the county.
14 Number three. It removes growth
15 allocation from the towns that have used it
16 judiciously and have come to rely on it for projects
17 under consideration. It is saying to the local
18 communities we will manage your growth and control
19 your tax base, but you can increase taxes to
20 maintain services.
21 Number four. I believe that it runs

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1 contrary to Critical Areas regulations which require
2 the counties to cooperate and accommodate the towns.
3 It is also not helpful to good growth management --
4 (Change audiotape)
5 -- which says to keep all growth near the
6 towns so that services such as sewers and water can
7 be handled more efficiently.
8 Number five. The County decided many
9 years ago that the best way to handle these actions
10 were for the people closest to the situation to make
11 those decisions. Now because of an attempt to
12 control what local citizens want, the County has
13 reversed it traditions which have worked well.
14 Citizens should make the decisions for their
15 communities, not people who live outside the
16 community.
17 I hope that the Critical Area Commission
18 will reject Bill 933 and allow the local communities
19 to control their own destinies. If not, perhaps the
20 County should come up with a taxing system that says
21 if the county is going to control the economic

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1 development of the towns, then they will spread the
2 cost of the services throughout the county and have
3 everyone share in the taxes. I do not believe that
4 those who oppose any growth will want that to be
5 done.
6 Sincerely, Nicholas A. Panuzio.
7 I'll be happy to give this to you for
8 your records.
9 PANEL MEMBER BLAZER: Appreciate it.
10 Thank you. Gene Mechling. Mr Mechling.
11 FROM THE FLOOR: He left.
12 PANEL MEMBER BLAZER: Okay Jay Corvan.
13 MR. CORVAN: How do you do. My name is
14 Jay Corvan. I live in Trappe, Maryland, and I'm a
15 local architect.
16 I'd just like to comment very briefly
17 about both of the bills under consideration.
18 First of all, I believe that the
19 antagonism that's being experienced between the
20 County and municipalities is long founded and very
21 deep and, unfortunately, I think that they need to

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1 work on resolving their differences.
2 I believe that the bills under
3 consideration will actually help along those lines.
4 I think that when you are thinking of – really go
5 back to realize what this might have been in the
6 governmental sense, I believe it might amount to
7 something like the checks and balances that our
8 government actually experiences in the United
9 States. So I don't think this is that unusual.
10 I'd also like to say that I believe that
11 if the County participated in a master plan, which
12 it currently does not have underway, that the growth
13 allocations could be considered by the
14 municipalities during that master-planning process,
15 and we wouldn't be experiencing this problem now if
16 we had that master plan in place. So I think this
17 is an important aspect. And perhaps you, as a
18 committee, might be able to recommend to the county
19 and the municipalities to undergo that process.
20 Thank you.
21 PANEL MEMBER BLAZER: Thank you, sir.

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1 Russell Dize.
2 MR. DIZE: Mr. Chairman, members of the
3 committee, I am Russell Dize, vice-president of
4 Maryland Watermen's Association, and I probably have
5 a different slant on it than most people here.
6 I'm really interested in the Critical
7 Areas. As we see more growth we see more problems
8 with the rivers and the bay. We're fighting hard
9 now to eliminate nitorgen that's going into the bay.
10 And with more growth allocation in the area around
11 St. Michaels, it affects us greatly in the Tilghman
12 area, which I'm from, as we work the waters of Miles
13 River and other rivers in Talbot County.
14 Last year they had a sewage spill in St.
15 Michaels that went into the Miles River and shut the
16 river down two weeks. That caused our watermen two
17 weeks of work. That's pretty difficult to handle.
18 With all these new houses going on, we
19 just want to make sure that they'll be handled, that
20 the effluent will be handled.
21 Finally the Chesapeake Bay Foundation has

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1 taken up the nitrogen issue and, as some of you may
2 know, the Chesapeake Bay from Potomac River to above
3 the Bay Bridge has a huge problem with low oxygen
4 coming from the nitrogen. And there are no specific
5 standards that these sewage treatment plants have on
6 nitrogen release. They are getting some guidelines
7 now, but there haven't been any specific numbers put
8 on the nitrogen release.
9 So it affects us greatly. We're like –
10 the watermen now are like the miners' canary. When
11 you see us disappearing, you know you've got a
12 problem. We're disappearing.
13 We need to control it, and I believe 933
14 will help, because if you get below St. Michaels,
15 anything from St. Michaels down, all the little
16 communities, Tilghman, Claiborn, Whitman, McDaniel,
17 Bozman, Neavitt, we are controlled by the County, so
18 we think the County would have a better idea of the
19 complete residents in the area than the Town of St.
20 Michaels. Thank you.
21 PANEL MEMBER BLAZER: Thank you, Mr.

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1 Dize. John Hurt.
2 MR. HURT: Chairman Blazer, members of
3 the Panel, members of the staff, my name is John
4 Hurt. I reside at 15 Londonderry Drive in Easton.
5 I'm here tonight as president-elect of
6 the Mid-Shore Board of Realtors, representing our
7 board and over 500 members.
8 And we are really interested in managed
9 growth, well planned and well thought through that
10 will benefit all who live and love the mid-Shore
11 area.
12 We believe that the Critical Area law as
13 set forth in the Natural Resources article of the
14 Maryland Annotated Code, nor the local program
15 criteria contained in COMAR give county government
16 the power to control or limit planning, zoning or
17 subdivision regulation within local municipality
18 borders.
19 Both legislation and case law have
20 regularly declared that municipalities have
21 exclusive planning, zoning and subdivision powers

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1 within their borders. The reason for this should be
2 clear. Local municipalities are the best judge of
3 what is appropriate for them.
4 I'm just going to read just a couple
5 excerpts out of this statement and then I'll
6 conclude.
7 The Mid-Shore Board of Realtors strongly
8 opposes the approval of Talbot County Bill 933. It
9 effectively removes planning and zoning powers from
10 the towns due to the fact that the majority of the
11 land within the town is within the Critical Area --
12 -- Sid Campen said that only 5 acres are out -- or
13 are not Critical Area in the Town of Oxford -- thus
14 the County would have control of most growth within
15 the towns. This is clearly contrary to both
16 Maryland law and to common sense.
17 The bill has created a strong adversarial
18 relationship between the County and the towns.
19 Russell mentioned that this is probably
20 been going on for some time. It is. But this
21 certainly doesn't do anything to alleviate that.

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1 It's also clearly contrary to Maryland law, which
2 requires counties to work in coordination and
3 cooperation with the municipalities to plan and
4 establish for growth. And 933 is a far-reaching
5 effort to take complete control over one particular
6 project.
7 Good legislation demands that those who
8 will be affected have a voice and that their voice
9 be heard and considered. If Bill 933 is allowed to
10 take effect, this will not be the case. Not only
11 will the individual towns suffer a loss, but those
12 who have dealt with the towns in good faith will
13 lose also.
14 It's interesting that Mr. Dize summarized
15 his remarks by saying 933 would be a good vehicle to
16 control growth. Quite frankly, I believe that's the
17 objective. Thank you.
18 PANEL MEMBER BLAZER: Thank you, Mr.
19 Hurt. Callum Bain.
20 MR. BAIN: I'm Callum Bain, 9704 Bent
21 Tree Road, Easton. I'm a practicing physician, I'm

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1 an M.D. I'm also the president of the Talbot River
2 Protection Association.
3 Chairman Blazer, ladies and gentlemen, we
4 know by now that 933 takes away the growth
5 allocation rights from the municipalities.
6 Let me remind you that we are not talking
7 about canvas, we are talking about an area that is
8 42 percent water; 38 percent of our land is in the
9 Critical Area and, as you heard earlier tonight, 600
10 miles of waterfront. So what we are talking about
11 is not like canvas.
12 Our roads here are already inadequate.
13 During Isabel they flooded. Much of the development
14 around here is on very long, thin peninsulas. If
15 Isabel had been worse, it's doubtful if we could
16 have got the people out of some of these small
17 towns. Land does not exist in some areas to improve
18 these roads; it just isn't there.
19 We also know that the sewage is
20 inadequate in many areas around here.
21 Now, the Council, who are behind me, are

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1 responsible, the County Council that is, for the
2 health and safety of citizens.
3 We have massive growth going on here. We
4 have, for example, in St. Michaels, we have a jewel
5 highway, Route 33, with a very bad accident record.
6 And I've already alluded to the sewage
7 problems in this area, which I happen to know a lot
8 and can submit written documentation if you would
9 like it.
10 I think the County Council must control
11 development around here by Bill 933 to ensure public
12 safety; safety on the highways, safety through the
13 disposal of sewage. They cannot fulfill their
14 responsibility for health and safety without Bill
15 933.
16 So I ask for the support of the Critical
17 Area Commission in putting Bill 933 into operation.
18 Thank you.
19 PANEL MEMBER BLAZER: Thank you, Mr.
20 Bain. Jane Hubbel.
21 FROM THE FLOOR: She left.

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1 PANEL MEMBER BLAZER: Thank you. John
2 McGowan.
3 MR. MCGOWAN: My name is John McGowan,
4 and I live at 400 Water Street in St. Michaels.
5 I've owned the property and been a resident of St.
6 Michaels for more than ten years. I'm a former
7 member of the St. Michaels Historic District
8 Commission. My letter of February 29 is included in
9 the Critical Areas Commission 933 file. I'll be
10 brief.
11 I agree with most of the people who have
12 opposed 933. I oppose 933. When I look at the
13 actions of the Talbot County Council I shudder
14 because it reminds me of an experience that I had a
15 few years ago negotiating a check with the Chinese
16 communists, officials. After signing a lengthy
17 agreement for a joint venture and construction of a
18 large facility, we sent a large contingent of people
19 to China for planning and carrying out the
20 agreement, we spent a pile of money, only to find
21 out that the Chinese began to renig on the agreement

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1 immediately. It became clear to us that the rules
2 were being changed after the agreement. It was also
3 clear to us we were dealing with bugs, especially
4 the local level. I won't bore you with how we
5 figured out to get around this. But it brings up a
6 parallel with the way 933 was enacted, with no
7 discussion. People have alluded to cooperation and
8 so forth. I won't go back over that.
9 But after almost seven years of public
10 exposure through press releases, press accounts,
11 public meetings, readily available copies of the
12 proposals, the Talbot County Council all of a sudden
13 late last year discovered the existence of the
14 proposal for the Miles project. They must have been
15 hearing voices, demon voices maybe. They certainly
16 were hearing voices.
17 It's my belief that several members of
18 the Council should have recused themself, and this
19 933 would never have passed. I say that because of
20 the close association with individuals and groups
21 that are opposed to this project. But that's for

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1 another day.
2 I would ask this Council -- excuse me --
3 panel to not allow 933 to be enforced, enacted, and
4 that the growth allocation be restored to St.
5 Michaels. Thank you.
6 PANEL MEMBER BLAZER: Thank you, Mr.
7 McGowan. John Wolfe.
8 MR. WOLFE: Good evening. My name is
9 John Wolfe. I reside at 246 Perry Cabin Drive, St.
10 Michaels, Maryland. I'm not an attorney and I'm not
11 going to quote COMAR. What I am going to try to do
12 is appeal to your logic.
13 We have a rather unique situation in
14 Talbot County compared to at least where I've lived
15 other places in my life. We have shared
16 responsibilities for key items of infrastructure.
17 For example, in St. Michaels the wastewater
18 treatment is not under the control of St. Michaels,
19 it's a County responsibility; schools are a County
20 responsibility; many roads that impact on the St.
21 Michaels area are County.

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So what sense does it make to have a municipality have unilateral control over growth allocation when it impacts key infrastructure items for which they do not control. That's why a cooperative interactive process makes sense. It's local. It's not COMAR. I ask you to support Bill 933. Thank you.

PANEL MEMBER BLAZER: Thank you, Mr. Wolfe. Tom Hughes.

MR. HUGHES: I don't know what happened to your batting order, but I thought I was third to sign up this evening. So we'll go from here.

My name is Tom Hughes. I'm representing the Talbot River Protection Association.

Members of the Critical Area Committee, I am speaking to you this evening on behalf of the board and membership of the Talbot River Protection Association, also known as TRPA, in support of Bill 933. I'm one of the founders of this organization and I'm still on the board of directors.

TRPA was founded in 1996 to both study

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the condition of our local waters and to insist that all environmental laws be followed in order to protect and improve our rivers.

In 2002 I was appointed by the Talbot County to an ad hoc committee to review its new Critical Areas regulations. I was also appointed by the County in 2001 to both a regional and Steering Committee for the review of our Comprehensive Plan. The product of this two-year effort is currently under review by Talbot's Planning and Zoning Commission before being sent to the County Council.

My experience in all these endeavors has given be broad insight into two areas of Talbot County's life that are germane to this evening's discussion. One is the past and present condition of our rivers, and the other is public perception of same and what they want done about it.

I have been a conservationist for most of my life and continue to be distressed at the lack of progress in saving the bay. We have made countless promises to our unique estuaries and have yet to

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deliver on them. Somehow these promises and time tables always seem to get pushed back further into the future and our environment suffers as a result.

The waters of Talbot County are now in worse condition than they were when the Critical Area law was passed. How do I know this? Over the past several years TRPA, in conjunction with the University of Maryland at Horn Point and others, has assembled a unique database of water quality data covering all of Talbot's waters. These data, assembled from both public and private sources paints a sorry picture of the health of our local waters. All of this data can be accessed on the Web at www.hpl.unces.dbu and then click on the TRPA Creek Watchers link.

Wholly objective scientific data proves that water quality in Talbot County is not improving as required under federal, state and local laws, and in many instances it is actually getting worse.

As a participant in Talbot's Comprehensive Plan review I was also made well aware

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that the citizens of Talbot County want their rivers improved. They, like other residents of the mid-Shore, place a far greater value on improving their environment than catering to poorly planned development.

The majority of residents of Talbot, as represented by the regional comprehensive planning committees, also want better cooperation between the town and County governments. They realize that actions of one entity have affects on the other that must be rectified prior to decisions being made that have long-term consequences for the County as a whole.

Forty-two percent of Talbot County is water, 38 percent of our land is in the Critical Area. The Critical Areas law has more significance for Talbot County than any other subdivision in Maryland.

What the incorporated towns of this county do often have effects that go beyond its own boundaries. Since any project undertaken in the

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1 Critical Areas of one of our towns will ultimately
2 affect the waters of the county, it would seem
3 prudent for both entities to act in a coordinated
4 fashion to ensure the best results for all the
5 citizens of the county. Indeed, the County's
6 comprehensive water and sewer plan already
7 necessitates this in matters relating to water and
8 sewer. All municipal sewer systems in the county
9 discharge directly, or in some cases indirectly,
10 into the county waters.
11 Good government requires cooperation.
12 And in 2004, Talbot citizens, as represented in the
13 new county Comprehensive Plan draft, demanded the
14 rivers of Talbot County belong to all of us and
15 their improvement is crucial to our economy.
16 Bill 933 is a wholly legitimate response
17 to a majority of the citizens of Talbot County who
18 demand both cleaner rivers and better cooperation
19 between local governments in order to accomplish
20 this long overdue goal.
21 More than 20 years ago the State of

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1 Maryland declared through the new Critical Areas law
2 that -- quote -- the shoreline and adjacent lands
3 constitute a valuable, fragile and sensitive part of
4 this estuary system where human activity can have a
5 particularly immediate and adverse impact on water
6 quality and natural habitats. The capacity of these
7 shoreline and adjacent lands to withstand continuing
8 demands without further degradation to water quality
9 and natural habitats is limited. End of quote.
10 The object of the Critical law -- and
11 only one previous person has even mentioned that --
12 the object of the Critical Area law was to limit
13 activity in the thousand feet of land near the water
14 in order to clean up the bay and provide habitat.
15 Members of the Commission, the rivers of
16 Talbot County are telling us that we have failed
17 totally in our mission to clean up the bay.
18 People ask TRPA from time to time why
19 they continue to see shorelines being cleared and
20 developed. They thought there were laws against it.
21 We try to explain growth allocation to them, but in

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1 the end many come to think it is all a farce.
2 Indeed, how can a homeowner be expected to take
3 seriously Talbot's new hundred-foot residential
4 buffer requirement, when a developer is able to call
5 his hundred-foot buffer a waterfront park with all
6 the activity it entails?
7 Your Commission has an opportunity here
8 tonight to support a County Council that, with the
9 backing of the majority of the citizens, wants to
10 make a new beginning in its efforts to clean up our
11 precious rivers while seeing to it that responsible
12 development can still go forward.
13 The status quo is no longer acceptable.
14 The Talbot River Protection Association urges your
15 support of Bill 933. Thank you.
16 PANEL MEMBER BLAZER: Thank you, Mr.
17 Hughes. Judith Amdur.
18 MS. AMDUR: I'm Judith Amdur of Bozman,
19 and I'm reading a statement submitted by Russell
20 Trane, who is unable to attend the meeting this
21 evening. Russell Trane is the former administrator

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1 of the Environmental Protection Agency.
2 Dear Members of the Panel: As the owner,
3 with my wife, of a 175-acre farm in Bozman,
4 Maryland, I'm writing in strong support of Bill 933.
5 It is essential that critical development issues not
6 be left to the sole discretion of a local
7 jurisdiction such as St. Michaels. Large-scale real
8 estate development inevitably impacts a far wider
9 region than just the town immediately involved.
10 Sewage treatment and nutrient runoff into
11 local waterways, for example, will affect wide areas
12 of Chesapeake Bay. Increased traffic congestion at
13 a bottleneck such as St. Michaels will have a direct
14 impact on the safety, economic well-being and
15 general quality of life of those of us who live in
16 the Bay Hundred area.
17 It makes total good sense for the County
18 to be involved in such decision making as assured by
19 Bill 933. I urge your support of that Bill.
20 Sincerely, Russell Trane.
21 PANEL MEMBER BLAZER: Thank you, Mrs.

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1 Amdur. Robert Amdur.
2 MR. AMDUR: Thank you. I'm Robert Amdur
3 of Bozman.
4 I suggest that the reason we are here
5 tonight is the fact that there has been little
6 cooperation or sensitivity by the Town of St.
7 Michaels to the citizens of the county.
8 Talbot County Council, acting in the
9 spirit and the best interest of the Critical Area
10 law and regulations, recently passed Bill 933. The
11 Council recognized the impact that growth
12 allocations that are granted for intensive
13 development could have on a county infrastructure
14 and upon the residents of the areas beyond the Town
15 limits.
16 I believe that the County Council should
17 have a role in determining how growth in the
18 Critical Areas will be used when it affects county
19 residents. Bill 933 will accomplish that objective,
20 and I urge the Commission to endorse this ordinance.
21 PANEL MEMBER BLAZER: Thank you, Mr.

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1 Amdur. Jackie Fletcher.
2 MS. FLETCHER: I'm Jackie Fletcher.
3 24640 Nightclub -- Yacht Club Road, St. Michaels,
4 Maryland.
5 After listening and analyzing everything
6 both sides have to say, I strongly encourage you to
7 approve this bill. It's a good thing to do.
8 And I think there might have been some
9 misunderstandings or mis -- all this bate
10 (phonetically) made in the past. But go forward so
11 that we can do a responsible thing for the county,
12 for the water, for the bay, for the people and for
13 our next generation. And that's all I have to say.
14 Just something else I'd like to mention.
15 As a token Chinese here, I would like to say that we
16 grew our learning of our war from (unintelligible).
17 We use the same Chinese character for crisis as well
18 for opportunity. So we need to understand the
19 issue. Every issue is (unintelligible) dimensional,
20 particularly when we talk about 933. So I urge some
21 of you, you may be opposed to this issue, take a

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1 look at the benefit of what the issue will bring to
2 all of us. As a concerned citizen I encourage you
3 to approve this Bill. Thank you.
4 PANEL MEMBER BLAZER: Thank you. Lisa
5 Mullens Thompson.
6 MS. THOMPSON: I am a town resident of
7 St. Michaels, and I'm concerned about the possible
8 unintended consequences of Bill 933.
9 Proponents of 933 claim that they want to
10 encourage a more deliberate process; it helps to
11 preserve the farmlands and the health of the bay.
12 But I fear 933 will do just the opposite.
13 This Bill has the effect of rewarding
14 towns that quickly granted growth allocation, while
15 punishing the towns that took their time to more
16 carefully deliberate both the development proposals
17 and future growth.
18 Many backers of 933 say they ultimately
19 want to take growth allocation away from St.
20 Michaels and Oxford and give it to Easton. Such a
21 move would only reinforce this perception.

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1 The message to towns and other Critical
2 Areas will be clear; in the future he who hesitates
3 is lost. Better to rush a development and the
4 implementation while the growth allocation is still
5 available than to risk losing the opportunity
6 altogether. That is not an environment which
7 encourages responsible stewardship or good town
8 planning.
9 Everyone here tonight agrees that we want
10 to preserve farmland and save the bay. But I am
11 concerned the ultimate effect of 933 will be to
12 discourage denser developments around existing town
13 centers with access to public water and sewer and,
14 instead, it will encourage large-lot development
15 that will eat up our rural landscape and require the
16 installation of more septic tanks. That result
17 would be the exact opposite of what we all say we
18 want to accomplish.
19 In short, I urge the Commission to be
20 aware of these unintended consequences and to
21 respect the good faith that has been made by our

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1 town officials.
2 PANEL MEMBER BLAZER: Thank you. Allen
3 Silverstein.
4 MR. SILVERSTEIN: Mr. Chairman, members
5 of the Commission, thank you for the opportunity to
6 appear before you. My name is Allen I. Silverstein.
7 I reside at 7233 Francis Street in Easton, Maryland.
8 I'm here representing the Talbot County Chamber of
9 Commence, an 850 member organization, and I stand
10 here this evening in opposition to Talbot County
11 Council Bill 933. I think you've heard a lot of
12 good reasons why that Bill should not be passed.
13 (Change audiotape)
14 And due to lateness of the evening,
15 that's all I have to say. Thank you very much.
16 PANEL MEMBER BLAZER: Thank you. Robert
17 Fletcher.
18 MR. FLETCHER: My name is Robert
19 Fletcher. I'm from Yacht Club Road, St. Michaels,
20 just outside the Town and just barely in the county.
21 I probably live closer to the development that's

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1 been in question than anybody who lives in St.
2 Michaels, 40, 50 feet.
3 I want to pass on repeating the several
4 comments that I would have made about runoff and
5 roads and the terrible condition that we've allowed
6 the Miles River to get into, along with its creeks,
7 on one of which I live.
8 I do want to take exception to the idea
9 that's been put forward by two, perhaps three, of
10 the speakers in opposition to 933, to say that
11 somehow that the county surprised them with 933.
12 933 was well publicized, it had hearings before the
13 County Planning Commission, Planning and Zoning
14 Commission and, of course, it was publicized before
15 it went to the County Council. There has been no
16 surprise.
17 Also, testimony you've heard tonight from
18 people who complain that the county didn't come to
19 them and stop them from swinging on the rope while
20 they spent a million dollars on legal fees and
21 consultants. I wonder why the Town didn't approach

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1 the County.
2 Is the County supposed to know when to
3 jump into a town's business, as they are asking it
4 not to do now, and keep them from dangling?
5 I think that there has to be much better
6 cooperation.
7 I sat through the hearings, as I
8 mentioned, in the county, and it became clear that
9 many of the county officers felt that the dialogue
10 had basically failed without the presence of a Bill
11 such as 933.
12 I strongly support 933. I think that the
13 county people and the St. Michaels and the people of
14 the other towns need to work closer together to
15 preserve our fine area. I thank you very much.
16 PANEL MEMBER BLAZER: Thank you, Mr.
17 Fletcher. Steve Florkewicz.
18 MR. FLORKEWICZ: I'm Steve Florkewicz.
19 I live in St. Michaels, Incorporated, the Town of
20 St. Michaels.
21 And I'd like to urge your support of Bill

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1 933. I feel it's quite necessary in order to take
2 in the entire area of the county when growth
3 allocation decisions are made.
4 One interesting thing that came to my
5 mind when this hearing announcement came out was
6 back five years I had written a letter to the St.
7 Michaels Commissioners requesting that they consider
8 returning at least some of the 245-acre growth
9 allocation to the county, and part of the reason was
10 because the 245 was way out of balance with the
11 other towns, Oxford only getting 195, Easton only
12 getting 150. And when you look at the area of St.
13 Michaels, there was not 245 acres available for
14 development in St. Michaels. So they were depending
15 on annexing county land in order to be able to use
16 that 245 acres.
17 So I think, based on the fact that they
18 were figuring on taking over county land, that the
19 county should also have a strong voice in how the
20 growth allocation is allotted. Thank you very much.
21 PANEL MEMBER BLAZER: Thank you, sir.

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1 Elizabeth Jones.
2 MRS. JONES: Good evening. My name is
3 Elizabeth Jones, and I live just outside of St.
4 Michaels.
5 I want to take exception to a statement
6 earlier that there was no public hearing for Bill
7 933. Actually there was a public hearing and
8 actually in preparation for that public hearing a
9 rather remarkable thing happened. Forty activists
10 got together, strongly supporting this Bill, and
11 together we decided that we had just a week but in
12 that week we were going to see what kind of support
13 there was beyond ourselves.
14 We started collecting signatures on
15 Tuesday morning; we finished the following Monday,
16 that's when the stragglers came in. There was
17 amazing outpouring of support from county residents
18 and town residents alike in favor of Bill 933.
19 We realized that we are blessed to live
20 where we live and we realized that we are facing
21 tremendous development pressures and, therefore, the

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1 idea of having a safeguard system where towns and
2 county work together to make sure that we get
3 sustainable growth, not detrimental growth, is in
4 all our interest.
5 In the course of that week, I'm going to
6 tell you that probably 90 percent of the people who
7 we approached, haphazardly, I have to say – this is
8 as we were gearing up for Christmas – 90 percent of
9 the people signed on to a petition in favor of Bill
10 933. All told, we raised – or we got eleven
11 hundred signatures and in addition to a lot of
12 emails from folks e-mailing in from far away.
13 I have done some analysis of these
14 signatures, and it's really interesting that they
15 not only come from the Bay Hundred, 25 percent of
16 them are registered voters within the Town of St.
17 Michaels. We also have big representation from the
18 Town of Easton itself, the incorporated area. We've
19 got people from Trappe, we've got people from
20 Oxford, eleven hundred, all told, in less than a
21 week said we want Bill 933. Thank you.

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1 PANEL MEMBER BLAZER: Thank you. Mr.
2 Doyle.
3 MR. DOYLE: My name Edward Doyle. I'm
4 from St. Michaels, Maryland.
5 Lucky for me, most of the comments I had
6 have been covered, and I won't go into those.
7 I just wanted to make one comment, just
8 listening to the presentations.
9 A lot of the argument that seems to be
10 coming against 933 from the towns and from others is
11 to impugn the motive of the County Council, to say
12 that the County Council used this as a back-door way
13 to get at the Midland development. None of that
14 addresses the substance of the issue; that is,
15 that's a smoke screen and a charet, a canard. To
16 imply that the County Council was acting out of
17 malice, I think, is a very bad example of an
18 argument. To even suggest that they are equivalent
19 to the communist Chinese is ridiculous.
20 So I think the point is that the
21 cooperation is necessary between the towns and the

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1 county in all of these issues because they share
2 common resources
3 One other thing is that these growth
4 allocations are a very valuable asset and they
5 reside within the towns of just a few hundred
6 people with a very small tax base. The enticement
7 to use those as a way to increase the funds of the
8 town or to be enticed by the developer in ways that
9 probably are not proper is a very serious and real
10 potential.
11 As an example, a developer can offer a
12 town a considerable amount of money for development
13 within a town of only 200 people. Additionally, as
14 with St. Michaels with the Midland project, you
15 heard Mr. Hickson say that they rejected it a number
16 of times until they just could not handle the cost
17 and the legal bills any longer and they acquiesced
18 and, among other things, to get out of that, a
19 thousand dollars per home built was offered by the
20 developer for, I think, 20, 30 years. That's a
21 pretty strong enticement to a small community.

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1 I think the advantage of having the
2 County involved removes that enticement and adds
3 some substance and consideration back to the whole
4 community so they can't be buffaloed and put over by
5 the deep pockets of the developer. Thank you.
6 PANEL MEMBER BLAZER: Thank you, Mr.
7 Doyle.
8 That exhausts our list of people who have
9 signed up.
10 MR. THOMPSON: Mr. Chairman, I did sign
11 up to speak on behalf of Strausburg family, and I
12 think it is important that we correct some
13 misimpressions that Mr. Alspach may have left with
14 you.
15 My name is David Thompson. I previously
16 addressed you on behalf of the Town of Trappe and
17 the Town of Oxford. I'm now addressing you on
18 behalf of Vance and Nancy Strausburg.
19 Vance and Nancy Strausburg own a 136-acre
20 farm here at the head of Broad Creek. This farm was
21 annexed by the Town of St. Michaels back in the

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1 fall.
2 It is, indeed, a pipe-stem annexation.
3 Ms. Mason's real boss, the Attorney General of the
4 State, has approved pipe-stem annexations in an
5 opinion that he wrote or that one of his staff
6 wrote, an opinion that the Town of St. Michaels
7 relied on and an opinion that the Strausburg family
8 relied on.
9 The use of this example by Mr. Alspach
10 presents a classic example of the kind of
11 contradictions we are faced with in land-use
12 planning.
13 The Strausburg annexation is final.
14 Growth allocation was granted by the Town of St.
15 Michaels under the Town of St. Michaels' growth
16 allocation process. And on October 1, 2003, the
17 Critical Area Commission approved that growth
18 allocation as consistent with all of the criteria.
19 It is adjacent to an LDA. The growth allocation
20 that was approved in this case was 20 acres.
21 In reliance upon the annexation and the

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1 growth allocation that was approved by this
2 Commission, the Strausburg family has donated to the
3 Town of St. Michaels a 75-acre conservation
4 easement, a conservation easement that permanently
5 protects and preserves the approach to St. Michaels
6 from the north; a conservation easement that
7 prevents the construction of homes on a 36-acre
8 portion of that parcel that is zoned by the County
9 Council as town residential, which would permit four
10 dwelling units per acre with water and sewer and one
11 dwelling unit per acre without water and sewer.
12 The Strausburg family, to preserve a
13 modicum of the value of their property, opted to
14 seek —the County, by the way, rejected their
15 proposal that the County process it under the
16 County's growth allocation process.
17 The Strausburg family went to the Town,
18 with which they have a long-standing relationship.
19 It was determined that they met the legal criteria.
20 They were annexed. The County government was given
21 notice of that annexation. There was an annexation

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1 hearing. No one from the County government showed
2 up.
3 Many of the people who spoke here tonight
4 in opposition to Bill 933 did speak at the St.
5 Michaels annexation of the Strausburg property and
6 they supported the annexation of the Strausburg
7 property, because everybody in this room knows that
8 a 75-acre conservation easement in consideration, if
9 you will, for 20 acres of growth allocation that
10 adds five dwelling units to a 136-acre farm that
11 could be developed with as many as 130, with water
12 and sewer and all that, or 36 additional homes on
13 the one home per one acre analysis was a good deal;
14 it was a good deal for the community, it was a good
15 deal for all of us who live in Bay Hundred, it was a
16 good deal for all of us who live in Bozman, where I
17 live, by the way, right next to Mr. Russell Trane.
18 It was a good deal for Russell Trane, who has put an
19 environmental easement on his property, as well.
20 If more people would do this we'd all be
21 better off because that's the real protection that

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1 we have. It's better than any zoning that changes
2 with the whim of whoever happens to be in office.
3 This 75-acre conservation easement was
4 approved because the Town of St. Michaels was given
5 the opportunity to use the annexation law, to use
6 the Critical Area criteria. It was approved by the
7 Critical Area Commission. And it is not an example
8 of something that needs to be stopped, it is an
9 example of something that needs to be encouraged.
10 Yet in Talbot County Bill 933, this is
11 one of the example used in one of the multiple
12 whereases as something that is bad. And as the
13 president of one of the conservation groups has told
14 you, we need to stop this; I think it's terrible
15 that people are giving these 75-acre conservation
16 easements out to the Town of St. Michaels. That's
17 nonsense.
18 There are many contradictions that we
19 have to deal with. Bill 933 would authorize, as
20 written, would authorize the County to invalidate
21 your decision granting growth allocation. The

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1 vested rights provision is intended to allow the
2 County to reach back and to take away any growth
3 allocation that has not been acted upon by
4 development.
5 So we talk about the unintended
6 consequences. This is a perfect example of a
7 conservation easement that could very well sit there
8 for years and years and years. There could be no
9 development of these five lots.
10 But yet what the County Council Bill
11 suggests to a landowner like Strausburgs is, you'd
12 better build them, you'd better build them quick,
13 because they want to take it away because a special
14 interest group believes this is bad.
15 It's not bad. It was a bad example. But
16 it's the right thing for our community, it's the
17 right thing for the protection of open space, and it
18 was a good thing that the St. Michaels Commissioners
19 did. I thank you.
20 PANEL MEMBER BLAZER: Thank you, Mr.
21 Thompson. Is there anybody else out there who did

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1 not sign up that would like to say something at this
2 point?
3 MS. ELLISON: Doctor Rebecca Ellison,
4 27350 Oxford Road. I live right outside of Oxford.
5 I have lived for 11 years in St. Michaels. I'm very
6 familiar with the situation with the Midland
7 Companies.
8 I hadn't really intended to speak, but I
9 would like to speak in favor of this Bill.
10 I'm sorry that there aren't more members
11 of the general public here. I want to say that I
12 was – slightly participated in Beth Jones'
13 impromptu petition.
14 I think that you really do need to know
15 that there is a great deal of citizen unrest here.
16 Everybody is being very polite and very few of us
17 have taken the gloves off. But I think you can see
18 that Mr. Thompson just had a nerve hit, and I think
19 that's because the most recent thing said, I think
20 I'd like to speak to that.
21 This pipe-stem thing, apparently they get

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1 some kind of contiguity to annex into St. Michaels
2 simply because this property is on the St. Michaels
3 Road. Where does it end? This property is a good
4 mile out of town.
5 I'm afraid that he may have struck a good
6 deal for the Town. But what about the property that
7 is between the pipe stem and town? Now they are all
8 going to scramble and they're maybe not going to be
9 so nice as the Strausburgs. It's a very bad
10 precedent.
11 And I would also like to amplify – I
12 think it was Mr. Doyle who said that the Town simply
13 needs the cash. I've watched this very closely, and
14 I was at most of the early – Midland I, Midland II,
15 Midland III. Now they changed the names, so they
16 start over with one again. Actually, I think we're
17 at five, even though it's Miles Point III.
18 It's unbelievable what went on in
19 November and December. These people did a scramble.
20 There's probably two meetings a week, including
21 practically Christmas morning.

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The only way to interpret the reversal is that they simply need the cash.

I'm sorry they twisted in the wind for all those years. And it did cost a million dollars. I think they raised the taxes three times.

I think I'd like to throw out some quick numbers from all the meetings I've been to. I think this project adds 60 percent to the size of the town. I think that's kind of a lot. No one yet has really addressed the ability of a developer to distinguish a traditional town. This town has been there for three-hundred-plus years. What will happen with a stroke of a pen, when you add 60 percent to the size of the residents of the town?

We have new people like this well-meaning lady from Connecticut. She's sort of a pro-town person, but maybe she doesn't know that the potential cost to the county of fixing the sewer INI. I don't remember what the other I is, but you know, the infiltration problem with the collection system. That's the weak point of the St. Michaels

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sewer. They don't know the extent of it. They have been blowing colored gas through it and other esoteric -- trying to find out what exactly is going on. The number I heard was $27 million. Somebody can correct me. But that's an obligation that falls on me as a county resident, and that's the sort of things, I think there are examples of that, whoever said let's look at logic.

The other number I'd like to throw out is I believe is eighteen hundred county residents live sort of upwind of St. Michaels' single road through town, which will be badly congested.

The State Highway Administration is allowing this development to have only entrance onto the St. Michaels Road, so there are, of course, four entrances onto Yacht Club Road, which is a county road. Why should the County -- I go back to the logic thing.

Thank you for your consideration. I suggest that this is really a popular idea. The time has come. Thank you.

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PANEL MEMBER BLAZER: Thank you very much. Are there any other comments about Talbot County's Bill 933?

MR. PULLEN: Mr. Chairman, if there are no other comments from the public, I would like to take this opportunity to thank the Panel and thank the speakers who have come tonight and stayed rather late to voice their opinion, and we appreciate that opportunity very much.

PANEL MEMBER BLAZER: Thank you. I want to thank you all, too, for being here tonight and spending a good part of the evening with us. You're actually done earlier than I thought we were. But I thank you for your civility and your patience and comments.

Going through, I do want to remind you that written comments will be accepted up until Monday, April 5, 2004, until the close of business on that day, and you can send those to the Critical Area Commission at 1804 West Street, Suite 100, Annapolis Maryland 21401.

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Any comments from the Panel members? (No response)

PANEL MEMBER BLAZER: Thank you all for coming. This closes the public hearing.

(The hearing adjourned at 10:25 p.m.)

10:25 p.m.)

I, David M. Schafer, a Notary Public in and for the State of Maryland, County of Wicomico, do hereby certify the foregoing a true and accurate record of the proceeding aforementioned.

As witness, my hand and Notarial Seal this 15th day of April 2004, at Delmar, Maryland.

David M. Schafer

DAVID M. SCHAFER
NOTARY PUBLIC
MY COMMISSION EXPIRES AUG. 2006
WICOMICO COUNTY, MD

Critical Area Commission

PANEL REPORT
May 5, 2004

APPLICANT:	Talbot County
PROPOSAL:	County Council Bill 933 Review and Reallocation of Growth Allocation for the Towns
COMMISSION ACTION:	Vote
COMMISSION PANEL:	Dave Blazer (Chairman), Bill Giese, Joe Jackson, Ed Richards and Gary Setzer
PANEL RECOMMENDATION:	Pending Panel Discussion
STAFF:	Ren Serey
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article §8-1809 (h)

DISCUSSION:

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

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

EXHIBIT
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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; <u>underlining</u> indicates language added to existing law by original bill; ~~strikethrough~~ indicates language deleted from existing law by original bill, and * * * indicates existing law unaffected.

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

- The applicable sections of the Critical Area Law and Criteria governing growth allocation.

- The effect of Bill 933 on other approved Critical Area Programs, program amendments, or program refinements.

- The interpretation of the growth allocation provisions of COMAR 27.01.02.06.A, particularly the provision that states, "When planning future expansion of intensely

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

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

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

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

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

1. To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

2. To conserve fish, wildlife, and plant habitat; and

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

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

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

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

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

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

GROWTH ALLOCATION COORDINATION BETWEEN COUNTIES AND MUNICIPALITIES
April 6, 2004

Anne Arundel County
(Currently undergoing comprehensive review, to be completed in April 2004)

The County allocated 11 acres of growth allocation to the City of Annapolis which represents five percent of the RCA lands within the City. The City controls the use of this growth allocation and may use it without County review or action. To date, the Commission has not reviewed any growth allocation applications within the City.

Baltimore County

Baltimore County does not have any municipalities with Critical Area Programs.

Calvert County
(Last comprehensive review completed February 1997, currently undergoing third round)

Calvert County allocated 100 acres of growth allocation to Chesapeake Beach and 20 acres to North Beach. The respective Towns control the use of this growth allocation and may use it without County review or action. To date, the Commission has not reviewed any growth allocation applications within the Towns.

Caroline County
(Comprehensive review initiated)

Caroline County did not allocate any growth allocation to the towns of Denton, Federalsburg, Greensboro or Hillsboro. The County did adopt procedures for the consideration and award of growth allocation, which are applicable to the Towns. The County would have to approve the use of growth allocation within any of the Towns. To date, no growth allocation has been used within the Towns.

Cecil County
(Last comprehensive review completed in July, 1994)

Cecil County did not allocate any growth allocation to the towns of Charlestown, Chesapeake City, Elkton, Northeast, Perryville, and Port Deposit. The County did adopt procedures for the consideration and award of growth allocation, which are applicable to the Towns. The County would have to approve the use of growth allocation within any of the Towns. When Towns approve growth allocation applications, they submit a request for growth allocation to the County with information about the project. To date, Charlestown, Northeast, and Port Deposit have not used any growth allocation, Chesapeake City has used 23.87 acres, Elkton has used 76.50 acres, and Perryville has used 58.66 acres.

Charles County
(Last comprehensive review completed in July 2001)

E. 1763

Charles County includes provisions in the County's Program stating that Indian H
the County divide growth allocation acreage on the basis of population, i.e. if Indian He

EXHIBIT
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3.5% of the population, then the Town is entitled to 3.5% of the growth allocation. The calculations must be updated regularly, especially when a growth allocation application is submitted. To date, Indian Head has used 9.00 acres of growth allocation.

Dorchester

(Last comprehensive review completed in February 2001)

Dorchester has allocated 240 acres of growth allocation to the City of Cambridge, 30 acres to Vienna, 20 acres to Secretary, and 20 acres to be used jointly by Church Creek, Eldoardo, Brookview, and Galestown. The respective Towns control the use of this growth allocation and may use it without County review or action. These allocations reflected coordination between the municipalities and the County to identify the growth allocation needs of the municipalities an amendment to the County's Critical Area Program which was approved by the Commission in July 2001.

Harford County

(Last comprehensive review completed in August 2001)

Harford County did not allocate any growth allocation to the Town of Havre de Grace; however, the County's zoning ordinance includes provisions for using growth allocation for land proposed to be annexed by a municipality. These provisions require the review of applications through the County's procedures.

Kent County

(Last comprehensive review completed in March 2003)

Kent County has allocated 82.78 acres of growth allocation to the Town of Betterton, 84.00 acres to Chestertown, no acreage to the Town of Millington, and 66.73 acres to the Town of Rock Hall. The respective Towns control the use of this growth allocation and may use it without County review or action. Once this acreage is used, the Kent County Growth Allocation Policy would apply. It states, "It is policy to grant growth allocation to the incorporated towns of Betterton, Chestertown, Millington, and Rock Hall." The County would be involved in the review of projects requiring growth allocation in excess of the initial allotment.

Prince George's County

Prince George's County does not have any municipalities with Critical Area Programs.

Queen Anne's County

(Last comprehensive review completed in April, 1996)

The County has set aside 189 acres of growth allocation for Centreville, and 160 acres for Queenstown. The respective Towns control the use of this growth allocation and may use it without County review or action. To date, Centreville has not used any growth allocation and Queenstown has used 15.06 acres. The County's Program states that, "The Queen Annes' County Critical Area Program may be amended to provide that the remaining acres of municipal set aside may be reallocated to the County if any municipal set aside is not assigned within five years." At this time, the County has not reallocated any growth allocation set aside for the municipalities. Additional growth allocation may be used by these Towns, as well as Church Hill and Queen Anne, on a project-by-project basis, subject to review and approval by the County.

St. Mary's County

(Last comprehensive review completed in July 2002)

The County allocated 4 acres of growth allocation to the Town of Leonardtown, which represents five percent of the RCA lands within the Town. The Town controlled the use of this growth allocation and used it in 1998 for the Tudor Hall Village Project. The Town has requested additional growth allocation from the County for another part of the Tudor Hall Project and the Leonardtown Landing Project. In the Tudor Hall Project, the Town become an applicant to the County and went through the same formal review and approval process as a private landowner. Since that time, the County has completed their comprehensive review and amended their growth allocation process. Now the Town requests growth allocation from the County Commissioners, and the Commissioners may approve the request if it is consistent with the County's comprehensive plan. The Town is not required to submit the request with a specific project; however, the most recent growth allocation request was made specifically to accommodate the Leonardtown Landing Project, and specific plans were provided to the County with the Town's request.

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Somerset County

(Last comprehensive review completed in December 1995)

Somerset County allocated 100 acres of growth allocation to Princess Anne and 100 acres to Crisfield. The respective Towns control the use of this growth allocation and may use it without County review or action. To date, the Commission has reviewed and approved the use of 17.12 acres of growth allocation within the Town of Crisfield.

Talbot County

(Currently undergoing a comprehensive review to be completed in 2004)

Talbot County allocated 155 acres of growth allocation to the Town of Easton, 195 acres to the Town of Oxford, and 245 acres to the Town of St. Michaels. The County's Critical Area provisions state that this reserved acreage shall be reviewed by June 1, 1993 for possible reallocation, and at least every four years thereafter. The respective Towns control the use of this growth allocation and may use it without County review or action. In May 2000, the County amended their Critical Area Program to provide for the award of supplemental growth allocation through a joint review process in which both the Town and County would participate. Easton has used 147.34 acres of its original allocation, plus an additional 156.0 acres through the "supplemental growth allocation" process. Oxford has used 15.22 acres of growth allocation, and St. Michaels has not used any growth allocation acreage.

Wicomico County

(Last comprehensive review completed in November 2001)

Wicomico County originally allocated half of its growth allocation to the City of Salisbury and the towns of Mardela Springs and Sharptown. The County's Program specified that after four years, any of this growth allocation that had not been used would become part of the countywide growth allocation pool. No growth allocation was used by Salisbury, Mardela Springs, or Sharptown during the four years, so all growth allocation has been consolidated in the countywide pool. At this time, the municipalities would have to request approval of the use of growth allocation by the County.

Worcester County – Chesapeake Bay
(Last comprehensive review completed in November 2003)

Worcester County did not allocate any growth allocation to the Town of Snow Hill. The Town must apply to the County to use growth allocation after the request is approved by the Town Council. The County reviews the application and holds a public hearing on the application. To date 1.63 acres of growth allocation have been used by Snow Hill.

Worcester County – Coastal Bays
(Program adopted in November 2002)

The only incorporated municipality in the Coastal Bays Critical Area of Worcester County is Ocean City. All of Ocean City is designated IDA, so no growth allocation would be needed unless additional land was annexed.

Critical Area Commission

SUPPLEMENT TO PANEL REPORT
May 5, 2004

APPLICANT:	Talbot County
PROPOSAL:	Comprehensive Review of Local Program, County Council Bill 933
COMMISSION ACTION:	Vote
PANEL MEMBERS:	Dave Blazer (Chairman), Gary Setzer, Bill Giese, Joe Jackson and Ed Richards
PANEL RECOMMENDATION:	Deny
STAFF:	Ren Serey
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article §8-1809 (j)

DISCUSSION:

I move on behalf of the panel to deny approval of Talbot County Bill 933 as an amendment to the County's Critical Area Program and to invite the County to work with the Commission and its staff to develop new growth allocation provisions that will be compatible with the State Critical Area Act and Criteria.

The basis for the motion is as follows:

Accepting Bill 933 would negate at least one previous Commission action approving a local program change. This is the refinement to the St. Michaels program for the Strausburg growth allocation approved in October 2003.

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

EXHIBIT
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MEETING OF A PANEL

OF

THE STATE OF MARYLAND

CRITICAL AREA COMMISSION

FOR THE

CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: May 5, 2004 (Meeting No. 2)

Time: 10:15 a.m.

Location: Department of Housing and

Community Development,

Crownsville, Maryland

E. 1768

EXHIBIT

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Reported by: Linda A. Crockett

MEMBERS OF THE PANEL:

Gary Setzer, Chair
Judith Evans
Joseph Jackson
Edwin Richards
David Blazer

Marianne Mason, Assistant Attorney General

P R O C E E D I N G S

CHAIRMAN SETZER: We'll convene this discussion by the hearing panel. Sitting on the panel is Judith Evans, Joe Jackson, Ed Richards and Davis Blazer. The three issues that we have before us all relate to the town of St. Michael's, ordinance 304, changes in zoning and critical area map amendment procedures; resolution 2003-06 which deals with the annexation of Miles Point property; and then we have growth allocation request for Miles Point III.

Much like the previous discussion I think two out of three proposals we could probably dispose of quickly. So why don't we move to ordinance Number 304 which deals with the text changes and I'll open it up for discussion. Do you want to summarize your staff report?

MS. HOERGER: There are two basic changes with ordinance 304. One is to amend some procedures in the town's critical area program with respect to eliminating duplication of amendment processes. For example, when an applicant would come before the town for growth allocation, the commissioners would award that and they would come back a second time to change the actual physical town map. So the town has changed that so that it is one process instead of two.

The second change involves the correction of the order that the town commissioners and this Commission review text and map amendments affecting the critical area. This process was corrected for growth allocation reviews in 1999. And now they're correcting the other types of processes so that, again, the order would be town commissioner vote and then it comes to the Commission for review. And that's essentially it.

CHAIRMAN SETZER: Any discussion? Do I have a motion?

MR. BLAZER: I move that we accept 304.

MS. EVANS: I second.

CHAIRMAN SETZER: Any discussion? All those in favor say aye.

(All said aye.)

CHAIRMAN SETZER: No opposition. 304 is approved.

The second issue on the agenda is the resolution 2003-06. Could you please summarize?

MS. HOERGER: We have a map up here which is essentially for the next item of discussion. This will show the annexation piece, the Miles Point Property, LLC was annexed into the town, this area, the upland portion is 17.136 acres. They have annexed a total of 42 acres which includes some lands of the bed of the Miles River, and the reason for that is the town has a board of port ordinance and a water management ordinance, so they have some jurisdiction to annex land under state waters, so that's why you'll see that number in your staff report. It

has come into the town as a resource conservation area and will remain as a resource conservation area.

CHAIRMAN SETZER: Discussion? A motion?

MR. BLAZER: I have a motion that we approve.

MR. JACKSON: Second.

CHAIRMAN SETZER: All those in favor say aye.

(All said aye.)

CHAIRMAN SETZER: No opposition.

The third issue on the agenda has to do with Miles Point III growth allocation. I'll turn to Lisa to summarize.

MS. OWENS: I'm doing this one. This project involves the use and growth allocation by the town of St. Michael's of 70.863 acres to change the critical area designation from RCA to IDA. That's the conceptual plan for the project. Essentially the property is undeveloped. It's been used for agriculture. It's basically a

fairly level open field with a few, a little bit of fringe of trees in the buffer. The town is proposing to deduct the entire acreage of the parcel located on the east side of Maryland 33. There is a portion of property located on the -- for this project.

Just to summarize a little bit. I'm just going to walk you through my staff report. The Commission has several standards of review. They are primarily looking at the goals of the critical area program to minimize adverse impacts on water quality, to conserve fish, wildlife, plant habitat; and establish land use policies for development in the Critical Area but also address the fact that even if pollution is controlled, the number, movement and activities of people in the area can create adverse environmental impacts.

To summarize the panel's discussion broken down into several categories. The most time was the discussion about protecting habitat

and water quality. And the COMAR provides some guidelines for growth allocation that basically talk about minimizing impacts to habitat protection areas. There are two habitat protection areas on the site. One is the 100-foot buffer and the other is the water conservation area. I'm going to turn it over to Claudia to talk about that. The next goal is to minimize the impact of the defined land use of the RCA; and the third is that new IDA and LDA located in RCA should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters. Again, these are guidelines.

I think important points of the discussion had to do with the fact that this is going to be a fairly intense development of this site. There will be 280 new dwelling units, an inn, and also the buffer is proposed to be used by the town as a park. So most of the site is going to be developed. Impervious surface levels are going to increase from 0 percent to roughly

35 percent. There are going to be dramatic changes in water quality. And the primary ways that impacts to the water quality are going to be addressed is the agricultural use of the property is going to cease, stormwater management is going to be provided, and forested buffers will be established.

There has been a lot of discussion about the forested buffer. The width has been an issue, whether it's going to be 100 or 300 feet, whatever. Also the project involves the creation of a marsh for shore erosion control. Sometimes there can be some conflicts created by trying to establish a forest buffer, there's some balancing that needs to go in there. The town has viewed the fact that they are providing the marsh as being sort of a trade-off, they don't need to provide the 300-foot setback because they're going to be providing this area of marsh.

There was also a lot of discussion about the use of the 100-foot buffer that is proposed

1 in the project as a park. The town proposes
2 there will be gathering areas used for concerts
3 and potentially other civic events. We don't
4 have any details for the park yet. We do believe
5 that because there's not a lot of publicly owned
6 land in the town of St. Michael's and not a lot
7 of waterfront that it would be used heavily and
8 quite frequently.
9 The 300-foot setback was talked about
10 quite a bit. I'm on Page 4 now, some of the
11 points sort of summarized and broken down into
12 six points, things that were discussed about the
13 purpose of the 300-foot setback: Providing a
14 buffer between areas of intense human activity.
15 To potentially provide some type of wildlife
16 corridor system on the property. To provide
17 protection to the waterfowl staging and
18 concentration areas located in the Miles River.
19 The 300-foot setback also can have the effect of
20 reducing overall impervious surface area
21 associated with the project and the volume of

1 waterfront be outside the fall and wintering
2 period for these species. He recommends that
3 bulkheading not be done, to keep it as natural as
4 possible, either marsh grass and/or stone. He
5 also recommends that setbacks for building
6 construction, walkways, et cetera be set back as
7 far as possible or screening of plantings to
8 minimize the activities.
9 I did not get to follow up with Barry to
10 see what he felt as far as marsh creation. The
11 forest buffer for waterfowl, although he did say
12 that springing was recommended. I did talk to
13 Stan Causey at the Department of the Environment
14 and he said he has already issued several years
15 ago a permit for riprap along the shoreline and
16 he hasn't seen an application yet for marsh
17 creation, but he didn't feel like it was the best
18 candidate.
19 I also looked at an article that was
20 done by Fish and Wildlife Service as well as the
21 U.S. Forest Service Chesapeake Bay Program, in

1 stormwater, and it also increases the areas
2 available for infiltration -- provides for
3 recharge. If you minimize the effects of
4 shoreline erosion by basically providing a wider
5 area in which to deal with erosion control. And
6 then providing an area of sufficient size and
7 width to accommodate both the resource protection
8 benefits of the buffer and accommodate the
9 recreational needs of the town.
10 With that I was hoping that maybe
11 Claudia could talk a little bit about the
12 waterfowl concentration areas.
13 MS. JONES: We got some comments from
14 Larry Heinman from the Department of Natural
15 Resources. And he says it's used by large
16 numbers of wintering Atlantic Canada geese,
17 cambusbacks (phonetic), tundra swans, golden eye,
18 (inaudible) and mallards. Two of the species,
19 cambusbacks and tundra swans, are in decline in
20 the Maryland portion of the bay. He recommends
21 that any proposed construction along the

1 1995, and they talk about discouraging people
2 from a full scale shift to marsh creation versus
3 a forested shoreline saying that most of the
4 research has been done and it's undisputed how
5 valuable large areas of salt marsh are to aquatic
6 life.
7 However, when they did sampling along
8 fringe marshes versus forested shorelines, they
9 found a lot more use by aquatic species along the
10 forested shorelines versus a forested buffer
11 where you had some debris that provided hiding
12 areas for aquatic species, fish and crabs.
13 MS. MASON: Just to follow up on
14 something Claudia said, the record that the town
15 submitted at the public hearing included a number
16 of boxes which I think are over there on that
17 hand cart. And we have gone through those and in
18 those boxes there were documents referencing the
19 applications for riprap permits, just to follow
20 up. That's somewhere in one of those boxes. The
21 excerpts were provided, anything that was

1 relevant to the Commission's review, excluding
2 traffic, volume of cars, things like that were
3 provided to the panel.
4 MS. OWENS: Page 4, the next thing that
5 was discussed was wildlife habitat and corridors.
6 That site certainly is used by wildlife, even
7 though it may not be the typical thing we
8 envision, since it's basically an open field. It
9 certainly is a goal to provide for the habitat.
10 That's why we've established the buffer and try
11 to provide vegetative corridor wherever possible.
12 There was some discussion about the various areas
13 where stormwater management is proposed. And
14 there are actually four of them. What's proposed
15 is here, here, here, and here. And the idea of
16 possibly working that stormwater quality
17 management and ponding management into some type
18 of habitat areas as well through (inaudible).
19 The next issue that was discussed was
20 shoreline access and buffer management. As I
21 said earlier, the 100-foot buffer on the project

1 more about impervious surface area. It does look
2 feasible that they would be able to provide all
3 the necessaries for water management on site.
4 Shore erosion control, we talked about
5 that. Their proposal at the moment is implement
6 a marsh creation program and a structural
7 element, which is a sill basically to protect the
8 marsh. There was a lot of discussion about
9 shading of the grasses. Certainly that's
10 something, if they're shaded and don't get
11 sufficiently established, they don't do as good a
12 job at protecting the shore. Most of you were
13 out on the site, you saw how severely it's
14 eroded. Even in the two times Lisa was there she
15 felt there was more erosion.
16 MS. MASON: Can I add something on that
17 too? There was information that was provided to
18 the panel from the town indicating that the
19 erosion was somewhere at the rate of 2 feet per
20 year.
21 MS. OWENS: Which based on our

1 as proposed is supposed to be dedicated to the
2 town for use as a town park. We do know they
3 plan to use the area for walkways and gathering
4 areas. We do not know too much else about that.
5 We don't have a detailed plan of the area as of
6 yet.
7 Certainly in the past the Commission has
8 requested -- required that a Buffer Management
9 Plan be submitted for review and approval by the
10 Commission at a later date and that may be
11 something to contemplate on this because we don't
12 know a lot yet about what's going to happen.
13 Stormwater management, just touched on
14 that before, areas that are proposed to be
15 provided. They have performed preliminary
16 calculations based on their conceptual plan and
17 believe that volume and runoff of stormwater can
18 be controlled and they can meet the 10 percent
19 reduction requirement.
20 All of this is subject to them getting
21 more detailed soil information once they know

1 definition is considered significantly eroding.
2 What I think we're not clear on yet is whether if
3 we're trying to establish a forested buffer and
4 also providing a marsh creation, we want to be
5 successful at what distance would forest
6 vegetation need to be set back from the edge of
7 the bank in order to not shade the grass. We
8 haven't quite gotten a definitive answer on that.
9 The last issue that was discussed was
10 wastewater treatment. There were some concerns
11 about wastewater treatment problems in St.
12 Michael's and the limitation of their plan.
13 Based on the information that we were provided at
14 the last panel meeting, it was our understanding
15 that the plan is to be substantially upgraded
16 prior to any of the structures that are proposing
17 to be built on the site to be connected to it.
18 MDE is the kind of watchdog agency ensuring that
19 that is adequate. We believe they have the
20 measures in place and the conditions placed by
21 the town council to do that. That's basically

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1 it.
2 CHAIRMAN SETZER: Any questions?
3 MR. BLAZER: This I guess goes back to
4 the permit for the shoreline, that was not for
5 the wetland creation, that was only to stabilize
6 the shoreline.
7 MS. JONES: That's my understanding.
8 MR. BLAZER: We're still looking at
9 basically the same area?
10 MS. JONES: Yes.
11 CHAIRMAN SETZER: In terms of my review
12 of the request there are several issues. One has
13 to do with the buffer and the use of a 100-foot
14 buffer in lieu of a 300-foot buffer and the
15 suggestion that that distance may preserve
16 improvement compensated by marsh creation. Based
17 on the review from staff as well as information
18 the -- the success of marsh creation on the
19 shoreline significantly (inaudible).
20 I don't know that in terms of water
21 quality benefits that we want to sacrifice a

1 lesser buffer for a highly engineered marsh
2 creation, so I think I personally would like to
3 have us discuss implementing a larger buffer.
4 The criteria is looking at a 300-foot buffer.
5 MR. SEREY: The criteria do not -- the
6 guidelines does not call for a 300-foot buffer.
7 It's a 300-foot setback between the new growth
8 allocation and the tidal waters, and I think the
9 idea behind that is not necessarily to achieve a
10 300-foot area with the exact same buffer
11 functions that you would get from a 100-foot
12 buffer, but to have that 100-foot buffer and
13 those functions associated with it and then an
14 additional setback. It's not a 100 versus a 300.
15 CHAIRMAN SETZER: So the 100-foot buffer
16 would be what we would be looking for highly
17 vegetated establishing some habitat value on site
18 and taking this discussion one step further,
19 based on the use by the town of that area for
20 public use, public functions, we need to look at
21 what types of restrictions the Commission wants

1 to look at in terms of the town's use of that
2 area.
3 MS. MASON: You have a criteria that
4 does encourage public access to the waterfront.
5 You need to keep that in mind as well. Something
6 else on the plan and in the information provided
7 to the panel, and I believe it was pointed out in
8 the public hearing, although I'm not sure. The
9 developer has proposed more than a 100-foot
10 buffer in some places up there, perhaps even
11 substantially more. Some of the line goes into
12 the stormwater management which the Commission
13 has in the past found that's not permitted to be
14 in the buffer. So it really can't be counted as
15 part of the buffer area.
16 Nonetheless, if you look carefully where
17 the line is there is a provision -- in other
18 words, it's not a static line. So when you're
19 discussing that issue you need to be aware of the
20 fluctuation in the setback, which it could change
21 based on where it's measured from. I don't

1 recall seeing any information as to when the line
2 on the plan -- where it was drawn from and if the
3 shoreline is eroding, that could make a
4 difference.
5 MR. SEREY: My understanding is that the
6 line from which the buffers and setbacks are
7 measured was taken in November of last year,
8 about seven months old. That's my understanding.
9 CHAIRMAN SETZER: The other issue that
10 is of concern for me has to do with the treatment
11 of stormwater on site, the proposal at this point
12 is conceptual and certainly takes advantage of
13 surface control techniques in terms of dealing
14 with quantity and quality. Personally, I would
15 like to see at least an attempt to use more of
16 the environmental sensitive techniques, and some
17 other opportunities, at least keep them in
18 reserve until you find out what the soils are on
19 site and whether they're applicable before going
20 to the surface water treatment system. We
21 already touched on the shore erosion.

1 Personally I don't want to discourage
2 the creation of marsh along the shoreline, but
3 then again, the use of that shoreline is more
4 appropriate for a buffer than a marsh creation
5 project. That might be something to consider
6 whether the investment in the structural marsh
7 system is worthwhile. I guess at the exclusion
8 of other --
9 MR. JACKSON: If it's highly engineered
10 that usually means high maintenance. Is that
11 true, Claudia?
12 MS. JONES: Not necessarily. Gary might
13 be better to answer this. If it's engineered
14 properly then they shouldn't have to maintain too
15 much. If they do it right, correctly.
16 CHAIRMAN SETZER: I think it can be
17 done. When MDE was out on site Claudia spoke
18 with them and that's when the project, shore
19 erosion, marsh creation really even looked into
20 that process. His position is that it was part
21 of the department's charge and it's also within a

1 period where -- we looked at no treatment, marsh
2 creation and -- you go out on site, they're
3 looking at the site again. That's not to say I
4 necessarily want to discourage marsh creation.
5 MS. JONES: But it's telling that there
6 was one little patch where it looked like there
7 was some kind of marsh grass growing along the
8 shoreline maybe about this wide and the rest of
9 it was just sand. So it's not happening
0 naturally, although it might be something for
1 them to consider doing marsh creation on one side
2 and riprap on the other. I don't think the marsh
3 creation should be traded for buffer.
4 MR. BLAZER: The permit for the riprap
5 is actually only on the point out front. It
6 stops where the property line exists. So if you
look at the map, the point that's furthest east,
I guess, right, from there all of the way north
and around, to that is all permit for the riprap.
That lower section is not part of this permit.
There might be a second permit.

1 CHAIRMAN SETZER: What I would like to
2 do, if you all agree, is because there are a lot
3 of issues that kind of are swirling around, to
4 close the meeting and have an opportunity to
5 discuss some of these issues with counsel and
6 determine whether or not --
7 MR. RICHARDS: The legal process.
8 CHAIRMAN SETZER: The legal process. We
9 can close the meeting to consult with counsel and
10 take legal advice. So I would like to close the
11 meeting to consult with counsel to obtain legal
12 advice under the applicable sections of the
13 applicable area of law, to consult with counsel
14 to obtain legal advice in the context of
15 recommending Commission action on the growth
16 allocation, to consult with counsel to obtain
17 legal advice on the interplay between this
18 proposed program and the amendment on the 933,
19 and to consult with counsel to obtain legal
20 advice.
21 MR. BLAZER: I make a motion that we go

1 into closed session.
2 MR. JACKSON: Second.
3 CHAIRMAN SETZER: All those in favor?
4 (All said aye.)
5 CHAIRMAN SETZER: To summarize our
6 discussion, the issues that have jumped out at me
7 in terms of considering the -- open for
8 discussion.
9 MR. BLAZER: I think we were talking
10 before about the 300-foot buffer. I think one of
11 the concerns that the shore erosion issue is kind
12 of a moot point. We see that as something we
13 need to deliberate. A 300-foot buffer in my
14 eyes --
15 MS. MASON: Setback in the criteria,
16 that setback?
17 MR. BLAZER: No. I think my issue with
18 that directly is the amount of impervious surface
19 that you need to have a 300-foot setback because
20 of the habitat and the criteria that's laid out
21 for water quality habitat considerations would be

1 more in line with the goals of the program.
2 I think my other point was I'm looking
3 at it from that perspective as opposed to the
4 trade-off that's recommended within the proposal.
5 I think our purviews are looking at water quality
6 and habitat issues, the 300-foot buffer would be
7 more adequate. Especially my concerns with
8 impervious surface, going from 0 to 30 or 60
9 percent I think the number was, than the argument
10 laid out in the proposal about marsh creation.
11 That is something to me that is a little bit
12 different.
13 CHAIRMAN SETZER: I think with the marsh
14 creation, MDE went out, to advance that to a
15 vegetated shoreline which certainly is viable to
16 protect the shoreline. I think the concern for
17 us is, and we heard this in some of the
18 discussion previously, is whether or not we can
19 use that as a trade-off to adjust the buffer and
20 setback. That's what we need to focus on.
21 MR. RICHARDS: In addition to the

1 environmental issues, I would like to raise a
2 procedural issue as far as the 300-foot setback
3 is concerned. The attorneys are going to go
4 berserk. As a layman I have my own definitions
5 of what shall or should be. And basically I
6 think in the regulations that we're working from
7 we have a should reinforce by and shall use and
8 shall use as the guideline shall be used and it
9 says there should be a 300-foot setback. My
10 layman's definition says that shall is stronger
11 than should. But when they're used together it
12 says should means that there will be a 300-foot
13 setback unless there are very compelling reasons
14 why they cannot have the 300-foot setback or that
15 a 300-foot setback would work against the intent
16 of the law.
17 And the three reasons the town gave for
18 not requiring a 300-foot setback did not meet my
19 standards. And I do not know of any compelling
20 reason why there cannot be a 300-foot setback.
21 And I do not feel a 300-foot setback would work

1 against the intent of the law. So I think
2 procedurally, I do not think the town met the
3 requirements of the regulations. They did not
4 take appropriate considerations to the guidelines
5 300-foot setback.
6 Now all the lawyers can write me a
7 letter and fax me all the stuff to tell me it's
8 wrong.
9 MR. BLAZER: My issue about impervious
10 surface, I think the design of the development,
11 trying to use cluster development, trying to use
12 new urban techniques, it's been at the expense of
13 open space and at the expense of what should be a
14 better buffer. You know, they have got their
15 density; they have got the site design, but open
16 space requirements really aren't there. And the
17 buffer, looking at water quality and habitat
18 considerations, I think in this case is very
19 appropriate.
20 CHAIRMAN SETZER: A buffer, the statute
21 of regulations will provide that with land use

1 changes from agricultural use to -- that the
2 buffer has to be established. And it's not just
3 a vegetative buffer. It says forest and
4 vegetation needs to be established. So there's a
5 number of opportunities to point to in the
6 statute that directly concentrate on providing an
7 adequate buffer with the habitat and water
8 quality considerations.
9 MR. RICHARDS: I think another argument
10 in addition to the environmental. Basically
11 dealing with growth allocation, the stipulation
12 we're accommodating growth which we're required
13 to do. However, even if pollution is controlled,
14 we have to take into consideration that people
15 create adverse environmental impacts, and
16 essentially the 300-foot setback is to protect
17 the water from us, not just the stormwater, not
18 just the runoff, not just the other problems, but
19 basically us walking there, driving there create
20 problems.
21 One way to mitigate that is to keep the

1 problem 300 feet away from the water. That's why
2 I believe that should is a very strong indication
3 of what we should be doing.
4 CHAIRMAN SETZER: Not to solely
5 concentrate on the environment issues that relate
6 to water quality and habitat and as it relates to
7 both the setback and buffer, one of the other
8 issues that the Commission needs to address is
9 giving the public an opportunity to reach the
10 water and enjoy the water. So while I think we
11 all kind of agree that we need to deal with both
12 the reestablishment of a 100-foot buffer and
13 perhaps a larger setback than what's being
14 proposed by the development, in that same context
15 we also need to provide an opportunity for public
16 access, and somehow there needs to be that
17 balance between buffer setback and public access
18 to the water. We need to be able to accomplish
19 all those objectives.
20 MR. BLAZER: Would that be incorporated
21 into a Buffer Management Plan? I mean, it's not

1 that specific that we'd have to agree to today.
2 But I think making some condition we need a
3 Buffer Management Plan.
4 MS. OWENS: We could acknowledge that
5 the plan would have public access.
6 MR. BLAZER: And it needs to come back
7 to the Commission.
8 CHAIRMAN SETZER: Under that Buffer
9 Management Plan you could address not only the
10 100-foot buffer but an adequate setback.
MS. OWENS: Yes, or we could do it in
two conditions. It would have one that talks
about providing a 300-foot setback and one that
talks about establishing a buffer as required by
the criteria. I guess if the 300-foot setback
exists, we have the public access in the 200 feet
that aren't forest.
MR. RICHARDS: I think they're two
different issues. The 200 foot we're talking
about passive recreation, that should be
available for passive recreation. I think the

1 problems with this is since there's no provision
2 for a forested buffer, I think 100 foot is what
3 in the management plan talk about what part is
4 going to be forested and how it's going to be
5 forested and what provisions will be there for
6 public access. Part of the issue with
7 accommodating growth is being able to use the
8 bay. I think that's been an issue and I think
9 that has to be addressed.
10 CHAIRMAN SETZER: Any further
11 discussion?
12 MS. OWENS: What about stormwater
13 management?
14 MR. RICHARDS: I'll approach it from
15 another standpoint, Greg, I would defer to you
16 because I've had to deal with water plans, but I
17 don't like them. I think one of the issues that
18 I have is a conflict in looking at this
19 development, I think it is an appropriate site
20 for development. I think the cluster or
21 traditional town approach they have used is very

1 appropriate. However, I think that by using it
2 it requires us to go from a more controlled
3 growth under a limited development area to an
4 IDA. And I have some problems with that because
5 the LDA has some criteria that are weighed
6 because we're going by the IDA. I recognize that
7 if you stay with the LDA, you can't stay with the
8 cluster. But I think there are a lot of
9 advantages to some of the criteria in the LDA,
10 which I don't know whether it's appropriate for
11 us to talk about those.
12 But I think some of the issues have
13 already been raised and I think most of them
14 addressed the stormwater problem. One is the
15 restriction on impervious surfaces and, you know,
16 whether or not that could be applied, I don't
17 know. But I think it should at least be used as
18 the basis for evaluating the proposal and who
19 would evaluate it, would it be the town or us, I
20 don't know.
21 Another one is forestation. I have a

1 problem with the less trees than we had before
2 and there are provisions for that. One of the
3 things that I think the guidelines should be is
4 the cap on the number of units in an LDA which I
5 look at about 212, which I don't think is
6 necessarily hard and fast. But I think as a
7 planning guide that gives us a good instrument to
8 look at. The difference between the impact of an
9 LDA and IDA and I think all of this needs to be
10 looked at by someone and I don't know who that
11 someone is.
12 But anyway, going back to the issue of
13 stormwater. I don't like to deal with stormwater,
14 if you went back to some of these LDA standards,
15 you would reduce the problems for the stormwater
16 management engineering because you'll reduce the
17 runoff and the speed of runoff.
18 I don't know how to approach those, but
19 they're certainly concerns that came up in my
20 mind when I was looking through all of the
21 material. And I just had to throw it out on the

1 table. Sorry.
2 MS. MASON: I think that the decision as
3 to whether the town -- whether to request growth
4 allocation to go from RCA to LDA or RCA to IDA is
5 within the town's purview. The town decided they
6 wanted to and that's how the Commission needs to
7 consider it. I think within that set of facts
8 that you have, that the town has requested IDA, I
9 think the Commission would be straying from its
10 statutoried and regulatory home if it were to
11 say, well, we think this should be LDA instead of
12 IDA. My advice is you need to take it as it is,
13 that is IDA.
14 But that said, the criteria that you all
15 have discussed regarding the conversion of
16 agriculture uses to other uses apply equally.
17 The protection of the habitat, waterfowl staging
18 areas, the number, use and activities of people
19 in the buffer, the wildlife and habitat benefits
20 of a larger setback would apply.
21 So I think you've been discussing lots

1 of issues and I think the question of LDA versus
2 IDA is one that I would advise that it's not in
3 our ball court.
4 MR. RICHARDS: I think it has to stay
5 IDA.
6 MS. MASON: But even in terms of
7 applying that --
8 MR. RICHARDS: I thought you were going
9 to say that.
10 CHAIRMAN SETZER: As far as Mary's staff
11 report. I think she indicated that at least
12 conceptually a way to treat stormwater would
13 address critical area requirements in terms of --
14 I guess from my perspective the only thing that I
15 would like to see on the stormwater side is that
16 at this early juncture in the design of the
17 project, that we will close the door on other
18 best management practices that may be -- we may
19 have a better opportunity in terms of filtration
20 or other types of best management practices as
21 opposed to dis -- I'd just as soon keep it very

1 general and just make that that all opportunities
2 are investigated in terms of using best
3 management practices before jumping to surface
4 water treatment. Discussion?
5 MS. OWENS: Do you want to see that
6 stormwater plan similar to -- you've done that
7 before on other projects?
8 CHAIRMAN SETZER: I think North Bay is
9 an excellent example. We had a very conceptual
10 stormwater proposal and the Commission worked
11 very closely -- at that -- with that particular
12 project because it was a state project, we were
13 able to work with MDE and move forward in terms
14 of stormwater management. The Commission's
15 staff -- I think they have a -- work with staff
16 and the Commission to come up with stormwater
17 treatment.
18 Discussion. Does anyone want to venture
19 on a motion, a discussion here?
20 MR. RICHARDS: I move that we approve
21 Miles Point with those conditions. And you'll

1 have to help me with the wording, 300-foot
2 setback, 100-foot buffer management that allows
3 planting of trees and public access to the water
4 and a condition that -- stormwater, whatever Greg
5 just said.
6 MR. BLAZER: Encourage the use of best
7 management.
8 MR. RICHARDS: And it comes back for
9 review. Any other conditions anybody wants to
10 throw in?
11 CHAIRMAN SETZER: I think we want those
12 to come back not just for review, but also
13 approval.
14 MR. BLAZER: Did the Buffer Management
15 Plan get incorporated or is that a separate
16 condition?
17 MR. RICHARDS: I put it in as one
18 condition. But you can put it in as two separate
19 conditions. Two conditions, one that there be a
20 300-foot setback allowing for passage,
21 recreation -- 200 feet beyond the 100-foot

1 forested buffer, and two, there be a forested
2 buffer with a management plan that would allow
3 for public access. That's three conditions, I
4 think.
5 CHAIRMAN SETZER: In terms of developing
6 the buffer management plan and the stormwater
7 plan, work with both the Commission and the
8 Commission staff to address these issues and to
9 bring that result back to the Commission for
10 approval.
MS. OWENS: The plans, the buffer and
stormwater.
MR. SEREY: Do you want us to verify our
understanding that the buffer and any setbacks
are being measured from a line set last November,
and if so, do you have any further question about
that?
MS. OWENS: Shouldn't it be whatever the
existing shoreline is when they do the project?
MR. RICHARDS: 100 foot through the
existing shoreline.

1 MR. JACKSON: If we have another Isabel
2 come through you don't know where the shoreline
3 will be.
4 MR. RICHARDS: So moved.
5 MR. BLAZER: I'll second.
6 CHAIRMAN SETZER: As part of the
7 discussion, why don't we ask Ren or Mary who are
8 taking copious notes to read back the motion.
9 MS. OWENS: The conditions are that the
10 project will include a 300-foot setback, that it
11 include a 100-foot forested buffer that includes
12 provisions for public access, that a Buffer
13 Management Plan be developed, and that they work
14 with both the Commission and Commission staff on
15 the development to be submitted for approval by
16 the Commission, that a stormwater management plan
17 be developed that explores all options for
18 infiltration and buyer retention and that that
19 plan, that they work on that with the Commission
20 and Commission's staff and that it be brought
21 back to the Commission for approval.

1 CHAIRMAN SETZER: Discussion?
2 MR. SEREY: There was one other element
3 that Ed had mentioned about passive recreation
4 and the 300-foot setback.
5 MS. MASON: And the measurement?
6 MR. SEREY: I've got that.
7 CHAIRMAN SETZER: Can we take a play off
8 this morning and move it as a conditional
9 approval with final vote coming after staff has
10 had an opportunity to put the final motion
11 together?
12 MS. MASON: Before the 1:00 meeting?
13 CHAIRMAN SETZER: Yes. Further
14 discussion? All those in favor?
15 (All said aye.)
16 CHAIRMAN SETZER: No opposition.
17 Approved.
18 (Proceedings concluded.)
19
20
21

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1 STATE OF MARYLAND SS:

2 I, LINDA A. CROCKETT, a Notary Public of the

3 State of Maryland, do hereby certify that these

4 proceedings took place before me at the time and

5 place herein set out, and the proceedings were

6 recorded stenographically by me and this

7 transcript is a true record of the proceedings.

8 I further certify that I am not of counsel to

9 any of the parties nor an employee of counsel nor

10 related to any of the parties nor in any way

11 interested in the outcome of this action.

12

13 As witness my hand and notarial seal this 8th

14 day of June, 2004.

15

16 My commission expires

17 December 1, 2004 Notary Public

18

19

20

21

MEETING OF A PANEL

OF

THE STATE OF MARYLAND

CRITICAL AREA COMMISSION

FOR THE

CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: May 5, 2004 (Meeting No. 3)

Time: 1:00 p.m.

Location: Department of Housing and Community Development, Crownsville, Maryland

Reported by: Linda A. Crockett

MEMBERS OF THE PANEL:

Martin G. Madden, Chair

Peggy G. Campbell

Ren Serey

Marianne Mason, Assistant Attorney General

Commission's authority in the context of taking action such as approval or denial on a program amendment for growth allocation. Seven, to consult with counsel to obtain legal advice on the meaning of Commission criteria COMAR 27.01.02.06A and B. This would be available in the minutes for the full meeting are available. Having made that motion, can I have a second?

COMMISSIONER: Second.

CHAIRMAN MADDEN: All in favor say aye.

(All said aye.)

(Recess.)

MS. HOERGER: You have a staff report titled town of St. Michael's ordinance Number 304, and attached to that is the actual bill that the town commissioners passed. It is correcting essentially two items in their existing critical area program. The first change has to do with eliminating a duplicative process for applicants who, for example, may be seeking a growth allocation request before the town commissioners

P R O C E E D I N G S

CHAIRMAN MADDEN: I'm asking us to go into a brief closed session. One, to consult with counsel to obtain legal advice on the applicable sections of the critical area law and criteria governing the Commission's deliberations. Two, consult on the applicability of other state laws, policies and regulations, including but not limited to planning and zoning. Three, to consult with counsel to seek legal advice whether the Commission should consider the effect of a program approved by the Commission; four, to consult with counsel to obtain legal advice on the interplay between Talbot County Bill 762 and Bill 933. Five, to consult with counsel to obtain legal advice on the interplay between the proposed amendments from St. Mary's and St. Michael's Miles Point III growth allocation. Six, to consult with counsel to obtain legal advice on the scope of the

receive that or not. But if they do, then they have to come back again to get the maps amended. The town is simply eliminating that duplication and when someone comes to the town commissioners for that it will only be one time.

The second change involves the correction of order in which things like text changes, map amendments are approved and adopted between the town commissioners and this Commission. The current town program is set up so that those changes come to this Commission first and then they go back to the town commissioners. The town has now changed that so the town commissioners first approve those types of changes and then they come to the Critical Area Commission. A couple of years ago that process was changed for growth allocation processes. That has already happened. This will fix the process for all these changes, including text changes.

That is the substance of Ordinance 304.

1 Chairman Madden appointed a five-member panel
2 which held a hearing in the town of St. Michael's
3 on April 1st. There were no substantive comments
4 on this ordinance. We did have some comments
5 from the town. That's all I have to report.
6 CHAIRMAN MADDEN: Any other comments?
7 Comments from the public?
8 MR. SETZER: The panel, as Lisa said,
9 discussed proposed ordinance and would like to
10 move before the entire Commission in accordance
11 with Lisa's staff report that ordinance 304 as
12 enacted by St. Michael's town commissioners which
13 amend growth allocation, zoning and critical area
14 map amendment procedures used by the town be
15 approved by the Commission.
16 We have a motion for approval. Do we
17 have a second?
18 MS. MASON: Second.
19 CHAIRMAN MADDEN: Any discussion? All
20 those in favor say aye?
21 (All say aye.)

1 CHAIRMAN MADDEN: Next we'll move to St.
2 Michael's annexation resolution 2003-06.
3 MS. HOERGER: The proposal is resolution
4 2003-06. I'm trying to do this so you all can
5 see it. I apologize if some of you can't. The
6 annexation request of the town of St. Michael's
7 is for 42.066 acres of land. 17 of those are
8 upland. The portion of the annexation on this
9 site plan is this area in green. This is the 17
10 acres of upland. The balance of that 46 acres
11 are the land that is under the Miles River. The
12 reason the town also annexed that area is because
13 they have a board of port ordinance and a
14 waterway management ordinance and they do have
15 the authority to annex state waters, in case
16 anyone had questions.
17 The critical area designation of the
18 annexation property as a resource conservation
19 area and as it was brought into the town, it will
20 remain as a resource conservation area. Chairman
21 Madden appointed a five-member panel to hear this

1 request. It was heard at the April 1st hearing.
2 There were no substantive public comments. Does
3 anyone have any questions?
4 CHAIRMAN MADDEN: Any questions for
5 Lisa? If not, I'll turn it over to panel chair.
6 MR. SETZER: Once again the panel
7 discussed the proposed resolution and would like
8 to recommend to the Commission that it approve
9 resolution 2003-06 adopted by St. Michael's town
10 commissioners which annexes the 42.066 acre Miles
11 Point LLC property into the town.
12 Is there a motion to approve resolution
13 2003-06. Is there a second?
14 COMMISSIONER: Second.
15 CHAIRMAN MADDEN: Any additional
16 comment? All those in favor say aye.
17 (All said aye.)
18 CHAIRMAN MADDEN: Motion is approved.
19 Thank you, Lisa.
20 Next we move to St. Michael's growth
21 allocation for Miles Point III in Talbot County.

1 Mary Owens will lead the panel discussion.
2 MS. OWENS: This next item is an
3 application from the town of St. Michael's to
4 award some growth allocation to the Miles Point
5 III project. This is a site map of the project.
6 Then we have a couple pictures of the site. So
7 Lisa is going to go through those and I'll just
8 quickly kind of show you the site while I talk
9 about the project. It involves the award of
10 70.863 acres of the growth allocation to change
11 the critical area designation from RCA to IDA.
12 It's proposed to be a residential development
13 involving 231 single-family units, 20 townhouses,
14 8 live and work units, an inn, and a public
15 waterfront park.
16 As I get into my presentation I'll talk
17 about the erosion on the shoreline. But this
18 shows a shot of the shoreline and some of the
19 erosion that's on the property. This is another
20 view of the property that shows that it currently
21 does not have a vegetated buffer. It was

1 formerly farmed. So it's basically an open
2 field, fairly level. Shoreline varies. In some
3 places it's a little bit more of a cliff, maybe
4 seven or eight feet. Here it's about 2 or 3
5 feet. That's a view to across the project site
6 to an area of townhouses which is actually here
7 on the site plan. On this particular day the
8 tide was pretty far out so there is somewhat of a
9 sandy beach. But at a normal tide condition
10 there really isn't much of a beach there. It
11 shows a portion of the property that has been
12 protected already with a revetment.
13 Here again you can see the significant
14 erosion there. That's another shot basically of
15 the same view on a cloudier day. There isn't a
16 lot of vegetation on the edge of the shoreline
17 because a lot of it has eroded and fallen into
18 the water. Here's another shot of the shore.
19 This is looking across the project. It's
20 basically a field. There's not a whole lot of
21 vegetation. Again, another shot of the site, an

1 open field. That's basically it. It's fairly
2 straightforward. There's not a lot of vegetation
3 on the site.
4 There are two non-tidal wetland areas.
5 Essentially the project involves the use of the
6 growth allocation to change the critical area
7 designation from RCA to IDA. The property has a
8 long history, has undergone several revisions
9 over the years. It's been involved in extensive
10 litigation. But at this point the town has
11 submitted it to the Commission for approval. The
12 last revision involved this portion of the
13 property which was recently annexed was taken out
14 of the project.
15 The panel held a public hearing on
16 Thursday, April 1. It was well attended. There
17 was a lot of public comment on the issue and the
18 record was held open until Tuesday, April 13th.
19 We received a lot of public comment that was
20 provided to all of the panel members. The panel
21 met once after the public hearing and then met

1 again this morning to discuss this issue. And
2 I'm going to summarize their discussions, some of
3 which took place at the earlier panel meeting
4 which took place today.
5 In reviewing this application, the
6 Commission was really looking at primarily the
7 goals of the critical area program, which are to
8 minimize adverse impacts on water quality that
9 result from pollutants; to conserve fish, plant
10 and wildlife habitat; and then to establish land
11 use policies that accommodate growth and also the
12 fact that just people in the critical area can
13 have adverse environmental impacts.
14 In analyzing this project and I think
15 making an effort to look at whether it was
16 appropriate to approve it or deny it or approve
17 it with conditions, the panel analyzed several
18 aspects of the project. The first had to do with
19 protection of habitat and water quality. In
20 terms of looking at how the criteria addressed
21 the use of growth allocation, there are really

1 three areas that they focused on, new IDA and LDA
2 areas should be located to minimize impacts to
3 habitat protection areas and optimize benefit to
4 water quality. On this particular site there are
5 two primary habitat protection areas which are
6 the 100-foot buffer and a waterfowl staging and
7 concentration area in the Miles River. New IDA
8 should also be located where they minimize their
9 impacts on defined land use of the RCA.
10 And then something that the panel spent
11 a lot of time discussing was that new IDA and LDA
12 in the RCA should be located at least 300 feet
13 beyond the edge of tidal waters. And that
14 300-foot setback issue was discussed extensively,
15 primarily because the panel believes that this
16 project involves a very intense development.
17 There will be a lot of units and a lot of new
18 residents that will be in the area, and that most
19 of the site is going to be developed. There
20 aren't a lot of open space areas, and the
21 importance of the setback to meet the goals of

1 the critical area program became really the
2 primary way that impacts could be minimized and
3 habitat could be protected.
4 Another issue involved dealing with
5 stormwater on the site and water quality.
6 Impervious area is going from approximately 0
7 percent as the site is currently undeveloped up
8 to approximately 35 percent, which includes
9 roads, rooftop areas, et cetera. The primary
10 ways that water quality will be addressed will be
11 agricultural use of the property is going to stop
12 so they will no longer be applying fertilizer.
13 They also will be proposing to treat all
14 stormwater on the site and they're proposing
15 essentially four areas where stormwater will be
16 addressed, here, here, here, and here.
17 The other way that stormwater quality
18 will be addressed is through the provision of
19 forestation of the 100-foot buffer. One of the
20 issues that the panel also talked about is how
21 the 100-foot buffer is proposed to be dedicated

1 to the town for use as a park. And the panel was
2 concerned about how the use of the park -- the
3 use of the 100-foot buffer as a park could be
4 coordinated with the requirement to forest the
5 buffer and would those uses potentially be
6 conflicted.
7 In looking at the setback and the
8 buffer, the Commission -- and I'm on the middle
9 of Page 4 now -- talked about the ecological
10 benefits of providing a 300-foot setback, and the
11 benefits included providing a buffer between
12 intense human activity and pollution and
13 sensitive aquatic resources; potentially
14 providing a wildlife corridor system, some sort
15 of habitat area for wildlife; providing
16 appropriate protection for the waterfowl staging
17 and concentration area; reducing overall
18 impervious surface on the area, and along with
19 that, reducing the volume of stormwater and
20 associated pollutants as well as increasing the
21 area available for infiltration; minimizing the

1 effects of shoreline erosion on the project by
2 having a wider area to deal with erosion control;
3 and then providing an area of sufficient size and
4 width to accommodate the needs or requirement to
5 provide a buffer and the requirement of the town
6 to provide recreational needs.
7 The panel also talked about wildlife
8 habitat, and their discussions focused on the
9 ability of the 300-foot setback to provide some
10 of those benefits and provide for wildlife to
11 continue to use the site. The panel spent a
12 considerable amount of time today talking about
13 the use of the buffer as a town park and
14 providing for shoreline access and the need to
15 deal with managing the buffer and providing an
16 appropriate plan.
17 As you saw from the pictures, there is
18 not much vegetation in the buffer. So the buffer
19 is going to have to be established. The site is
20 fairly exposed. It has an eroding shoreline.
21 There will need to be a significant investment in

1 getting that buffer established.
2 I think the important thing that the
3 panel really focused on this morning is that the
4 criteria required that the buffer be established
5 when agricultural use of the land ceases. And
6 that it's fairly specific in the criteria that in
7 establishing the buffer, management measures
8 shall be undertaken to provide forest vegetation
9 that assures the buffer functions to protection
10 of habitat and water quality.
11 The panel talked at length about other
12 projects that have involved the review and
13 approval of the Commission of a Buffer Management
14 Plan and felt that might be a way that they could
15 assure that a buffer was appropriately
16 established and that any other recreational uses
17 were appropriately accommodated.
18 The panel also talked about stormwater
19 management and discussed the conceptual design.
20 They were, I think, prudent in acknowledging that
21 at this point the design is conceptual. Although

1 preliminary calculations have been performed and
2 indicate that the applicant will be able to meet
3 the 10 percent pollutant reduction requirement
4 which is required in intensely developed areas.
5 They're proposing four best management practices,
6 three pond wetland systems, and then a fourth
7 multiple pond system.
8 The Commission I think is concerned that
9 when we're providing for stormwater management,
10 that if possible, every effort should be made to
11 deal with conserving and providing habitat if
12 possible, and that environmentally sensitive
13 design in stormwater practices should be a
14 priority. There was a lot of discussion about
15 certain types of practices which require
16 attention and other types of practices and the
17 benefits that those types of practices may
18 provide over a typical surface water treatment
19 system such as a pond.
20 The panel also talked quite a bit about
21 shore erosion control on the project. Currently

1 there is an approved permit approved by MDE and
2 the Army Corps of Engineers for installation of a
3 revetment for shore erosion control. However,
4 what the applicant is currently proposing is to
5 deal with the shore erosion control issue through
6 a marsh creation, which is basically a
7 nonstructural measure that provides some habitat
8 benefits.
9 Some of the information provided in the
10 record indicated that the town believed that
11 providing the marsh creation as a shore erosion
12 control measure was sort of a trade-off in terms
13 of the habitat benefit with the 300-foot setback.
14 That was discussed extensively by the panel.
15 Another concern with providing the marsh
16 creation was a concern about whether there would
17 be conflicts created with shading of the marsh
18 grass which might prevent it from being effective
19 as a shoreline stabilization strategy and whether
20 the providing of a 100-foot buffer as required
21 was going to create conflicts there.

1 The last issue addressed by the panel
2 and not talked about too much today but more at
3 the prior panel meetings was wastewater treatment
4 and concerns about whether the town's wastewater
5 treatment plant was going to be adequate to
6 accommodate all of this new development. The
7 town is proposing to do a major upgrade of their
8 sewage treatment plant which is actually operated
9 by the County. The new or renovated treatment
10 plants will provide nutrient reduction and state
11 of the art technology for wastewater treatment.
12 St. Michael's Town Council approval of the growth
13 allocation actually included conditions that
14 addressed the need to complete the upgrade of the
15 plant before any building permits could be issued
16 for development on this site. So the panel
17 believed that those conditions were adequate to
18 deal with the wastewater issue.
19 That's pretty much my summary of the
20 panel report.
21 CHAIRMAN MADDEN: Any questions? Thank

1 you very much. I'll open it up for public
2 comments. I want to start up with the town of
3 St. Michael's.
4 MR. HICKSON: My name is Michael
5 Hickson, Mr. Chairman, Commission members. I'm
6 the town attorney for St. Michael's. It would be
7 helpful if we had the recommendation from the
8 panel so that I could address that. But I don't
9 know how you feel about that motion.
10 CHAIRMAN MADDEN: The panel has voted on
11 the recommendation. They haven't reported it to
12 the Commission yet at this point. The Commission
13 has not discussed it. So the recommendation is
14 approval with conditions.
15 MR. HICKSON: I understand that. And I
16 wanted to discuss the conditions is why I was
17 hoping that that would be introduced. But I will
18 obviously do whatever you wish me to do.
19 Proceed?
20 CHAIRMAN MADDEN: Proceed.
21 MR. HICKSON: The town of St. Michael's

1 has been dealing with an application on this
2 particular site since 1998. There has been, as I
3 said earlier, extensive litigation. It has been
4 represented that the town is beleaguered, that
5 they're tired of this, that they can't afford to
6 continue the battle if that's what it takes, and
7 that sort of thing. That is simply not true. We
8 have received -- in the beginning we received not
9 only my advice, but we sought a second opinion on
10 a number of legal issues from a law firm by the
11 name of Lenos & Blocker that concentrates its
12 practice in land use law, and Lenos & Blocker
13 have been with the town, they have been advising
14 the town with me ever since 1999.
15 We established a strategy in 1999 and we
16 pursued that strategy and the strategy has played
17 out. We litigated with the developer for as long
18 as the developer wanted to litigate. As
19 mentioned earlier, there have been several
20 applications on this property, and each time an
21 application was submitted that we didn't think

1 he assembled a citizen group that included the
2 developer and representatives from all sides and
3 they mediated what should happen on this project
4 and proposed plans for most of the summer of
5 2002.
6 In addition to that, included with that
7 group, we invited a gentleman by the name of Ed
8 McMahon, vice president of the Conservation Fund.
9 Mr. McMahon has written about conservation and
10 development and he's lectured extensively around
11 the country. And we used him and Professor
12 Collins as a sounding board as to the site, the
13 quality of the proposed plan at that time and
14 what should happen to it. The mediation group
15 was led by Professor Collins and that went
16 throughout the summer of 2002.
17 And at the end of it there were -- the
18 opinion was not uniform. There was a majority
19 opinion and a minority opinion. But many of the
20 points were agreed on and it formed a basis for
21 more dialogue. And after that there was a public

1 was adequate, we turned them down flat. But if
2 they wanted to go to court about it, that was
3 fine. We went to court and met them in court and
4 we defeated them.
5 Part of our strategy was that this is
6 our town and judges don't necessarily make good
7 land use planners. And we didn't want the future
8 of our town decided by a judge. We wanted it
9 decided by our own committees and our own town
10 commissioners. When we felt we were at a point
11 where suggestion was appropriate to sit down with
12 a developer and try to get to a better plan. We
13 did that. And we did it in several ways.
14 We invited in Professor Richard Collins,
15 who was previously head of the planning
16 department of the University of Virginia and also
17 a founder of an organization, if I can get it
18 right, the Foundation for Environmental
19 Mediation. He's done a lot of mediation in land
20 use disputes, not only in Virginia, but in other
21 states as well as Maryland. We called him in and

1 workshop that involved the town commissioners and
2 developer and ultimately a plan similar to this
3 was arrived at. All the while, if the developer
4 was not willing to listen to reason, we were
5 prepared to go to court.
6 But as I said before, we didn't want our
7 town planned in court. So this project proceeded
8 from that point and has gone through the Planning
9 Commission, has gone through the town
10 commissioners at both levels, and received
11 unanimous approvals. The records in this case
12 from the town is over there. Most of that stuff
13 came from the town record. We had three full
14 boxes we submitted to this Commission. The
15 Planning Commission's recommendation was, I
16 believe 70-some pages long and the town
17 commissioners' decision adopted most of that
18 recommendation, but was 20-some pages in addition
19 to that.
20 As you will hear from the panel, most of
21 the concern here seems to be the 300-foot area,

1 the buffer and a hundred foot minimum and beyond
2 that as well as the shoreline treatment. I sent
3 to Chairman Madden a few days ago -- actually, I
4 sent it in care of Ms. Mason for her to do as she
5 wishes. Included with the letter was a list that
6 was three pages long that lists issues that the
7 town commissioners and the Planning Commission
8 considered in dealing with the 300-foot buffer
9 and making their decision that in this case
10 300-foot buffer was not appropriate or needed.
11 One of the reasons that they decided
12 that the 300-foot buffer was not appropriate or
13 needed was because the proposal was to do a
14 vegetative shoreline stabilization whereby marsh
15 would be constructed with some low level stone to
16 keep the sand in place by an organization known
17 as Environmental Concern, Gene Slear from
18 Environmental Concern is here today. He
19 addressed the town commissioners and the Planning
20 Commission. The testimony is on record from him
21 and that testimony is in those boxes over there.

1 But again, among the things that I sent
2 to Commissioner Madden through Ms. Mason were
3 some excerpts from that testimony. The testimony
4 was given after Hurricane Isabel, and Mr. Slear
5 was asked what has been the effects on similar
6 projects from Hurricane Isabel, and the testimony
7 was that there were no permanent effects at all.
8 There were minor impacts. For instance, the
9 vegetation, that the marsh grass was laid down
10 for a while but in a few days it popped back up
11 on its own accord. We think that is a better way
12 and we think it will enhance the qualities of the
13 Miles River. And based on the testimony that
14 we've got and we've seen, and we did investigate
15 it, we think this method will work and it's
16 better to do it that way.
17 Now, what is the incentive for a
18 developer to spend almost twice as much to do a
19 project like that rather than put in revetment if
20 you don't give him something in return? What we
21 gave him in return was we didn't make him put in

1 the full 300-foot buffer. The buffer is, however
2 -- at every location is more than 100 feet. In
3 many cases it's substantially more than 100 feet.
4 Now, we're concerned here, the
5 recommendation is that a full 100-foot buffer and
6 an additional 200 foot, as I understand it,
7 setback area be established. A uniform distance
8 all along this project. Now, the town has
9 invested six years in the development of this
10 property. In the beginning we were totally
11 opposed to it. But this piece of property is
12 subject to an annexation agreement that was
13 entered into with the land owner in 1981. At
14 that point, when that property came into town
15 through an annexation agreement where certain
16 zoning for residential development was guaranteed
17 to the owner, the die was cast at that time that
18 this property was going to be developed.
19 So the town commissioners ultimately
20 came to the position that they should find -- if
21 there was going to be development, it was in

1 their best interest not to simply deny it, but to
2 work for the best outcome, and they believe this
3 is the best outcome.
4 This decision is here in a situation
5 procedurally where there's not much room for
6 negotiation. In another project, Four Seasons,
7 it came before this Commission when the County
8 commissioners who were the final authority had
9 not made their final decision. There was some
10 negotiation done here, the buffer was extended.
11 It then went back to the County for a final vote.
12 We don't have that situation here.
13 As you heard Ms. Owens say, we were
14 required to change our zoning ordinance in 1999.
15 Before that time the process was it went to the
16 Planning Commission, if it was a favorable
17 recommendation, it would come up here for the
18 Critical Care Commission to review and make its
19 decision and then back to the town commissioners.
20 But that's not the way it is now and that's not
21 the way it has been throughout this project. The

1 town commissioners made its final decision, a
2 site-specific, plan-specific decision. And if
3 you do very much with this decision of the town
4 commissioners it will be tantamount to a denial
5 and we'll have to start all over again.
6 I would suggest that as far as what will
7 be recommended, that instead of setting a uniform
8 300-foot setback, that you give the staff and the
9 town an opportunity to work together and try to
10 find a resolution to what has been the panel's
11 concerns. Thank you very much.
12 CHAIRMAN MADDEN: Thank you.
13 Mr. Hickson. Any members of the public like to
14 comment? We ask you to keep it to the matters
15 germane as outlined by the Attorney General and
16 keep it to no more than two minutes. Yes, sir.
17 MR. SLEAR: Good afternoon. My name is
18 Gene Slear. I'm the vice president with
19 Environmental Concern. We're a public
20 not-for-profit company established to restore
21 wetlands, educate the public regarding the value

1 of wetlands, and to do research in the benefits
2 of wetlands for water quality and habitat
3 enhancement. We've been at the same location in
4 St. Michael's, Maryland since 1972. We were
5 engaged by the Midland Corporation to evaluate
6 the needs for water quality enhancement and
7 habitat enhancement on this site, initially in
8 1997, I believe, and more recently in 2002. Our
9 findings are part of the record.
10 The panel's findings suggest that there
11 is some -- there was some discussion regarding
12 certain aspects of our findings and I'd like to
13 address those. I'm not adding any new
14 information, just summarizing what's already in
15 the record.
16 The area that will receive the -- the
17 shoreline that will be protected by marsh
18 vegetation starts from the southerly property
19 line and proceeds up to this boundary here, a
20 distance of about 800-some-odd feet. It was
21 suggested in the panel's report that it would

1 have to be a highly engineered site in order for
2 that marsh to work properly.
3 I want to submit a couple of additional
4 facts for your consideration. The property owner
5 immediately to the south is the Fogg Cove
6 Condominium Association. We designed a marsh
7 vegetation shoreline protection system for the
8 Fogg Cove Condominium Association seven years
9 ago. It's right in here, functioning
10 beautifully, continues to function beautifully.
11 It is engineered to a lower standard than what
12 we've engineered for this area. The reason
13 simply is it receives less fetch; it's more
14 protected. As we proceed on this roughly
15 north-south access, there is more fetch and
16 therefore more energy interacting with the
17 unprotected shoreline.
18 We have, instead of just a system of
19 groins and sand, planted we have established a
20 sill which protects the vertical edge of the new
21 marsh from the energy. I'd like to bore you with

1 two short details, one is that the energy we have
2 to deal with, there are two components to that,
3 one is the rate at which the water attacks the
4 shoreline, and the mass of that. And the mass is
5 a function of how deep the water is. The water
6 is very shallow along this area. So the
7 engineering, as we come away from that property
8 line and proceed up and around, it's very easy --
9 we have done sites that have the same engineering
10 requirements that's in the record. We've shown
11 pictures of what happened after Isabel to those
12 sites.
13 CHAIRMAN MADDEN: You need to sum up.
14 MR. SLEAR: The shoreline is part of an
15 eco-system which includes best management
16 practices for stormwater management and a
17 forested buffer and the tidal marsh. The tidal
18 marsh in this area runs along the north-south
19 axis. The forested buffer will not shade that
20 marsh to any extent because the sun comes up in
21 the east and goes down in the west. So we're

1 very comfortable to work out something with the
2 Commission to fully forest that. That working
3 with the constructed wetlands that will be part
4 of the stormwater management system provide a
5 superior system as defined by the U.S. Wildlife
6 Service as recently as 2002.
7 CHAIRMAN MADDEN: Thank you very much.
8 MR. SLEAR: Thank you.
9 MR. DICKSON: My name is Sidney Dickson.
10 I've lived in the environs of St. Michael's.
11 I've lived within three miles of it for most of
12 my 63 years. I'm one of those who gave up
13 development rights on my 37 acres adjacent to
14 town in order to prevent such unhealthy
15 developments as we are faced with today.
16 Read between the lines here, please, pay
17 attention. From what you've heard today all is
18 roses. It seems to me that the public input has
19 not been considered. I assure you that the
20 community of Talbot, the Eastern Shore, I know
21 the watermen, the builders, the land owners are

1 you might have heard. They have demonstrated
2 they'll dump enough money into this project to
3 prevail. It seems clear that Midlands will stop
4 at nothing and take the golden egg and leave a
5 devastated goose. This was made clear to me
6 person to person in a very chilling way.
7 Before the Town Commission folded into
8 submissive compromise, before any of these little
9 meetings, I was told by a sitting town
10 commissioner, Rob Nobile, by name, that few
11 supported the Midlands proposition. But he said
12 townspeople had been taxed to the limit to the
13 point they considered Midlands to be unstoppable.
14 Furthermore, get this, this is untenable, could
15 be very easily implied, and I can't prove it, but
16 this town commissioner told me this, and I'd like
17 to see the town commissioners and the lawyers
18 deny it, the town commissioners were informed
19 that if they continue to stand in the way of
20 Midlands, they stood risk of being sued
21 personally and individually for being in the way.

1 dead set against this development. No matter
2 what you hear about how they have gotten together
3 and made these arrangements. These are silly
4 details that you're being confused with. The
5 point is once this land is ruined, it's going to
6 stay ruined until the next ice age. These
7 buildings aren't going away if you let them be
8 put there. I implore you, do not let this go
9 through.
10 They say, oh, you've got to compromise.
11 You don't have to compromise. Right is right and
12 wrong is wrong. This is wrong. This is good
13 habitat. On normal storms in the summer of St.
14 Michael's contaminated wastewater and sewage
15 actually runs in and out of one of the food
16 stores. I've seen it happen. It's Lady's
17 Market. They're prepared with sand bags. This
18 is not unusual.
19 There's something worse. It's not so
20 much what they're doing, it's how they're doing
21 it. Through incessant lawsuits, contrary to what

1 Rob Nobile told me this. I testified under oath
2 that he told me this and that they had caved
3 because they thought Midland was unstoppable and
4 they were -- could not raise taxes further and
5 they certainly couldn't have their families
6 ruined by this money.
7 This is a matter of money. The
8 community does not want this. Who wants this?
9 Midlands. And one or two contractors in the area
10 who have been paid to agree with them. The
11 builders don't want it. You see no builders
12 saying we want to build these houses. Our
13 builders are busy. We have plenty of growth.
14 CHAIRMAN MADDEN: I need you to sum up,
15 please. Your time is up. I need you to sum up.
16 MR. DICKSON: Turn it down flat. Thank
17 you.
18 CHAIRMAN MADDEN: Thank you, sir.
19 MR. DEMING: Chairman Madden, members of
20 the Commission. I'm Thomas Deming, I'm an
21 attorney for the St. Michael's Bay Hundred

1 Alliance. The Commission's charge under Natural
2 Resources Article Section 8-1809 is to determine
3 whether the program amendment as proposed meets
4 the goals of the statute and the criteria. You
5 will hear in the panel's recommendation that was
6 forecast in the staff report several specific
7 instances in which the panel members express
8 grave concern whether this project meets the
9 criteria. Most specifically the 300-foot
10 setback. The criteria say that the town shall
11 use the guideline that proposed new IDA should be
12 located at least 300 feet from the tidal waters
13 and tidal wetlands.
14 As a member of this morning's panel
15 said, that's a strong should and it's backed up
16 by a shall. But the record in this case shows
17 that rather than using the 300-foot setback, the
18 town accepted rationales from the developer as to
19 why there should be no 300-foot setback. This is
20 but one instance of several that are reflected in
21 the panel's comments that indicate that this

1 proposal as submitted does not meet the criteria.
2 And I would submit to you that rather than
3 approving this proposal with conditions, that the
4 more straightforward action for this Commission
5 to take under the terms of the statute is to vote
6 it up or down and I would urge that your vote
7 should be to disapprove the proposed program
8 amendment. Thank you.
9 CHAIRMAN MADDEN: Thank you.
10 MR. ALSPACH: Thank you, Mr. Chairman.
11 Ladies and gentlemen, good afternoon. My name is
12 Tom Alspach. I represent Talbot Preservation
13 Alliance, Inc. We are a volunteer citizens
14 organization with a large number of members in
15 Talbot County and in St. Michael's.
16 We are opposed to this project
17 specifically for the reasons that it does not
18 comport with the criteria that this Commission
19 must apply under the Critical Area law. You'll
20 hear the staff report about problems with
21 compliance with the 300-foot setback. We

1 certainly agree with that.
2 I'd like to draw your attention to the
3 additional criterion, mandatory criterion with
4 which this project does not apply. That is the
5 criterion relative to development in intensely
6 developed areas which recites that to the extent
7 practicable, future development shall use cluster
8 development as a means to reduce impervious
9 surface and maximize areas of natural vegetation.
10 COMAR defines cluster development as a means of
11 residential development where dwelling units are
12 concentrated in selected areas or in a selected
13 area or selected areas of a development tract so
14 as to provide natural habitat or other open space
15 uses on remainder.
16 Ladies and gentlemen, the developer here
17 has done the clustering of the houses. But they
18 forgot about the open space. There is none. The
19 rationale is you have this 100-foot buffer. If
20 you look at the rest of this development plat,
21 all we have is houses. There is some open space,

1 but it's impervious surface; it's tennis courts.
2 The requirement under the COMAR statute is to
3 reduce impervious areas through cluster housing.
4 This does not reduce impervious areas, as you
5 heard, it increases impervious areas from 0
6 percent to 55 percent of the site. There is no
7 dedicated open space on this plat.
8 Now, I think you will hear that the idea
9 of extending the 300-foot setback to 300 feet is
10 some sort of substitute for the creation of open
11 space. I submit to you that it's not. The
12 rationale of the 300-foot setback is to protect
13 the shoreline against human impact. That's right
14 in the Critical Area law. That's a separate and
15 distinct criterion from the clustering criterion
16 which requires open space as a means to reduce
17 impervious areas and maximize areas of natural
18 vegetation. There are no areas of natural
19 vegetation that are being provided for on this
20 project. This project does not comply with the
21 criteria. I thank you for my time.

1 CHAIRMAN MADDEN: Thank you very much.

2 DR. McCARTHY: Chairman Madden and

3 members of the Critical Area Commission. Thank

4 you for allowing me to speak. I'm Dr. John

5 McCarthy, and I represent the Talbot River

6 Protection Association, of which I serve as

7 executive director.

8 TRPA, as we're best known, was created

9 about eight years ago in an attempt to protect

10 the rivers and creeks in Talbot County from the

11 constant degradation that they were experiencing,

12 and one of those of which is, of course, the

13 Miles River. Eight years later it would appear

14 that we're not succeeding.

15 In the past two weeks our Talbot County

16 newspaper, The Star Democrat, has featured news

17 articles telling us that the oyster harvest this

18 year is the lowest ever and Chesapeake oysters

19 have fallen to 1 percent of their normal

20 population. The seafood industry on the

21 Chesapeake has fallen from its predominant place

1 completed a three-year study of the discharge

2 from the St. Michael's wastewater treatment plant

3 into the Miles River.

4 That study concluded that the

5 nutrient-generated loss of dissolved oxygen at

6 that site in the river was lethal to all marine

7 life. The State of Maryland, in part as a result

8 of this study, declared the Miles River to be

9 impaired. Unfortunately, this is not an isolated

10 situation. TRPA and the creek watchers have been

11 collecting water samples from all the rivers and

12 creeks in Talbot County, including the Miles

13 River, and it found that in many cases the

14 results are comparable and that marine life and

15 plant life is not compatible with what is there.

16 This is the same wastewater treatment

17 plant that exists today. Nothing has changed.

18 It's the same overburdened and malfunctioning

19 sewage removal system that routinely, as you've

20 already heard, allows partially treated or even

21 untreated sewage to flow in the streets of St.

1 of just a few years ago and the watermen who

2 survived on it are now searching for other means

3 of livelihood. A sport fisherman is suffering

4 from a serious systemic infection caused by an

5 infected rockfish, and this is not an isolated

6 incident. What do all those three things have in

7 common? They're all related to the condition of

8 the water of the Chesapeake Bay and the rivers

9 flowing into it.

10 This should not be news to anyone. I'm

11 sure you all realize that just recently Governor

12 Ehrlich and the Maryland legislature passed

13 landmark legislation funding over a number of

14 years upgrading of the larger wastewater

15 treatment plants in the estuary. One of these

16 plants is hoped to be the Talbot County-owned

17 plant serving St. Michael's into which the

18 proposed 300 Miles Point III homes would send

19 their sewage. A year ago TRPA, with the

20 assistance and coordination of the Horn Point

21 Laboratories of the University of Maryland,

1 Michael's during heavy weather situations.

2 We cannot allow the wastewater and

3 stormwater from 300 more homes to be added to it.

4 Even if the wastewater treatment plant is

5 improved it will cost millions to Talbot County

6 and Maryland, and the Miles River will not be

7 capable of handling the discharge.

8 CHAIRMAN MADDEN: I need you to sum up.

9 DR. McCARTHY: The significance of this

10 involves the welfare of a major Maryland

11 industry, the well-being of all of our citizens

12 and their ability to enjoy their surroundings,

13 and most importantly the public health of all

14 those who live and travel. We urge not that the

15 proposed Miles Point III growth allocation be

16 sent back to the town for improvement, but it be

17 rejected without conditions. Thank you.

18 CHAIRMAN MADDEN: Thank you. Please try

19 to adhere to the time limit in fairness to

20 everybody else.

21 SPEAKER: I'm afraid that there's no way

1 to hold it up. This is a portrayal of the area
2 of St. Michael's showing the river. I just
3 wanted to point out this was used recently. This
4 is a DNR product. It indicates the oyster bars
5 here at St. Michael's, the oyster bars that exist
6 in this region where the present consideration is
7 underway for the impact on the oyster stocks in
8 the Miles River.
9 I would like to say to the Commission
10 this: It seems to me that in history -- and I
11 personally was involved years ago with the
12 efforts that were made to put the critical area
13 law into place and design it for its purpose. I
14 understood, and people still today do, understood
15 its objective was to guarantee that we would
16 protect the water, the fishery, and the seafood
17 stock, the capability of the water being what it
18 was at one time.
19 It seems to me that we're off that mark
20 with many of the decisions we're making today,
21 and this one in particular. The Miles River

1 focus on exclusively go to one of the conditions
2 the panel has proposed, which is a uniform
3 300-foot setback. And the first thing that I
4 want you to understand is that in the entire
5 history of the Critical Area Commission, you have
6 never imposed a 300-foot setback contrary to the
7 local governing body's approval and contrary to
8 the application, never in the history of any
9 application that has ever been before you. You
10 are asked today to do something extraordinary in
11 your path.
12 The second thing I want you to know is
13 one of the reasons for that is for the last 11
14 years, the Critical Area Commission has had a
15 written policy that says the 300 feet should
16 guideline is one for the locality to consider.
17 The locality must have a 100-foot buffer and it
18 is to consider the 300-foot setback, combining a
19 200-foot setback with the 100-foot buffer. And
20 if it isn't going to increase the setback, it
21 needs to explain why.

1 cannot assimilate what's being proposed here.
2 The commissioners paid $40,000 for three years of
3 study to find out what the nutrients were in the
4 river right in the vicinity of St. Michael's
5 where this project is proposed. And the results
6 were very clear. The nutrients were out of
7 control and because the nutrients were whatever
8 they are, the dissolved oxygen was lethal to all
9 marine life.
10 I have to ask all of you, what did we
11 start out to do? This isn't what we're doing.
12 It was to protect these resources, these
13 fisheries. We're not doing it. How can we allow
14 more impact to the already threatened and
15 seriously declined capabilities of the Miles
16 River? Thank you.
17 CHAIRMAN MADDEN: Thank you, sir.
18 MR. DETAR: Thank you, Mr. Chairman,
19 members of the Commission. My name is Richard
20 DeTar from Miles & Stockbridge. I represent the
21 applicants. The comments that I would like to

1 But the point is your written policy
2 says that discretion is with the locality. The
3 exhibit is Exhibit 25 in the record. Don't take
4 my word for it. Ask your lawyer -- if you've
5 ever done it before -- ask your lawyer if that's
6 what the policy says.
7 Now, having said that, the Critical Area
8 Commission has influenced setbacks before, and
9 the way that you've done it is you've negotiated
10 with the municipality and the applicant, and
11 you've reached mutual agreement. That's what
12 happened in Hovnanian. It wasn't forced, it was
13 through agreement because of particularly
14 sensitive features.
15 When you vote on this I'd like you to
16 consider a couple of things. If you force for
17 the first time in your history a 300-foot
18 setback, you force a legal decision on whether or
19 not you have that authority. And if you do that,
20 it's not just about whether or not you erode your
21 ability to have influence on this project, if a

1 court says you don't have that authority, it
2 influences your ability to have that influence on
3 other projects, like Hovnanian.
4 The second thing I want you to know is
5 nobody ever asked us to push back the setback.
6 It never came up despite meetings with the staff.
7 The applicant is willing to consider that. So
8 I'm not here to tell you leave it alone. I'm
9 here to say consider approving it with the
10 condition that the applicant and the town worked
11 with your staff based on the site conditions to
12 arrive at what makes sense for a setback.
13 CHAIRMAN MADDEN: I need you to sum up.
14 MR. CETAR: Not an arbitrary and uniform
15 300 feet. Look at the environmental features of
16 the site. Use your staff who are experts and
17 allow the process to work through communication
18 the way it should. I believe everybody will be
19 better served if that process, which is how it
20 has historically worked, takes effect in this
21 case.

1 town is not left dangling. In fact, that
2 agreement has already been recorded in the land
3 records of Talbot County, so it now will extend
4 not only to the current developer owner but to
5 any subsequent owner.
6 I heard something about cluster not
7 being a good idea here. I think people are
8 missing a lot of small pockets of open space that
9 do add up on this site. I know the mission of
10 this Commission is environmental protection, but
11 the mission of planning for communities and place
12 making in communities is to think about a lot of
13 other things. This development, designed by
14 Andre Skelarni, who is a world renowned designer
15 of traditional neighborhood developments,
16 Seaside, Florida, you guys have heard the litany,
17 I think it's an opportunity for the town to have
18 quality development and environmental protection.
19 There are much more open space than has been
20 given credit, and if we clustered this on 30,
21 percent of the site and left the rest open space,

1 CHAIRMAN MADDEN: Thank you.
2 MR. REDMAN: My name is Tony Redman.
3 I'm a planner with a company called Redman-
4 Johnson Associates. I'm speaking on behalf of
5 the town of St. Michael's, where I work as a
6 consultant and have been very engaged in this
7 project. I have just a few comments,
8 There was concern that wetlands creation
9 on this edge might not be viable. I had
10 submitted only last week a copy of the wetlands
11 boundary map done by the State of Maryland back
12 in 1971 that shows much core grass marsh in this
13 area, which I think is a great indicator that it
14 is viable, that together with a reputation of
15 environmental concern and their history and track
16 record of building these things gives me great
17 reassurance of the work.
18 However, because we can't always be
19 certain, I want you to know that the town has
20 already secured a ten-year agreement with the
21 developer for maintenance of that wetland, so the

1 I would submit to you it would look nothing like
2 the existing town of St. Michael's. It would be
3 totally inconsistent with character and scale.
4 And in fact, in Talbot County and surrounding
5 areas that's what we've already got, lots of
6 cluster developments on two-acre lots. Using
7 land inefficiently, not housing people on less
8 land, it's very land wasteful.
9 Also there's a reference to this being
10 as high as 50 and 60 percent impervious surface.
11 It's not. The latest calculation from the
12 developer is 49. You look at me and say so what,
13 that's pretty high. Yes, it is high. But in the
14 IDA there is no limit on impervious surface. If
15 you wish to have a limit on impervious surface
16 through IDA, do the same thing you do in the LDA,
17 legislate an impervious surface limit. Until you
18 do, we don't have an option. Thank you.
19 CHAIRMAN MADDEN: Thank you very much.
20 Yes, sir.
21 DR. BAINES: Chairman Madden, ladies and

1 gentlemen, I'm Callan Baines, I'm a physician
2 practicing in Easton since 1968. I listened at
3 the initial presentation by the tall blond lady
4 who did a nice job pointing out all the good
5 features. And then I said when is she going to
6 address the question of sewage disposal? Right
7 at the end I thought she let the cat out of the
8 bag because she said the sewage plant will be
9 rebuilt by Talbot County.
10 So I ask you are you going to permit
11 approximately 60,000 gallons per day of sewage
12 going into a plant which is already failing which
13 in turn goes into a river which is heavily
14 polluted? Let me remind you, sewage is dangerous
15 stuff. I don't want to tax our transcriptionist,
16 but you've got salmonella and shigella, E. coli,
17 crypto-sporidium, mycobacterium marinum, and
18 hepatitis virus. If she gets that right I'll
19 congratulate her. Pfisteria causes loss of
20 intellect which sometimes is permanent. We've
21 had it on the Pocomoke River. The Miles River is

1 frequently closed because of E. coli
2 contamination in the oysters.
3 The wastewater treatment plant there,
4 quite regularly fails, puts raw sewage straight
5 out because it doesn't have the holding capacity
6 for a town of 600 people. Now, this developer
7 wants to add 251 houses at his last count, 251
8 houses each putting out 250 gallons a day comes
9 out to about an extra load of 60,000 gallons
10 going into a plant which is already failing.
11 This development, if it goes through in
12 its present form, abruptly doubles the population
13 of St. Michael's. For those of you who don't
14 live in that county, St. Michael's in places is
15 only about a thousand feet wide. There's an
16 impact on the sewage, impact on the highways and
17 the rights of citizens that live there to travel
18 freely upon the highway.
19 CHAIRMAN MADDEN: Doctor, I'm going to
20 ask you to sum up, please.
21 DR. BAINES: Right. Bill 933 was an

1 attempt to provide adequate sewage disposal and
2 to enforce better cooperation between the town
3 and county. This plant is a county
4 responsibility. The counties are responsible for
5 public health. Therefore, 933 is essential if
6 they are to protect the health and welfare of the
7 people that live there. I ask that this project
8 not be allowed until the wastewater treatment
9 plant have been improved. Thank you.
10 CHAIRMAN MADDEN: Thank you, Doctor.
11 Yes, ma'am.
12 MS. JONES: Good afternoon. My name is
13 Beth Jones. I'm president of the Bay Hundred
14 Foundation, an all-volunteer organization devoted
15 to preserving and enhancing the historic,
16 cultural and environmental qualities that make
17 our region so special.
18 This project is located in the Bay
19 Hundred area. As you probably know, Talbot
20 County has 660 miles of shoreline, more than any
21 other county in the United States. Bay Hundred

1 has the lion's share of that shoreline.
2 Dr. Baines was talking about the fact it's only a
3 thousand feet across. I have to say I'm so
4 delighted to live in a state that had the
5 leadership and the foresight to create the
6 Critical Area Commission 20-some years ago. And
7 I guess my question to you is if not here, then
8 where? This is the heart of what critical area
9 is all about.
10 The second question I have is about what
11 I heard the attorney for Midlands to say. If I
12 heard him correctly, it sounds like he was
13 implying that there might be a lawsuit against
14 you if you didn't give them what they wanted.
15 And if that's the case, unfortunately we've been
16 down this pike before. That has been the modus
17 operandi.
18 CHAIRMAN MADDEN: Thank you, Ms. Jones.
19 MR. DIES: My name is Russell Dies. I'm
20 vice president of the Maryland Watermen
21 Association. I live at Tilghman, Maryland.

CRC Salomon
(410) 821-4888 f: R180

1 Harvested seafood, shellfish out of Miles River
2 all my life until here recently. And last summer
3 Miles River was shut down for two weeks and we
4 couldn't harvest shellfish in Miles River because
5 of the overflow of the sewage treatment plant in
6 St. Michael's.
7 If you add, double the amount of
8 effluent going out of there, I see real danger
9 for the watermen in that area. Take a good look
10 at us. You might not want to, but you won't see
11 us much longer. As commissions okay these plans,
12 they're writing my death certificate. Because as
13 a waterman in Miles River and other rivers in
14 Talbot County, we soon no longer would be able to
15 make a living. We're right at that point now.
16 But I hail them for making new
17 marshland. But what's going to come from the
18 houses, the development, the overflow into the
19 Miles River is going to wipe away any benefits.
20 It can be the best plan and the best laid out
21 community, but if it puts people out of work. My

1 family has been working on the water since 1670.
2 We all have been watermen captains. I own a
3 50-foot skipjack. I can no longer make a living
4 because -- this is one reason, the oysters are
5 dead. If you have any feeling for the watermen,
6 turn this down.
7 CHAIRMAN MADDEN: Thank you.
8 MR. MARTIN: Good afternoon. For the
9 record, my name is Warren Martin. I'm a resident
10 of St. Michael's, Talbot County, Maryland. I'm
11 also co-chairman of SOS, Save Our St. Michael's.
12 Perhaps you've seen some of our bumper stickers
13 in the last seven years. We are an organization
14 of approximately 300 residents who have followed
15 and monitored this issue for seven years. I have
16 probably attended close to 100 of these meetings
17 in that period of time.
18 This Midland project is simply too dense
19 for our fragile Bay Hundred peninsula. To the
20 south of this project we have two units per acre.
21 Immediately to the north we have two acres per

1 unit. On Monday the third of this week the
2 voters of St. Michael's went to the polls and
3 elected two of the three slow growth limited
4 control growth candidates, and each of these
5 gentlemen are here today.
6 Without further redundancy, SOS would
7 like to endorse the testimony of our attorneys
8 Deming and Asplach and other opponents who have
9 spoken before me. Thank you for hearing our
10 plea. Please help us preserve our way of life,
11 our environment, and our Chesapeake Bay
12 tributaries. Please vote no on this growth
13 allocation.
14 CHAIRMAN SETZER: Thank you, Mr. Martin.
15 Commissioner Carroll.
16 MR. CARROLL: I'm Peter Carroll, Talbot
17 County Council. I'd like to talk a little bit
18 about that waste treatment plant. St. Michael's
19 plant is actually a regional plant. It deals
20 with St. Michael's, Royal Oaks, and a number of
21 houses and developments that are along that

1 route, that state road that comes in. The County
2 took that over a number of years ago because the
3 town was operating it and was not able to keep it
4 up to an acceptable standard. There has been
5 significant deterioration of the stirring paddles
6 and the processing equipment. So we have
7 ownership of that facility now.
8 A couple years ago a plan was to put in
9 place to increase the size of that plant to
10 800,000 gallons. It's a 300,000 gallon plant
11 today. Last year we took a look at that because,
12 as the governor has said to all of us, we need to
13 do a better job about environmental controls.
14 The processes that we have in place today simply
15 aren't getting the job done, and local
16 governments need to do more.
17 So we went back and revisited that
18 800,000 gallon plant and sized it to 660,000
19 gallons. That's the size of the plant that MDE
20 had originally recommended be put in place. That
21 downsizing brought to the surface another

1 critical issue. St. Michael's is an old historic
2 town, and the sewer collection lines, the lines
3 from the houses, the regional collectors that
4 lead into the main collection lines, are leaking,
5 and we have enormous infusion and of course
6 rainwater flowing into those lines so that the
7 plant on a nominal average runs around 300 to
8 350,000 gallons a day.
9 But when we have storm events it can go
10 to a million, a million and a half or a million
11 eight in some cases. Those are the cases that
12 cause raw sewage to flow out of manhole covers,
13 pops the lids off and sends that out into the
14 streets and into the town. We think that this
15 project is not right yet. It should not go
16 forward. And we sent a letter to you asking you
17 to delay this project because we are very
18 concerned about getting a new wastewater
19 treatment plant in place and being able to cope
20 with it.
21 The plant alone will not fix the

1 problem. We need to do something about the INI.
2 We are spending money on that. That's a part of
3 our upgrade program. But unless we can bring
4 that flow down to I'm going to say in storm
5 events to something like 700,000 or 800,000
6 gallons per day, a new plant isn't going to solve
7 the problem. All these new homes are going to
8 exacerbate that.
9 We're here to ask you not to do this
10 now. Let us get our house in order. Let's get
11 the waste treatment plant back on line, and let's
12 go into St. Michael's and fix all those
13 connections and leaders and then we're ready to
14 move on with it. Thank you very much.
15 CHAIRMAN MADDEN: Thank you, Council
16 Member Carroll.
17 MR. VALANOS: Good afternoon. My name
18 is George Valanos. I'm the developer of the
19 Miles Point project. I'd like to pick up on
20 something that Mr. Carroll said. Our engineers
21 are working with the County director of

1 utilities, Ray Clark, to address the INI problem.
2 We recognize that that's an issue, and certainly
3 before we go forward we're going to have to
4 address it and see to it that the INI issue is
5 taken care of, as well as working with them with
6 respect to the capacity of the existing
7 wastewater treatment plant.
8 Also I'd like to make a comment about
9 what our firm stands for is about smart growth,
10 pedestrian-friendly development. I know that
11 density has been an issue. But I also -- my
12 feeling of the critical area legislation, and
13 maybe some of you agree and some of you don't, is
14 to really identify through your planning process,
15 through smart growth issues, where development is
16 to take place and to identify those areas that
17 are priority places and also to look at them in
18 compact planning. Because what you're doing by
19 developing compactly is creating a pedestrian
20 environment where people can walk or bike, and if
21 it's close into town, which this project is, then

1 they will actually reduce car trips. And also
2 you can centralize your stormwater management and
3 provide best practices for that.
4 Outside of the town of St. Michael's
5 there is in the Bay Hundred region on average
6 over the last two decades roughly 30 units per
7 year, 300 every decade that are being developed
8 on large lots. And what a development like this
9 will do, in my opinion, is will redirect that
10 development to areas where development should
11 take place.
12 With that I want to thank you for your
13 time.
14 CHAIRMAN MADDEN: Thank you,
15 Mr. Valanos.
16 MR. DUNCAN: Mr. Chairman, members of
17 the Commission, let me introduce myself. My name
18 is Thomas Duncan. I'm a member of the Talbot
19 County Council. I was on that council, as a
20 matter of fact, I was president of Talbot County
21 Council when the Critical Areas legislation was

1 enacted, and the towns were given a certain
2 amount of growth allocation, along with the fact
3 that we did a new comprehensive plan and a voting
4 ordinance at that time. So as you can see it was
5 quite hectic at the time that I was on that
6 council.
7 I would like to speak to you not on the
8 issues of engineering or chemicals, or whatever.
9 I'd like to speak to you on the emotional issue
10 of this bill and it's this: My great-grandmother
11 was a Native American. My grandfather made a
12 living on the water. My father made a living on
13 the water. I grew up on the water. I would
14 suggest that the representatives of the town here
15 were not residents of the Talbot County. I've
16 been in Talbot County 67 years and I've seen the
17 progression or I should say regression of the
18 waters of Talbot County.
19 You ask why am I here and why am I so
20 emotional about this subject matter. The fact of
21 the matter is it's not going to make any

1 difference to me. At my age, I'll be gone. It
2 doesn't matter. But I have 12 grandchildren that
3 are going to accept what I leave for my
4 grandchildren. We're not asking for no growth in
5 Talbot County. All we're asking for is the
6 opportunity to get it right, to get it right.
7 That's all we're asking. And the fact of the
8 matter is we're at a crossroads right now. If we
9 can't get it right now, you can forget about
10 Talbot County. Why do people like to come to
11 Talbot County? It's pristine; it's beautiful.
12 Because Talbot County was the first county on the
13 Eastern Shore that had zoning. And that, in
14 fact, is what made Talbot County what it is, plus
15 we had some very wise people in government and
16 some very wise people in the civilian sector that
17 came forward and helped us guide our county.
18 So please give Talbot County the
19 opportunity to plan for the future. Thank you
20 for your time, Mr. Chairman.
21 CHAIRMAN MADDEN: Thank you, Council

1 Member Duncan. Anybody else? Judge North.
2 JUDGE NORTH: Good afternoon,
3 Mr. Chairman, ladies and gentlemen. I commend
4 you upon your patience and your attentiveness.
5 You've heard a great deal this afternoon and I
6 have just a few more words. This property is
7 near mine. So I'm very familiar with it. But I
8 assure you that if it were miles and miles away I
9 would have the same concern. St. Michael's is on
10 a very delicate area of land. It is an isthmus
11 connecting two bodies of land with water on each
12 side of it.
13 The waters of the Miles River have been
14 terribly, terribly damaged over the years. There
15 are no oysters in the Miles River any longer.
16 There are very few crabs and fish, and very
17 little bottom grasses. The Miles is in terrible
18 condition, due very largely to what happens in
19 St. Michael's and at the St. Michael's wastewater
20 treatment plant. I would urge you to give every
21 consideration not to compromise this matter

1 because we are, as has been said, at a
2 crossroads. The Miles and the bay have never
3 ever been in as terrible a condition as they are
4 today.
5 And recognizing this, I must point out
6 to you that a great number of people, the great
7 majority of people familiar with this situation
8 have voiced opposition to it. I took the liberty
9 of sending out a memo to all of you together with
10 supporting letters of people who had written in
11 concern, and in summary I would point out to you
12 that in favor of this proposition there is the
13 Midlands Corporation, the St. Michael's Town
14 Council, or part of them now, and a handful of
15 real estate brokers and other individuals.
16 Against this proposal, totally against it, are
17 Governor Harry Hughes who would be here today
18 save for a preexisting medical appointment;
19 Russell Trane, the first head of the
20 Environmental Protection Agency; Chuck Fox,
21 former secretary of DNR; several former St.

1 Michael's town commissioners who have written;
2 all four former Critical Area Commission members
3 from Talbot County, the Bay Hundred Foundation,
4 Fogg Cove Homeowners Association, Historic St.
5 Michael's, Maryland Watermen's Association, Save
6 Our St. Michael's, St. Michael's Preservation
7 Coalition, Talbot County Historical Trust, Talbot
8 County Oystermen's Association, Talbot
9 Preservation Alliance, Talbot River Protection
10 Association, and hundreds of citizens throughout
11 Talbot County.
12 In closing let me say that I thought
13 Mr. DeTar was very candid in his comments and he
14 has followed the path that his client has
15 followed previously. He says to you, in effect,
16 if you go along with this requirement at 300-foot
17 setback you're going to go to court. You're
18 going to be hamstrung in the future. That's his
19 threat. There is an easy way of resolving that
20 matter. Very easy. Turn it down flat, no
21 conditions. Turn it down flat. Thank you.

1 CHAIRMAN MADDEN: Thank you, Judge
2 North. Would anybody else from the public like
3 to make a brief comment? We thank you. I would
4 like to turn to the chair of the panel for
5 additional information and recommendations.
6 MR. SETZER: Over the past 45 minutes to
7 an hour you all had a small taste of what we
8 experienced for three to four hours when we had
9 the public hearing for this particular growth
10 allocation. And you add those comments along
11 with the cart of backup material that's been
12 supplied to the Commission in support and
13 opposition to the project, and you can see the
14 type of issues that we as a panel have been
15 wrestling with over the past several weeks.
16 As a result of what was offered this
17 afternoon, I guess I'd just like to address a
18 couple points so at least you all have some idea
19 of the discussion that the panel had in moving
20 forward with this recommendation. First off,
21 there was a lot of discussion about the 300-foot

1 setback and how that relates to the design of the
2 development, the fact that it's very intense
3 development, and the fact that it is going to
4 increase the impervious surface on the site.
5 According to Mr. Redman the new figure is 49
6 percent. But obviously the increase in
7 impervious surface is going to be significant.
8 And those were the things that we looked at when
9 we were discussing the 300-foot setback.
10 We recognized, and again, Mr. Redman
11 pointed it out in the plan, that there are a
12 number of open space areas distributed throughout
13 the development. But we also thought that it was
14 important, because of the intensity of the
15 development and because of the impervious
16 surfaces, that we provide a more significant
17 setback to help the Commission deal with its
18 regulatory issues in terms of water quality and
19 habitat protection and those types of issues.
20 We talked at considerable length about
21 the use of the 100-foot buffer and we looked at

1 it from both a plant and wildlife habitat issue
2 as well as public access. And we recognized that
3 in terms of the Critical Area criteria those are
4 both important issues. But I think all the panel
5 members came down on the side of a more heavily
6 vegetated 100-foot buffer, again, to promote the
7 water quality and habitat protection requirements
8 of the Critical Area Commission.
9 We talked about stormwater management
10 and appropriate best management practices for the
11 site. There's a number, I think three or four
12 surface treatment ponds on the site which
13 obviously you can vegetate and provide some
14 wetland vegetation. But we thought that as the
15 design for the project moved forward, that there
16 should be additional consideration for
17 environmentally sensitive design for the
18 buildings in terms of rooftop disconnects, what
19 other opportunities may exist based on the
20 geology of the site, and opportunity for
21 infiltration and those types of issues so that we

1 had an opportunity to kind of look for some
2 expertise and guidance in the stormwater
3 management area, and we asked Ken Pensill from
4 MDE to sit in on panel discussions and provide
5 some background in terms of the type of treatment
6 options that are available to deal with
7 stormwater management.
8 The panel also discussed, and discussed
9 it quite heavily this morning, shoreline
10 treatment. We talked about marsh creation versus
11 revetment. There's an existing permit issued by
12 MDE for revetment on part of the property. We
13 talked a lot about whether or not marsh creation
14 would be successful. And all of that discussion
15 was fine, but when it came down to a
16 recommendation, what the panel really looked at
17 was whether or not providing a vegetated
18 shoreline treatment was an appropriate trade-off
19 for a forested, vegetated 100-foot buffer.
20 We also heard, both during the hearing
21 as well as over the past hour, a lot of concerns

1 about wastewater treatment. And again, the panel
2 was interested in making sure that we understood
3 the situation as it exists today as well as what
4 was on the horizon for wastewater treatment for
5 Talbot County in the St. Michael's area.
6 We asked again MDE from the MPDS program
7 to come in and talk to the panel and discuss the
8 issues related to this treatment plant,
9 infiltration, the overflows, and what was being
10 done now and in the future to address the sewage
11 treatment issues.
12 And I think the panel report that Mary
13 put together kind of puts it in context. MDE has
14 issued a new permit allowing for the increase of
15 the treatment plant to 660,000 gallons per day.
16 They're required to put in biological nutrient
17 reduction. They're required to put together a
18 plan to address the infiltration into the system,
19 which is a big concern and a big part of the
20 overflows that are being experienced. And it's
21 our understanding that the town has qualified the

1 construction on this property contingent upon
2 appropriate availability of sewage treatment.
3 So we've looked at the issue; we've
4 talked about the issue, and the agencies that are
5 responsible for dealing with the issue have all
6 been engaged and are working toward a resolution.
7 So we've heard the issue; we've tried to
8 understand the issue, and the agencies
9 responsible for dealing with the issue have all
10 been engaged, and from that point we've moved on.
11 From my notes that's all I have.
12 If you don't mind, if there's anyone
13 else on the panel that would like to provide
14 other observations before we move forward with
15 the recommendation.
16 CHAIRMAN MADDEN: I'd be happy to take
17 those. I want to compliment the panel. They
18 have put a lot of time and debate into this. I
19 want to commend the members. Any other panel
20 members?
21 MR. SETZER: I call for the chairman to

1 make a recommendation.
2 What's being distributed now is a
3 supplement to the panel report which is basically
4 the recommendation for a vote. The panel
5 discussed Miles Point III growth allocation
6 request in regard to the consistency of the
7 request with the goals of the Criteria Area Act
8 and the Commission's Criteria required by Natural
9 Resources Article 8-1809(j). As a result of the
10 panel discussions the panel would move for the
11 approval of the growth allocation request with
12 the following conditions; one, that the
13 development shall be set back from the landward
14 edge of tidal waters at least 300 feet. Passive
15 recreation activities may be allowed outside of
16 the 100-foot buffer; two, the 100-foot buffer
17 shall be established. And in establishing the
18 buffer, management measures shall be undertaken
19 to provide forest vegetation that assures the
20 buffer functions set forth in Critical Area
21 Criteria.

1 Before final recordation of any
2 subdivision plats or grading of the site, a
3 Buffer Management Plan shall be developed
4 cooperatively with the town and the Commission
5 and the respective staffs. The Buffer Management
6 Plan shall be approved and reviewed by the
7 Commission and may provide for public access;
8 three, in measuring the 300-foot setback and
9 100-foot buffer, the measurement shall be based
10 on the existing shoreline at the time the Buffer
11 Management Plan is submitted to the Commission;
12 four, a stormwater management plan shall be
13 developed that promotes environmentally sensitive
14 design and explores all opportunities for
15 infiltration and bioretention before utilizing
16 surface water treatment measures. The stormwater
17 management plan shall be developed cooperatively
18 with the town, the Commission, and their staff.
19 The Stormwater Management Plan shall be reviewed
20 and approved by the Commission.
21 CHAIRMAN MADDEN: Do we have a second?

1 COMMISSIONER: Second. Meg Andrews.
2 MS. ANDREWS: Can you clarify for me, is
3 it the panel's understanding that this
4 enhancement to the wastewater treatment system
5 would have to be in place before the development
6 went forward or there would just have to be a
7 plan for it?
8 MR. SETZER: It's our understanding that
9 the authorization has been made to increase the
10 capacity of the treatment plant. That also
11 requires the County to develop a plan that
12 addresses the infiltration problems that are
13 resulting in some of the overflows that have been
14 described. We don't have, I guess, an exact
15 timetable for when that plan is going to be
16 constructed or when that plan is going to be in
17 effect.
However, the conditions placed on the
development by the town requires that there's
adequate capacity for whatever component of the
project moves forward. So basically they're not

1 going to be able to build on the site. And I
2 think that construction isn't just the new
3 housing units, but also I believe to the
4 infrastructure, unless there's the appropriate
5 capacity not only available, but granted to the
6 town to move the construction forward. That's
7 the panel's understanding.
8 CHAIRMAN MADDEN: Any other discussion
9 or comments?
10 MR. RICHARDS: Edwin Richards. My
11 understanding in reading the material is that
12 there is a condition that limits the construction
13 to a capacity of the -- very specific, and I
14 can't remember the exact wording, but it
15 basically says they cannot use any septic tanks,
16 no other intermediate system, and they have to
17 have approval, not only capacity, but they have
18 to have approval before they can actually start
19 construction. We looked at it -- or I looked at
20 it and I thought that was very restrictive and I
21 felt dealt with the issue of capacity.

1 CHAIRMAN MADDEN: Any other discussion?
2 MS. SAMORAJCZYK: Who makes that
3 decision?
4 MR. RICHARDS: It's between the County
5 and the Department of Environment. Anything that
6 the County does has to agree with the regulations
7 being administered by the Department of
8 Environment. And I'm sure after what's gone on
9 in Centreville that that will be tightened up.
10 So I think both County and Department of
11 Environment will be involved.
12 CHAIRMAN MADDEN: Any other questions or
13 comments?
14 MS. ENNIS: Is the current capacity of
15 the sewage treatment plant such that on an
16 ordinary day there would be allocation available
17 for this development, or must it be enlarged in
18 order to meet the basic statement that there's
19 allocation available?
20 MR. SETZER: I don't recall.
21 MR. RICHARDS: As I recall, the

1 statement made by the representative of the
2 Department of Environment was that there is
3 existing capacity that could allow it to move
4 forward. However, the INI issue is one that has
5 been raised in testimony here and I think it's
6 one that's going to be closely investigated
7 before -- there was a statement that there may be
8 a re-evaluation of the capacity of the facility.
9 So at least at this point theoretically there is
10 capacity to move ahead.
11 But I think that's going to be placed
12 under investigation.
13 MS. ENNIS: So it could go forward
14 without any of it?
15 MS. MASON: There wasn't enough for the
16 whole development.
17 MR. RICHARDS: No. This is a staged
18 development over a number of years. I think
19 there's going to be a lot of work done before any
20 approvals are given.
21 MR. SETZER: I guess from a panel

1 there are major problems here, there's no
2 requirement on the County or the town to make
3 those improvements prior to this, or at least the
4 first phase.
5 MR. RICHARDS: I'll quote two things,
6 one is the statement from the representative of
7 the Department of Environment that said that that
8 was under investigation. And secondly, there was
9 testimony today that there has been money
10 committed at the County level. I believe it was
11 Councilman Carroll who said they are
12 investigating it and it is underway right now as
13 far as the County is concerned.
14 Also there was some written testimony
15 submitted indicating something like $400,000 had
16 been committed already to begin the process to
17 correct these problems.
18 MS. MASON: Also in the panel report,
19 going along with what Gary said --
20 MR. SETZER: Page 7 of the staff report.
21 MS. MASON: -- which summarizes the

1 perspective the issue was laid on the table. We
2 asked the agency that was responsible for sewage
3 treatment and discharge permits to come to speak
4 to the panel to at least make sure that we
5 understood the existing condition and prospects
6 for the future, and you have to kind of tread
7 lightly here because of certain jurisdictional
8 areas that it's important for whether or not this
9 project moves forward from an MDE and County
10 perspective in terms of sewage treatment.
11 We felt, as far as the Commission was
12 concerned, the fact that this issue was being
13 examined, that Ed recalls there was capacity
14 available for portions of the development to go
15 forward. There were controls placed on the
16 development for -- to have capacity available for
17 the further build-out of the development of that
18 sewage treatment plant was being addressed.
19 MS. ENNIS: I'm very new to this so
20 maybe I don't understand. It sounds like if
21 there's available capacity right now, even though

1 information that the panel received from the MDE
2 representative. That's the information that the
3 panel received.
4 MS. ENNIS: I guess my concern is that
5 the permits have been issued. Then you get to
6 the point can the town and the County afford to
7 make the improvements and will those improvements
8 have to be in place before the first part of the
9 development moves forward? And I mean, my
10 concern is that our first charge is to protect
11 the water and the fish and wildlife, and even if
12 we try to be objective and discount emotional
13 appeals of what is said here today and what I'm
14 sure the panel has heard, from a practical
15 standpoint of being involved with government, can
16 we be sure that this sewage treatment plant
17 improvement and expansion is going to take place?
18 MR. SETZER: I guess that raises the
19 question, do we have the authority to petition --
20 MS. MASON: That's a very good question,
21 and that's one that the panel discussed with me,

1 actually, early on in the process. And the
2 Critical Area Commission has always worked
3 cooperatively with the permitting agencies. And
4 in this case the Department of the Environment
5 would be the agency that issues the permits for
6 upgrading or for making sure that the sewage
7 treatment plant is functioning in accordance with
8 the state regulations.
9 This Commission has no direct authority
10 to require MDE or the town to do anything with
11 regard to its sewage treatment plant, in my
12 opinion. The panel took the initiative and asked
13 for information from the appropriate people at
14 MDE, which I believe is well within their
15 authority to get as much information as they can.
16 The MDE representative informed them
17 that MDE was in charge and taking care of the
18 sewage treatment plant matters. So I believe
19 that the panel report, as far as it went, really
20 I think states that the panel discharged their
21 duty because they did get information presented

1 at the public hearing similar to what you heard
2 today, only a lot more of it, that addressed
3 concerns and questions about the current
4 situation in St. Michael's and I think that the
5 panel was right to get additional information.
6 Beyond that, the panel did not discuss
7 recommending any kind of condition. So I didn't
8 give them advice on that. But my advice would
9 probably be that they should defer to the
10 Department of the Environment on the sewage
11 treatment issue.
12 MR. SETZER: If it's okay with you I
13 found a fax sheet that MDE provided us.
14 Fax sheet update, Talbot County region 2
15 wastewater treatment plant ENR upgrade and
16 expansion. The proposed project involves the
17 upgrade of the existing region 2 St. Michael's
18 wastewater treatment plant with enhanced nutrient
19 removal facilities to achieve total nitrogen
20 removal for a yearly average of 3 milligrams per
21 liter with expansion from .5 to .66 million

1 gallons per day. Originally the County requested
2 to expand the plant to one million gallons per
3 day and MDE rejected that request as unreasonable
4 growth. The County agreed to go down to .8
5 million gallons per day. After design was
6 completed at this capacity the County Council
7 changed the expansion to .66 million gallons per
8 day.
9 The County is initiating the redesign
10 with the new capacity. The schedule design start
11 was February of 2002. Design completion was
12 October of 2003. The design start was January of
13 2004. Redesign completion is June 2004, with
14 construction start of September 2004 and
15 construction completion by December of 2005. It
16 says the service area is experiencing excessive
17 infiltration and inflow with 1,000 percent
18 variation of flows in some locations that
19 occasionally result in overflow. Maryland
20 Environmental Service has completed a study and
21 identified the areas with excessive infiltration

1 and inflow. During their July 22, 2003 meeting
2 the County Council decided to proceed with INI
3 corrections immediately. The corrections are
4 estimated to cost $600,000.
5 MDE advised the County to apply for MDE
6 and USDA world grants and loans. Also MES's
7 study discovered that some INI was due to house
8 connections, and the County has been advised that
9 some homeowners might be eligible for CPPG
10 funding.
11 As far as the ENR agreement, the County
12 signed the ENR agreement, which is enhanced
13 nutrient removal. With MDE, the County's meeting
14 with MDE on October 29th, 2003 was to discuss how
15 to proceed with the ENR project at the new
16 capacity of .66 million gallons per day.
17 CHAIRMAN MADDEN: Do you want to
18 summarize that for us? Any other discussion?
19 MS. PRETTIMAN: I would like to add on
20 that it's to any entity's benefit that owns a
21 water treatment plant or a septic plant to

1 upgrade so that -- when they have overflows the
2 MDE comes down very hard on them and fines them.
3 So it would be to their benefit. My question,
4 though, is on the ENR, and I didn't quite hear
5 you. They agreed to go down to 3 with the
6 enhancement?
7 MR. SETZER: Right.
8 MS. PRETTIMAN: Will their capacity go
9 up because they will be running more efficiently
10 then with going down to 3?
11 MR. SETZER: The impression that I got
12 was that ENR was a function of the .66.
13 MS. PRETTIMAN: And you don't know what
14 capacity they are right now?
15 MR. SETZER: I think they're authorized
16 for .5.
17 CHAIRMAN MADDEN: Commissioner McKay.
18 MR. McKAY: Thank you. I'm a bit
19 concerned about the area, the 300-foot setback.
20 While I recognize that I think it should be part
21 of this project, and that might be my personal

1 feeling, I'm concerned that from the 100-foot out
2 to the 300-foot, that that should maintain -- we
3 should maintain a local government or local
4 jurisdiction, kind of working together with the
5 Critical Areas Commission as well as the
6 developer to try to make that work as best as it
7 can for that particular project.
8 I am very concerned that we're
9 establishing a precedent that would really --
10 probably is something that's best left to the
11 local jurisdictions to do it as they should, as
12 the legislation says they should. And I just
13 think it's something that should be the locals
14 working with the Critical Area Commission to try
15 to accomplish that. I certainly support the
16 300-foot setback. I just feel like you're taking
17 away some flexibility with the local
18 jurisdictions in trying to accomplish other
19 benefits as they deal with that area of setbacks.
20 And I would like to see us revise it to
21 have this -- this particular project to have the

1 town of St. Michael's work with the Critical
2 Areas Commission to accomplish that setback as
3 best as possible.
4 CHAIRMAN MADDEN: I would defer over to
5 the panel chairperson because I know they gave a
6 lot of thought to the proposal. I also will ask
7 the counsel to give a historical perspective on
8 whether we've applied 300-foot buffers before.
9 Do you want to give us some thought behind the
10 recommendation?
11 MR. SETZER: I guess as I mentioned
12 earlier that looking at the intensity of the
13 development and the increase in the
14 imperviousness, we just thought it was important
15 to provide the maximum available setback that the
16 Commission authorized. We didn't discuss really
17 straying from the 300-foot setback, that I can
18 recall. I think right out of the gate the panel
19 started to talk about establishing a 300-foot
20 setback on the development, on the parcel. If
21 anybody on the panel has a different

1 recollection. That's my recollection.
2 MR. GILLISS: If the growth allocation
3 request requires this Commission to consider the
4 standards set out in 8-1809(J), and 8-1809(J)
5 directs us to the goals of the program in 8-1808,
6 one of which is to minimize impacts on water
7 quality, then we don't need to foundationally be
8 based upon the regulations which talk about
9 development from RCA to intense development, and
10 the shoulds and the shalls, but instead can rely
11 upon the fact that 8-1808(B)(1) directs us to
12 look at water quality, and one way to protect
13 water quality is to have a 300-foot buffer.
14 MS. MASON: Following up on what you
15 said, (B)(3), which directs the Commission to
16 look at the number of movement and activity and
17 persons in an area which is also something that
18 the panel discussed very very in-depth with the
19 proposed use of the 100-foot buffer proposed to
20 be a fairly intensive public recreation and
21 access area. The panel's discussions that I

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1 recall were centered on how much protection for
2 habitat and water quality would that 100-foot
3 buffer actually achieve if it's going to be used
4 for a public park and the need for some
5 additional area to achieve those goals of the
6 program.
7 CHAIRMAN MADDEN: Any further
8 discussion?
9 MR. RICHARDS: The commissioner raised a
10 point about the local government participation.
11 That's one of the initiatives that's been very
12 much a concern to me throughout this.
13 My issue with the 300-foot is it was
14 more procedurally at this point than it is an
15 environmental concern. Although I think
16 ultimately that would be a top concern. But the
17 regulations, to try and paraphrase them,
18 basically says that the local jurisdictions shall
19 use guidelines, and one of the guidelines is it
20 should have a 300-foot setback.
21 In the submittals that they have they

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1 claim to have addressed them, which they're also
2 required to do elsewhere, as I recall. And they
3 gave three reasons. We couldn't buy into any of
4 those reasons as to reasons why they should not
5 have a 300-foot. So basically we said they
6 really did not give the full merit to the
7 "should." And my feeling is that the "should" is
8 a very strong thing that says that they will do
9 it unless there's a compelling reason why they
10 don't or it runs counter to the intent of the
11 program.
12 And so right off the bat my feeling was
13 and the reason why I didn't address the issue
14 whether there should be something less than 300
15 feet, it says it should be 300 feet. So it's
16 time to drop it back in their lap.
17 I agree with you, if they want to come
18 back and say there is a compelling reason why we
19 cannot do it at 300 feet and then I, as an
20 individual, not speaking for the Commission,
21 would be glad to consider it. On a procedural

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1 standpoint.
2 On the environmental I think there are
3 some arguments against it. I think that the town
4 was given an opportunity and they didn't do it
5 appropriately. And I have to address some of the
6 testimony because it really bothers me. There
7 was a conflict between the two attorneys,
8 Mr. Hickson and the gentleman from Miles &
9 Stockbridge, which I did not get his name, about
10 the 100-foot buffer and the 300 feet. The
11 gentleman from Miles & Stockbridge says that the
12 developer, or his client, the issue of 300 feet
13 never came up. Which to me undermines anything
14 the town says if that is true, undermines
15 anything the town says about whether or not they
16 dealt with that issue. They got the opportunity.
17 And if that's true, that even goes further in
18 undermining the three points that they gave us.
19 The other conflict that I have is
20 because in addition to the 300-foot, there's the
21 question of the 100-foot forested buffer. I

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1 heard the attorney for the town of St. Michael's
2 saying we had to give him something in exchange
3 for putting in the marsh. And what he gave in
4 exchange was the 300 feet plus 100 feet of
5 forested buffer. And why did he give up the 100
6 feet of forested buffer? Because it would create
7 shade which would make the marsh impractical.
8 So basically in addressing the issue of
9 how the local government dealt with it, I think
10 that point, to me, was the most critical element
11 in this thing as to why it should be returned
12 with conditions, because that issue was not
13 appropriately addressed by the town. It should
14 be returned to make sure they address it.
15 And if they want to negotiate something
16 with the developer, then well and good.
17 Personally I have a feeling that if they can come
18 up with a compelling reason, I will listen, but I
19 will listen very critically.
20 MR. McKAY: I appreciate those comments
21 and I concur with you as long as the feeling here

1 is that we're requiring the 300-foot setback
2 because the local jurisdiction did not, in our
3 opinion, fully explore that -- doing that, then
4 that's fine. But I feel very uncomfortable if we
5 are doing it simply because we feel this
6 project -- and I do feel that 300-foot is
7 required here, but simply because we feel it's
8 required and the local jurisdiction has made
9 every effort possible to meet the 300. I want to
10 make sure we don't feel like we're establishing a
11 precedent.
12 CHAIRMAN MADDEN: This is the conclusion
13 the panel has reached.
14 MS. SAMORE: I would just like to raise
15 the point that the criteria established, the 300
16 feet, that it's the minimum, not the maximum,
17 that should be located at least. So it's the
18 minimum requirement in order to meet the goals of
19 the program which is to minimize adverse impacts
20 on water quality. So I think that's a very
21 important point.

1 CHAIRMAN MADDEN: Thank you. Are we
2 ready to vote? We have a motion in front of us
3 to approve the Miles Point Growth Allocation
4 Request with four conditions. All those in favor
5 say aye.
6 (All say aye.)
7 CHAIRMAN SETZER: Opposed?
8 MS. ENNIS: Only because of the sewage
9 treatment.
10 CHAIRMAN MADDEN: The motion is
11 approved.
12 Next on the agenda is the Talbot County
13 Comprehensive Review Amendments. I'll ask Lisa
14 to come up and give that presentation.
15 (Recess.)
16 MS. HOERGER: This has been a long
17 process for us, and the County Commissioners have
18 finally enacted a series of several bills that
19 are doing primarily two things. One is, for
20 those of you that were here in September of 2002,
21 this Commission sent the County a directive to

1 correct certain mistakes, conflicts or omissions
2 in their local program. And there were about
3 four of those, three of which have all been
4 corrected either prior to today, will be
5 corrected through the bills today, or in the
6 future. So essentially those items have or will
7 be addressed.
8 The other primary thrust behind these
9 bills that are in your staff report is part of
10 the County's comprehensive update that's required
11 every six years by each county. Last month we
12 did Anne Arundel County. We just updated them
13 for the third time. This is Talbot County's
14 first comprehensive review. I'll direct you to
15 your staff report. There are six bills that were
16 sent to us by the County. And I'm going to go
17 through each one of them bill by bill.
18 The first one is Bill 922, and this bill
19 includes specific provisions for the notification
20 of property owners for certain types of
21 development applications before the Office of

1 Planning and Zoning. The panel has no changes to
2 this bill. The way that you received it and read
3 it is the way that we propose to accept it.
4 The second bill is 926, and this is a
5 section in the County's current zoning ordinance
6 where all the definitions are laid out. And they
7 are adding some definitions. A definition for a
8 champion tree forest, preservation plan is a new
9 definition for the County, marsh vegetation,
10 mitigation, and disturbance.
11 There are two definitions in this bill
12 that the panel, which you will hear later from
13 the panel chair, are proposing to amend. One is
14 the definition of a dwelling unit, and the second
15 is their definition of shoreline development
16 buffer which is their definition of the 100-foot
17 buffer. And there will be one minor change to
18 their definition of development activities.
19 The next bill is Bill 927. This is the
20 section of the County Zoning Ordinance which
21 lists those uses that are permissible in the

1 County's resource conservation areas. If you
2 have a copy of your bill you can see those uses.
3 They're all acceptable to the Commission.
4 However, the panel has recommended a few
5 changes to those. One is for parks and
6 playgrounds. You may recall last month Anne
7 Arundel County had a similar provision in their
8 RCA use list and this Commission recommended and
9 approved an amendment to their comprehensive
10 review that it specifically be limited to passive
11 recreation, and that's the same type of
12 limitation that we're going to be asking for on
13 this bill.
14 The other issues in this bill with
15 regard to resource conservation area uses have to
16 do with the County's limit on treated septage
17 land application, community sewage treatment
18 plants, and sludge application for agricultural
19 and horticultural purposes. The County has
20 restrictions on where these uses can occur. They
21 restrict them to within 200 feet of mean high

1 water and tributary streams and we're going to
2 put in an addition to that to ensure that it's
3 also restricted from the buffer and the edge of
4 tidal wetlands because that wasn't clear in the
5 initial bill.
6 The next bill, Bill 929 amends the
7 agricultural and forestry management section of
8 the County zoning ordinance. In here the County
9 has done several things. They have reworked this
10 section of their ordinance quite a bit, inserting
11 the words 100 feet where appropriate, including
12 provisions for forest preservation plans.
13 This is something new for Talbot County.
14 This will require property owners in the critical
15 area to submit forest preservation plans when
16 they are undertaking clearing or development
17 activities within a 100-foot buffer or outside
18 the buffer.
19 They're also adding certain habitat
20 protection areas which didn't appear in the
21 County's original program, and they're adding a

1 buffer exemption area program for the first time.
2 We do not have the maps yet, but the County
3 Council is working on those maps and once we
4 receive them, you will get a chance to see those
5 maps and approve them.
6 What you'll be approving today is the
7 supporting language in the County's ordinance
8 that instructs how development will occur in
9 buffer exemption areas.
10 We will be making a suggested change to
11 the County's forest preservation plan language.
12 With regard to the buffer exemption area language
13 that's proposed, it is essentially consistent
14 with your policy on buffer exemption areas. In
15 fact, there are several places in the new bill
16 where it is stricter.
17 However, there's one section with regard
18 to mitigation. As you know, in buffer exemption
19 areas, the prescribed mitigation ratio is at a 2
20 to 1 ratio, but that's for all development
21 activities in the buffer. The County's bill

1 reads for new impervious in the buffer. So the
2 suggested change will be all development change.
3 So we can capture what will eventually be in the
4 buffer when the development takes place.
5 Bill 931, another section of the
6 County's zoning ordinance that pertains to the
7 general site plan requirements. Again, in this
8 section of the County Code there was
9 significant -- well, not significant changes, but
10 a lot of changes that the County made over the
11 years, and it adds waivers and certain
12 applications for site plans, talks about
13 extensions, and they have updated their language
14 with regard to when they refer to the appropriate
15 state agencies which have changed over the years.
16 There are a couple of changes to Bill
17 931 that the panel discussed today in the earlier
18 panel discussion. One of the issues is that in
19 the criteria there is a requirement that lots or
20 parcels must be at least 15 percent forested. So
21 if you have a lot or parcel that is not, you have

1 to bring it up to that minimum threshold.
2 The way this bill is currently written
3 it exempts grandfathered lots or parcels that are
4 less than seven acres. Because that is
5 inconsistent with the criteria and other county
6 programs in the Critical Area, the panel is going
7 to recommend that those references be deleted
8 from the bill.
9 The other change to this section is with
10 regard to the mitigation ratios prescribed when
11 you're clearing in the Critical Area. When
12 you're clearing between 20 and 30 percent of a
13 lot or parcel, you're required to do one and a
14 half to one mitigation. The way the bill
15 currently reads, you'd only be required to do one
16 and a half to one for the portion of the clearing
17 that would be between 20 and 30 percent range.
18 So we're asking for that to be corrected.
19 The final bill is Bill 932. This bill
20 talks about the process for obtaining growth
21 allocations for applicants in Talbot County, and

1 on March 24th. There weren't a whole lot of
2 substantive public comments. We did receive a
3 few. County staff gave us a formal presentation.
4 And that concludes my presentation
5 unless you have any comments or questions.
6 CHAIRMAN MADDEN: I'll turn it over to
7 the chair.
8 MR. BLAZER: The panel discussed the
9 County Council bills that Lisa has gone over,
10 those are Talbot County Bills 922, 926, 927, 929,
11 931 and 932 as part of their comprehensive review
12 of their local program. We reviewed them with
13 regard to the consistency of the goals of the
14 Critical Care Act and the Commission's criteria
15 required in Natural Resources Article 8-1809(G).
16 Again, just briefly, these are the bills as part
17 of the comprehensive review.
18 On behalf of the panel I move the
19 approval of the County Council bills with the
20 following conditions, and I'll read through, Lisa
21 has given you a summary of them and they're in

1 the panel had no suggested changes to that bill.
2 The comprehensive review also includes
3 that the County provide us with updated habitat
4 protection area maps. This is in an effort to
5 keep their maps current so we know which HPAs are
6 occurring within the County and we know what has
7 changed. We are working with the Department of
8 Nature Resources on finalizing those maps and
9 having them available to County staff and
10 Commission staff.
11 The critical area acreage and growth
12 allocation was provided to the Critical Area
13 Commission staff by the County. I believe your
14 package has attached to it a chart that lists out
15 all the growth allocations that have taken place
16 since the inception of the Talbot program. It
17 also includes the three local municipalities, St.
18 Michael's, Oxford and Easton's growth allocation
19 deductions.
20 Chairman Madden appointed a five-member
21 panel. The panel held a public hearing in Easton

1 your handout that's been circulated here. In
2 Bill 926, Chapter 190 Article 2 definitions and
3 word usage, Section 190-14, Section 3, dwelling
4 unit. Change the definition of a dwelling unit
5 to state dwelling unit means a single unit
6 providing complete independent living facilities
7 for at least one person, including permanent
8 provisions for sanitation, cooking, eating,
9 sleeping, and other activities routinely
10 associated with daily life. A dwelling unit
11 includes a living quarters for domestic and other
12 employee or tenant, an in-law or accessory
13 apartment, a guest house, or a caretaker
14 residency.
15 The other section of Bill 926, Section
16 9, where we made a recommendation of shoreline
17 development buffer, amend the definition of a
18 shoreline development buffer to state that there
19 are at least 100 feet wide measured landward from
20 the mean high water line of tidal waters,
21 tributary streams, and tidal wetlands.

1 The other section with Bill 926, Section
2 1, development activities. They request that at
3 least two sentences in item B be deleted. This
4 is where the substantial alteration is defined.
5 In Bill 927, Chapter 190, article 4,
6 land use regulations by zoning districts, Section
7 190-19. Section 4 of that bill, parks and
8 playgrounds, add another bullet that states
9 limited to passive recreation. Sections 18, 20
10 and 21, we talked about treated septage land
11 application, community sewage treatment plant,
12 sludge application for agricultural and
13 horticultural purposes. The panel recommended
14 adding tidal wetlands to the bullet that
15 restricts these uses to within 200 feet of mean
16 high water or tributary streams. At a minimum
17 this bullet should include the language that says
18 or insure that it is otherwise restricted within
19 the 100-foot buffer of tidal wetlands.
20 In Bill 929, Chapter 190, Article 11,
21 Critical Area Special Provisions Section 190-88,

1 190-88(B)(3)(N). In place of N insert the
2 following language: The forest preservation plan
3 shall include either of the following: A, a time
4 period for implementing the plan and provisions
5 for a final inspection by the County after which
6 the plan will be certified complete, or B,
7 provisions for removal of invasive exotic species
8 and/or maintenance of native vegetation for a
9 period up to five years including provisions for
10 annual inspections by the County.
11 The other recommendation was
12 190-88.1(B)(6)(B), replace the language
13 mitigation equal to an area two times the square
14 footage of the proposed impervious surface in the
15 buffer area. Change that to the language that
16 states mitigation equal to an area two times the
17 square footage of the development activity in the
18 buffer area.
19 Bill 931, which is Chapter 190, article
20 12, site plan review, section 190-92 and
21 190-93(E)(9)(A), and 190-93(E)(9)(D)(i), delete

1 the references to parcels up to 7 acres. It must
2 provide 15 percent aforestation. This language
3 excludes grandfathered parcels under 7 acres for
4 the aforestation requirement. If it's the
5 County's intent to allow certain allowances for
6 grandfathered parcels under 7 acres, then the
7 County may propose an exemption for certain
8 classes of activities such as new dwellings.
9 And then the last recommendation for
10 Bill 931 is 190-93(E)(9)(D)(c), delete the phrase
11 "additional ten percent." These were the
12 recommendations of the panel.
13 CHAIRMAN MADDEN: We have a motion for
14 approval with conditions. Is there a second?
15 COMMISSIONER: Second.
16 CHAIRMAN MADDEN: Is there any
17 discussion? Hearing none, all those in favor say
18 aye.
19 (All said aye.)
20 CHAIRMAN MADDEN: Opposed nay. Ayes
21 have it.

1 We have another very important issue
2 coming up in front of the Commission right now,
3 Talbot County Bill Number 933, growth allocation
4 procedures. We had a panel that looked into this
5 extensively. Ren is going to give the panel
6 report. And then I will again ask for public
7 comment if anybody wishes to have it.
8 MR. SEREY: This amendment to the Talbot
9 County Critical Area Program is County Bill 933.
10 As the chairman explained, the panel conducted a
11 public hearing, met on the bill and discussed it
12 several times, and met again this morning. The
13 staff report that went out and the panel report
14 that went out also included a copy of the bill.
15 In 1989 the Talbot County Council
16 approved the County's Critical Area Program and
17 submitted that to the Commission. The Commission
18 approved that program. The program included what
19 the County called preservation of growth
20 allocation to the towns of St. Michael's, Easton
21 and Oxford. The County used the method of

1 providing the growth allocation acres to the
2 towns. There were no conditions placed on the
3 use of those acres. That was in the 1989
4 Critical Areas Program. The County gave the town
5 of Easton 155 acres, town of St. Michael's 245
6 acres, and the town of Oxford 195 acres. There
7 were maps attached to the Critical Area Program,
8 three maps that showed the potential areas for
9 annexation outside of the towns.
10 The understanding was that the growth
11 allocation would be used by the towns both within
12 their current boundaries, and the understanding
13 was in annexed areas. As Lisa explained on one
14 of the other previous items -- I was going to say
15 this morning, it seems like this morning, the
16 town of Easton used all of its growth allocation
17 and in 2000 the County instituted a new process
18 which they called their supplemental growth
19 allocation process, and that is a process that
20 involved joint hearings by the County Council and
21 town of Easton and joint approval of growth

1 Easton ran out of growth allocation, that is the
2 joint process, the supplemental process, the
3 County informs us that that would be the process
4 now after the growth allocation unused by the
5 towns is removed and reverted back to the County.
6 There are a lot of planning, growth
7 management clauses that are in the preface to the
8 bill, in the whereas clauses, and you have all
9 that information. It discusses the fact that it
10 was done in 1989 and things have changed. Growth
11 management has changed, that the original county
12 program required a four-year review of the County
13 program in addition to a review of the growth
14 allocation maps and the growth needs of the
15 towns. That review was not done. It has been
16 done now in the form of Bill 933, removing the
17 growth allocation.
18 The original county total of growth
19 allocation was 2,554 acres. And the County has a
20 process for using a portion of that in the RCA as
21 is set out in the Critical Area law and is

1 allocations.
2 That process has been used recently for
3 the Easton Village and Ratcliffe growth
4 allocations that you may remember from a couple
5 months ago, I think that was January that the
6 Commission approved those. It's also been used
7 for the Cooke's Hope growth allocation in Easton.
8 Easton used their growth allocation.
9 Oxford has only used about 15 acres of its growth
10 allocation. And St. Michael's has used
11 approximately 21 acres for the Strausburg growth
12 allocation. And that is, as Lisa explained
13 earlier, a refinement that this Commission
14 approved in October of 2000.
15 Council Bill 933 prefaces the action
16 that the County took with a lot of explanation
17 about the use of growth allocation. What the
18 bill does is it removes that growth allocation
19 that has been unused by the town and has it
20 revert back to the County. And what the County
21 intends is that the process that they used when

1 concerned, among other things, that its process
2 for using the growth allocation in the RCA will
3 be compromised unless it regains control of all
4 of the growth allocation that has since been
5 unused.
6 If you look in your staff report or
7 panel report, on page 2 in the middle, you'll see
8 some of those reasons that the County set out in
9 addition to the ones that I've just described.
10 As I said, this action, Bill 933, will
11 remove the growth allocation and revert back to
12 the County. In addition, and I think Lisa also
13 described this earlier, it will undo a previously
14 approved growth allocation, and that's the
15 Strausburg growth allocation that this Commission
16 approved as a refinement in October of last year.
17 The reason it would remove that growth allocation
18 is because the bill contains a clause that says
19 if any growth allocation is unutilized, and the
20 County goes on to define unutilized, then by the
21 effective date of the bill, which was I think

1 february of this year, then that growth
2 allocation also reverts back to the County.
3 And included in the definition of
4 unutilized is the provision that any growth
5 allocation awarded for which substantial
6 construction has not started based on a valid
7 building permit, that is also affected by the
8 bill and reverts back to the County.
9 There could be other growth allocations
10 in addition to the Strausburg. We have talked to
11 the towns of Easton and Oxford regarding their
12 previously approved growth allocations, and our
13 understanding is that there are a few lots that
14 are still undeveloped for which there are no
15 building permits yet that could also be affected
16 by this bill. But the Strausburg growth
17 allocation approved in October is obviously
18 affected.
19 At the panel's request the staff looked
20 into growth allocations and growth allocation
21 systems in use by the other counties, and we

1 summarized for the panel that generally those
2 growth allocation procedures of the counties fall
3 into three categories. And I'm on Page 4 of your
4 panel report. One category is where the County
5 simply gave the growth allocation to the towns
6 for their use, and that was the process that
7 Talbot County used.
8 Another selection of programs, another
9 category of growth allocation used is where a
10 county simply identifies a number of acres for a
11 town's use, growth allocation, but then awards
12 that growth allocation on an individual project
13 basis when the town requests it.
14 And the third category is a coordinated
15 process where both entities make the decisions
16 together. If you look at the bottom of Page 4
17 you'll see some information that we've been
18 talking about quite a bit today in regard to the
19 other amendments. Here you'll find about three
20 quarters of the way down a quote from the
21 Critical Area law that provides you the standards

1 for review of a proposed amendment. Those
2 standards are that the Commission must determine
3 or that the program amendments must meet the
4 goals of the Critical Area law, and they are set
5 out at the bottom of page 4, as well as the
6 provisions of the criteria. That is what the
7 panel discussed at length in its meetings and
8 again today.
9 That's all I have in summary of the
10 bill. Are there any questions regarding the
11 process or what the bill does?
12 CHAIRMAN MADDEN: Thank you very much.
13 Now we'll allow brief public comment, if anybody
14 chooses to do so. We're allocating a time to the
15 County to come up and address us, and then we'll
16 allow members of the public tp address us briefly
17 also.
18 MR. POLLEN: Thank you, my name is
19 Michael Pollen. I am the Talbot County attorney
20 and I would like to read to you a letter that was
21 addressed to Senator Madden on April 22nd which

1 contained the County's comments on the
2 subcommittee's review of Bill 933 that had
3 occurred on April 19th.
4 Dear Senator Madden: During the
5 Critical Area Commission Subcommittee Review on
6 April 19, 2004 of Talbot County's proposed
7 changes to its local program, several members
8 commented on the need for more information to
9 fully understand the various bills' language. I
10 am respectfully submitting this letter to respond
11 to those questions and I will address my comments
12 in the order in which the discussion occurred.
13 Consistency. The subcommittee initially
14 posed the question whether Bill 933 was
15 consistent with existing Critical Area Commission
16 policies and other approved programs. The first
17 part of the discussion articulated the correct
18 standard by which to judge consistency. The
19 discussion involved approvals of the program for
20 Caroline County, Saint Mary's County, Wicomico
21 County, Queen Anne's County, which all

1 demonstrate that the Critical Area Commission has
2 approved as a matter of policy different
3 approaches to county municipal growth allocation.
4 Bill 933 falls within the parameters of the
5 previously approved programs and policies of the
6 Critical Area Commission. This is the correct
7 standard and the correct conclusion.
8 Comparison of Bill 933 to inconsistent
9 provisions of existing municipal programs based
10 on the 1989 ordinance that is being repealed by
11 933 is not the correct approach to determine
12 consistency. By definition, a program amendment
13 is a change to a program and it will necessarily
14 be different than existing elements of the
15 current program.
16 In the case of Bill 933, Talbot County
17 municipality has adopted their own local programs
18 based on the 1989 ordinance that gave them
19 specific amounts of growth allocation. Bill 933
20 changes that. And any existing elements of
21 approved local programs inconsistent with Bill

1 933 are irrelevant to whether Bill 933 should be
2 approved.
3 If proposed amendments are compared with
4 inconsistent existing program elements for
5 consistency, no amendment would ever be
6 consistent, and therefore, no amendment would be
7 approved.
8 I'm sure the subcommittee's intention,
9 based on Ms. Mason's legal advice in considering
10 consistency, does not include consideration of
11 existing elements of the municipal Critical Area
12 programs that were premised on the 1989 ordinance
13 that are being changed by Bill 933.
14 Municipal reliance. Some of the
15 discussion centered upon expectations of various
16 municipalities premised on the 1989 award of the
17 growth allocation acreage. This is not an
18 appropriate consideration in evaluating Bill 933.
19 Maryland law is quite clear that absent vested
20 rights, which Bill 933 specifically does not
21 impair, zoning laws may be changed by local

1 government and a property owner, or in this case,
2 a municipality, has no legal right to rely on a
3 preexisting law or any assumption that
4 preexisting law would continue as originally
5 enacted.
6 There was some discussion about various
7 projects that were pending, and one in
8 particular, Cooke's Hope, was the subject of the
9 next paragraph.
10 Cooke's Hope. One topic of discussion
11 was the effect of Bill 933 on the Critical Area
12 Commission's previous approval of the Cooke's
13 Hope project. Talbot County Council has already
14 approved its Cooke's Hope project utilizing the
15 procedures adopted under Bill 762. Bill 762 is
16 the bill that was approved by this Commission in
17 2000 that established a joint review process with
18 the municipalities and the County in which the
19 applicant submits the application to the
20 municipality; it's forwarded to the County;
21 there's a joint review at the Planning Commission

1 level; there is a joint meeting of the town and
2 the county planning commissions. They separately
3 confer and form separate recommendations to their
4 respective bodies. That is followed by a joint
5 meeting between the town council and the County
6 Council to review the application. They then
7 separately confer among themselves and come up
8 with individual recommendations for approval or
9 not. Both, under Bill 762, both the town and the
10 County must approve the project.
11 Now, that procedure has been
12 successfully used with the town of Easton on
13 several occasions. The town of Easton has no
14 longer any growth allocation, as Ren Serey
15 indicated.
16 Back to the letter. One topic of
17 discussion was the effect of Bill 933 on the
18 Critical Area Commission's previous approval of
19 the Cooke's Hope project. The Talbot County
20 Council has already approved the Cooke's Hope
21 project utilizing the procedures adopted under

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

1 county elected officials in connection with
2 enactment of Bill 933 --
3 CHAIRMAN MADDEN: I'm going to ask you
4 to summarize because your time is expiring.
5 Mr. POLLEN: Mr. Chairman, it's the
6 County's position that this -- and as Mr. Serey
7 explained in his comments, many counties
8 throughout the state have adopted Critical Area
9 policies that do not give specific acreage growth
10 allocations to municipalities. Those county-wide
11 programs have been previously approved by this
12 Commission.
13 Bill 933 is within the state-delegated
14 power of the County Council to enact. We're a
15 charter county. We have the obligation to
16 develop our own program, delegate it not only
17 under our charter, but under the Critical Area
18 law. This policy has been previously promoted by
19 other counties and approved by the Critical Area
20 Commission. And we believe that it represents
21 not only good environmental policy, but it's well

1 is attempting to yank back reserved acreage that
2 was originally given to the town and that the
3 town's programs were based on. They have been
4 functioning all these years, and the towns did
5 not receive any complaint from the County that
6 anything wasn't working well until we received
7 notice of this bill.
8 I testified at the local panel hearing.
9 We found evidence in the record here that the
10 County manager contacted Mr. Serey of this office
11 on October the 29th, 2003 to inform him that the
12 bill was in process and that he could expect it
13 to be up here for processing at the Critical Area
14 Commission in January of 2004. This bill was not
15 introduced to the public until some time in
16 November of 2003, and the towns were not
17 contacted about it and the problem was not raised
18 with the towns before the bill was introduced to
19 the public.
20 So there has been no coordination.
21 There's been no cooperation, and the effect of

1 within the prerogative of the County Council to
2 adopt that policy being consistent with the goals
3 and criteria of the Critical Area Commission.
4 It's really designed to enhance and
5 protect the environment of the Chesapeake Bay and
6 protect its future. So we would urge that the
7 Critical Area Commission adopt this as a program
8 amendment to Talbot County's local program.
9 CHAIRMAN MADDEN: Thank you for your
10 comments? Any member of the public that would
11 like to speak to us briefly on Talbot County Bill
12 933?
13 MR. HICKSON: My name is Michael
14 Hickson, I'm the attorney for the town of St.
15 Michael's. The town opposes 933. The towns of
16 Easton and Oxford appeared at the local county
17 hearing and also opposed this bill.
18 We opposed it for several reasons.
19 First, we think it's different than other
20 situations that you have addressed because in
21 this situation you're yanking back or the County

1 the bill will, as I said, yank back reserved
2 acreage and in my view run contrary to the way
3 that the state Critical Area laws and policies
4 are supposed to work, and that is they're
5 supposed to work in an organized and coordinated
6 fashion. Not to say that every county has to
7 work the same way, but by suddenly yanking back
8 these bills you have towns that in fact don't
9 have them; they can't function at all in terms of
10 Critical Area.
11 CHAIRMAN MADDEN: Your time is expiring.
12 Please summarize.
13 MR. HICKSON: We agree with what the
14 panel discussed this morning, that in effect it
15 will undo some decisions that the Critical Area
16 Commission had made, that it's inconsistent with
17 the existing town programs that exist in three
18 municipalities in the town and there's been no
19 cooperation or coordination in bringing this bill
20 forward. So we oppose it.
21 CHAIRMAN MADDEN: Thank you. Does

1 anybody else want to make any public comment?
2 MR. ALSPACH: Thank you again. My name
3 is Tom Alspach. I'm speaking on behalf of the
4 Public Preservation Alliance. I would not agree
5 with Mr. Hickson that the towns cannot function
6 with Bill 933. The purpose of Bill 933 is to
7 ensure that both the County and town and their
8 respective populaces equally have a stake in the
9 Critical Area, have their views taken into
10 account in the grand growth allocation.
11 The grand growth allocation in a town
12 like St. Michael's or Oxford affects all the
13 residents of the County who utilize the Miles
14 River, the Tred Avon River, Choptank River, et
15 cetera. What this process is intended to do is
16 to establish a joint review procedure whereby
17 both jurisdictions participate in that review.
18 Nothing is being taken away. The only two
19 instances that this process has already been used
20 with regard to the town of Easton, and in both
21 instances the growth allocation requests were

1 approved.
2 If you look at a map, some of you who
3 were at the public hearing for the panel,
4 remember I showed you what St. Michael's looks
5 like now. It looks like a big bar bell, a chunk
6 of lead here and a chunk of lead here and a
7 skinny bar that joins the two together. That's
8 what St. Michael's looks like now because they
9 annexed a piece of property three-quarters of a
10 mile out to the country by way of annexing a
11 roadbed. That piece of annexed property is out
12 in the middle of the county on a county river
13 surrounded by county residents, yet the residents
14 of the County had no say whatsoever when growth
15 allocation for this annexation was considered.
16 Given the fact that they will be
17 directly impacted by it, by annexations like in
18 the future, this procedure would ensure that
19 their concerns are taken into account as well as
20 those of people living in the town. By the way,
21 in response to a question that was asked, I think

1 by Mr. Jackson at the panel hearing, the question
2 was raised doesn't this give the County a veto
3 and it can prevent any growth allocation
4 whatsoever. No, it doesn't. The law requires
5 the counties to accommodate the growth needs of
6 the town. If the County were arbitrarily denying
7 growth allocation pursuant to this procedure, the
8 town would have relief available to it because
9 the County would not be accommodating its need
10 for growth. So that fear or concern is
11 misplaced. I would urge you to approve this
12 proposed program amendment. It does nothing but
13 assure that all parties affected by growth
14 allocation will be heard in the process.
15 CHAIRMAN MADDEN: Anything else? I'll
16 turn it over to panel chair for additional
17 comments and recommendations.
18 MR. BLAZER: I guess a couple things
19 while we're passing out the panel recommendations
20 and report. We only had three people I think
21 speak here. But the night of our panel we were

1 there for a good two and a half, three hours, had
2 quite a few people talk similar to the other St.
3 Michael's hearing. And a lot was presented and a
4 lot was discussed, and basically some of the
5 issues that we had to deal with and that we
6 focused on were basically -- we wanted to apply
7 the specific sections in the critical areas law.
8 We heard all kinds of things about planning and
9 smart growth and wastewater treatment and some of
10 the problems with the Miles River, you know, we
11 needed to focus on the Critical Area provisions
12 in the criteria and the law that we had. So
13 that's what we tried to focus on in our panel
14 discussions.
15 So, you know, with that, we also looked
16 at the effect of Bill 933 on other Critical Area
17 programs, program amendments, program
18 refinements, what the Critical Area COMAR section
19 said, so we had several meetings, a lot of
20 discussion, a lot of debate as we went through,
21 and I also want to thank the panel members,

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1 because I think the debate and the discussion was
2 very healthy and I appreciate all of your input
3 on those.
4 A couple other introductory remarks. In
5 its review of Bill 933, the panel wanted to
6 encourage the County and towns to work together
7 on specific changes on the growth allocation
8 procedures that are going to affect all of them.
9 You heard a couple people talk about process
10 things and I think that's one of the things that
11 we'd like to see as this develops over time.
12 The panel believed that the time was
13 particularly appropriate for this kind of
14 cooperative effort and the analysis given that
15 the County has engaged in its comprehensive
16 review of its program.
17 The panel also believes that the
18 supplemental growth allocation process of Bill
19 762 that I believe Mr. Pollen talked a little bit
20 about which is incorporated in the County code
21 may be a desirable growth allocation process,

1 however, as presently drafted, Bill 933 really
2 doesn't harmonize or come in line with the
3 supplemental growth allocation process of the
4 County code. There were some inconsistencies
5 that the panel was uncomfortable with in our
6 determination of our recommendation.
7 I'd like to move on behalf of the panel
8 to deny approval of Talbot County Bill 933 as an
9 amendment to the County's Critical Area program
10 and to invite the County to work with the
11 Commission and its staff to develop new growth
12 allocation provisions that will be compatible
13 with the state Critical Area Act and its
14 criteria.
15 There are two major bases for the
16 motion. They are: If we accept Bill 933, we
17 would negate at least one previous Commission
18 action of approving a local program change, and
19 that's the refinement to the St. Michael's
20 program for the Strausburg growth allocation we
21 approved back in October 2003. And the second

1 basis was, accepted [illegible]
2 conflicts between the County program and several
3 of the approved municipal programs that the
4 Commission has agreed to. The municipal programs
5 have their own approved growth allocation
6 procedures premised on the growth allocation
7 reserves provided by the County. The conflict
8 that Bill 933 would create was contrary to the
9 Commission's oversight responsibility to ensure
10 that local programs are implemented in a
11 consistent and uniform manner. So that's our
12 recommendation.
13 CHAIRMAN MADDEN: Do we have a motion
14 for denial of Talbot County Bill 933? Is there
15 a second?
16 COMMISSIONER: Second.
17 CHAIRMAN MADDEN: Any discussion? Yes,
18 Barbara?
19 SPEAKER: I would like to clarify
20 something. It's my understanding that the goals
21 of Bill 933 are consistent with the state

1 delegation to the County, but the draftmanship is
2 creating some inconsistency, so with appropriate
3 draftmanship the goals could be realized; is that
4 correct?
5 MS. MASON: The process that the County
6 has said that they intend to use, that is the
7 joint process through Bill 762, the panel
8 believed was definitely in line with or
9 appropriate under the state law and criteria, but
10 the actual wording of the bill which is what the
11 panel had to look at created the problem for this
12 Commission of negating the Commission action.
13 SPEAKER: So it's basically an inartful
14 drafting as opposed to a noncompliance -- the
15 goals are not noncompliant, the draftsmanship --
16 CHAIRMAN MADDEN: Denial is articulated
17 in the motion. If we stick to the motion rather
18 than try to read something else into it. Any
19 other discussion?
20 MS. ENNIS: It seems to me when we look
21 at this issue, the thing that's most inconsistent

1 is that it will repeal an action that the
2 Commission has already approved, both the town
3 and the County approved and that the Commission
4 approved.
5 CHAIRMAN MADDEN: The town approved.
6 The Commission --
7 MS. ENNIS: It didn't have to go through
8 the County?
9 CHAIRMAN MADDEN: Correct.
10 MS. ENNIS: If that were corrected,
11 would we still be opposed to this?
12 CHAIRMAN MADDEN: I think again, we have
13 to look at the motion. The motion cites two
14 issues. The basis for the motion is the first
15 paragraph, accepting 933 would negate at least
16 one previous Commission action and, number two,
17 would create conflicts between the County program
18 and several approved municipal programs. That's
19 what we're basing this motion on. Any other
20 discussion? If not, we have a motion in front of
21 us for denial. All those in favor say aye.

1 (All said aye.)
2 CHAIRMAN MADDEN: Opposed nay?
3 Motion for denial is approved. Thank
4 you again, all panel members and Commission
5 members.
6 (Proceedings concluded at 9:00 p.m.)
7
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1 STATE OF MARYLAND SS:
2 I, LINDA A. CROCKETT, a Notary Public of the
3 State of Maryland, do hereby certify that these
4 proceedings took place before me at the time and
5 place herein set out, and the proceedings were
6 recorded stenographically by me and this
7 transcript is a true record of the proceedings.
8 I further certify that I am not of counsel to
9 any of the parties nor an employee of counsel nor
10 related to any of the parties nor in any way
11 interested in the outcome of this action.
12
13 As witness my hand and notarial seal this 8th
14 day of June, 2004.
15
16 My commission expires
17 December 1, 2004 Notary Public
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20
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CRC-Salomon
(410) 821-4888 fax (410) 821-4890

Martin G. Madden
Chairman

Ren Serey
Executive Director

Chrlich, Jr.
rnor

S. Steele
vernor

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

TOWN OF ST. MICHAELS, MARYLAND

CHESAPEAKE BAY CRITICAL AREA

LOCAL PROGRAM

December 1987

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Resource Conservation Area

The Town of St. Michaels has nearly 98.04 acres that are classified for resource conservation (RCA). Approximately 17.61 percent of the Town's total acreage is RCA. Resource conservation areas comprise about 30.57% percent of the total Critical Area land in the Town.

The Critical Area Criteria guidebook explains RCAs as follows:

> RCA's are any area predominated by wetlands, forests, and forestry activities, abandoned fields, agriculture, fishery activities, or aquaculture. In addition, the area is to have at least one of the following characteristics:
>
> 1. Housing density less than one dwelling unit per five acres; or
>
> 2. The dominant land use is agriculture, wetland, forest, barren land, surface water or open space.[4]

Location and Extent of Future Intensely Developed (IDA) and Limited Development (LDA) Areas

The Critical Area Criteria provide for the designation of new IDA and LDA's in the Critical Area. Generally the amount of total Resource Conservation Area acreage which can be converted to a more dense or intense land use is limited to five percent (5%) of the total RCA area in the County. The computation of the what is termed the "growth allocation" excludes tidal wetlands in the RCA. In addition the Critical Areas Criteria mandate that the County establish a process that accommodates the growth needs of municipalities.

Criteria for establishing new IDA and LDA's are as follows:

> New IDA's should be located in existing LDA's or adjacent to existing IDA's.
>
> New IDA and LDA's should be located in order to minimize impacts to Habitat Protection Areas and in a manner that optimize benefits to water quality.

1. If the County is able to utilize its growth allocation as prescribed above, no more than half of the expansion allocated in the Criteria of the Commission may be located in RCA's (adjacent to LDA's or IDA's).

2. If the County is unable to utilize a portion of the growth allocated to the County within or adjacent to existing IDA's or LDA's as demonstrated in the Talbot County Local Program approved by the Commission, then that portion of allocated expansion which cannot be so located may be located in the RCA in addition to expansion allocated in 4 above. A developer shall be required to cluster any development in any area authorized.

3. New IDA and LDA's should be located in order to minimize impacts to Habitat Protection Areas and in a manner that optimize benefits to water

quality.

4. New IDA's or LDA's located in the RCA shall conform to all Criteria of the Commission for such areas and shall be designated on the Comprehensive Zoning Map submitted by the Local jurisdiction as part of its application to the Commission for program approval or at a later date as per 8-1809 (g) (Proposed Amendments).

The thrust of the Critical Area Criteria is to encourage the County to locate the entire growth allocation in or adjacent to areas that are already developed, such as the municipalities or existing IDA's and LDA's in the County. The Criteria intimate that the municipalities should be given priority for growth allocation. The Criteria also suggest that no more than half of the Growth Allocation should be located in existing RCA's, but recognize that it is possible that certain counties, including Talbot County, may not be able to so locate all of the growth allocation. If this is the case, the Criteria provide for allocating the unused portion of the growth allocation in stand-alone RCA's. The Talbot County Comprehensive Plan encourages locating growth in or near the existing towns, thus the Town of St. Michaels should reasonably expect the County to assign some portion of the growth allocation for its growth needs.

St. Michaels has determined that there are several areas within and adjacent to the corporate limits for which it will request growth allocation in order to permit development to occur at densities permitted in the St. Michaels Zoning Ordinance. These areas, which are currently LDA and RCA are shown on Map 2-1. Under the LDA designation, the Town would not be permitted to allow the full density currently permitted, thus it will need growth allocation to permit conversion of these areas to new IDA's. Growth allocation has been requested from the County for these areas which total approximately 445 acres in the Critical Area.

Program Goals

Using the designated development areas, the Town has established the following general goals to guide the creation of specific regulations within the Critical Area.

1. To direct future intense development to locations outside the Town's Critical Area to the extent possible. When future intense development activities are proposed in the Critical Area they shall be accommodated exclusively in designated Intensely Developed Areas.

2. To maintain medium development densities in the Limited Development Areas.

3. To reserve a portion of Resource Conservation Areas for compatible uses including but not limited to, fisheries, resource utilization activities (e.g., park land or passive recreation) and for achieving habitat protection objectives.

2. Location of slips in a manner which minimizes dredging needs and volumes. Dredged channels should decrease in width and depth toward shore with provision made for berthing deeper draft boats farthest from shore. Design of slips which are two feet (2) deeper at mean low water than the lowest projection of boats moored in them will minimize turbidity and bottom disturbances.

3. Maintenance of water circulation patterns to include tidal flow patterns, and preservation of salinity and distribution of nutrients in the water. Dimensions and locations of channels should be designed to achieve maximum flushing of the marina basin area.

4. Maintenance of the flow and volume of the natural drainage system, both on site and on adjacent properties.

5. Approaches taken through design to reduce storm water runoff volumes and erosion. Use of impervious ground surfacing should be minimized where possible. Maximum distances should be maintained between water and land areas proposed to be used for parking and loading purposes, to minimize the consequences of site runoff.

6. Effective use and location of site screening and vegetation in a manner which minimize noise and lighting impacts to surrounding residential uses.

7. Many off-site considerations which are significant should be reviewed in relation to the proposed marine facility location. It should be the applicant's responsibility to further assure the review body that their location proposals or projects should not adversely affect:

   (a) Maintenance of state water quality standards.

   (b) Land and water circulation needs. Marine locations should avoid interference with traffic flow on Town streets and the land/water transportation patterns of the surrounding area.

   (c) Preservation of rooted submerged aquatic vegetation of value to fish, shellfish and wildlife in the area.

   (d) Preservation of area wetlands, (tidal and non-tidal), fish spawning areas, shellfish beds and waterfront nesting sites.

Section IX. Growth Allocation Process

Several areas of the Town or adjacent areas where growth may occur have been mapped as Limited Development Areas or Resource Conservation Areas based on existing land use as of December 1, 1985. These areas may have to be converted to a different management category, e.g., converted from an LDA to an IDA through use of the County's growth allocation. These areas are identified and discussed in the Development Section of the St. Michaels Local Program.

The Town has requested growth allocation from the County to provide for these anticipated growth areas. The Town has mapped these growth areas in order to determine the approximate acreage of growth allocation that will be required and so that the County may anticipate the Town's growth needs in establishing their growth allocation process. It is also recommended that the Town adopt a local process for subsequent allocation of growth when it is determined development proposals which are consistent with the Town Comprehensive Plan and Local Program.

The Commissioners of St. Michaels may award growth allocation that permits an increase in the permitted density or intensity of use of a site over and above what is currently permitted at the time a specific development proposal is submitted. Prior to awarding growth allocation the Town Commissioners will review the proposed development plans and determine if they meet the objectives of the Local Program and are consistent with the St. Michaels Comprehensive Plan.

The following are additional provisions for guiding the award of the Town's growth allocation are recommended for inclusion in the St. Michaels Critical Area Overlay Zone:

Purpose and Intent

It is the purpose of the St. Michaels Growth Allocation Process to establish objectives, procedure, standards and criteria for determining appropriate locations and projects where growth allocation may be awarded to permit conversion of existing Limited Development Areas (LDA) and/or Resources Conservation Areas (RCA) to a new LDA and/or IDA. Upon approval of a proposed development project, the Planning Commission may assign a portion of the County's total Growth Allocation existing in LDA and RCA areas, as designated in the St. Michaels Critical Area Program. The Growth Allocation may be awarded to development projects which the Planning Commission deems to be the best examples of critical areas development and land use, and which demonstrate consistency with the Comprehensive Plan, Local Program and Critical Area Criteria.

The Growth Allocation Process is intended to insure that the Town's limited growth allocation, as determined in the Talbot County Local Chesapeake Bay Critical Area Protection Program (Local Program) is managed to insure equity in the award of growth while also resulting in development projects in the Town's Critical Area which achieve the goals and objectives of the Local Program as determined by the Town Commissioners. Further, it is the intent of the Town to establish a process whereby only those development projects which the Town Commissioners concludes are examples of sensitive development in the critical area are given growth allocation.

Project Location Criteria

It is the intent of the Town to encourage projects for growth allocation to be located in or adjacent to existing Limited Development or Intensely Developed Areas. In approving projects for Growth Allocation award the Planning Commission will give consideration to the following guidelines for the location of the growth allocation projects to the extent possible:

1. New IDA's should be located in existing LDA's or adjacent to existing IDA's.

2. New LDA's should be located adjacent to existing LDA's or IDA's.

3. New IDA and LDA's should be located in order to minimize impacts to Habitat Protection Areas and in a manner that optimize benefits to water quality.

4. New IDA's or LDA's located in the RCA shall conform to all Criteria of the St. Michaels Local Program for such areas and shall be designated on the St. Michaels Zoning Map for information purposes (note: Growth Allocation assigned to a property shall not constitute a zoning map amendment as per Article 66B unless there is a change in the underlying/existing zoning classification and shall be submitted to the Critical Area Commission as per COMAR 8-1809 (g) (Proposed Amendments) of the Chesapeake Bay Critical Areas Criteria.

Time Limitations

Applications for growth allocation shall include a schedule of project development and project phases. Project approval and award of growth allocation shall be limited to those phases of the project that can be completed within two (2) years of project approval. If after two (2) years the project is not completed, the applicant may request and the Town Commissioners may grant an extension of the time limit provided the Town Commissioners finds that reasons for project delay were not caused by the applicant but are for reasons beyond the applicant's control. The Town Commissioners shall withdraw the growth allocation from projects which are not completed within two (2) years or which are not granted an extension by the Town Commissioners.

Subsequent phases of the project which will require more than two (2) years to complete are eligible for subsequent growth allocation awards and successful completion of approved phases of a project may be taken into consideration by the Planning Commission when considering subsequent phases of the project for growth allocation provided the applicant has substantially complied with all conditions of approval.

Submission Requirements

Development activities in the St. Michaels Critical Area which are submitted for growth allocation must comply with the applicable requirements of the Town's Local Chesapeake Bay Critical Area Protection Program and the St. Michaels Comprehensive Plan, Zoning Ordinance and Subdivision Regulations. To insure project review by the Town is completed in the minimum time possible and that proposed projects fully comply with all applicable regulations, applicants for development actions will adhere to the site plan requirements contained in Sections 7 and 8 as applicable.

Section X. Amendments to Storm Water Management and Sediment Control Ordinances

The following provisions are recommended to adapt the existing Town (or County) Stormwater Management Ordinance to the Critical Area Program by limiting exemptions and waivers.

Exemptions

The following categories of development are exempted from the requirements of providing stormwater management. This does not exempt the developer from providing an adequate storm water drainage system or meeting the requirements of the Town's Critical Area Program and associated ordinances.

1. Agricultural land management practices approved by the Department of Agricultural and the Department of Natural Resources.

2. All developments disturbing no more than 5,000 square feet and not located within the Buffer area of the Town's Critical Area Overlay Zone.

3. Additions or modifications to existing single family detached residential structures provided they are not located within the Buffer area of the Town's Critical Area Overlay Zone.

Waivers

Any developer receiving a waiver of on-site storm water management quantitative control is not relieved of the responsibility of providing storm water management for qualitative control. The developer is required to demonstrate that such measures as required to reduce or eliminate pollutants from the first flush runoff event will be provided. If the proposed development activity is located in the Intensely Developed Area of the Critical Area Overlay Zone, then the developer must demonstrate that the pollutant loading from the site will be reduced by ten (10) percent.

The following modification to the Town's sediment control ordinance will insure that activities that would be excepted from the requirements of a grading permit will be evaluated as to their impact on water quality and identified habitat areas.

Exceptions

No exceptions shall be granted for the requirement of a grading permit for any grading, stripping, excavating or filling of land in the Town established Critical Area Overlay Zone. However, upon evaluation of the site outside the designated Buffer, the inspector may grant the exception if he determines that the development activity is classified as "insignificant" in impact to water quality and plant, fish and wildlife habitats as set forth in the Town's Critical Area Program.

Section XI. Recommended Planting Standards

Urban Woodland Reforestation and Afforestation Standards

The purpose of this section is to provide guidance to the Town in the reforestation and afforestation of trees within the Critical Area. These guidelines may be modified over time based on experienced gained through their application. Where woodlands

Chapter II

ST. MICHAELS LOCAL RESOURCE PROTECTION PROGRAM

Section I. DEVELOPMENT

As long as the Critical Area is maintained in its natural state, little can or need be done to manage land uses to protect water quality and wildlife habitats. However, as was discussed earlier, the St, Michaels waterfront is a desirable area for homes and businesses to locate. Hence, it is unrealistic to believe that the Critical Area program can or should freeze the further development of the St. Michaels Critical Area. Nevertheless, the Critical Area law and Criteria impose additional restrictions on the form and intensity of development.

Establishing the post-critical area development process for St. Michaels requires that the Local Program begin by assessing existing land use to determine a number of basic management and regulatory parameters. First, land use as of December 1985 must be zoned into one of three land use categories, Intensely Developed (IDA), Limited Development (LDA) and Resource Conservation Areas (RCA). Second, for each category policies, objectives and development requirements relating to the various program elements, i.e., Development in the Critical Area, Water Dependent Facilities, Erosion Protection Works, Forest and Woodland Protection, Natural Parks, and Habitat Protection Areas must be established. Third, provisions for grandfathering, variances, and buffer exemptions must be prepared to insure that the Town is able to strike a fair balance between the goals and objectives of the Local Program and the rights of property owners.

To meet the mandated mission of protecting the water quality and conserving habitat areas in the Critical Area, the Town has established land use policies for development which accommodate growth and address ecological concerns. In recognition that the Chesapeake Bay Critical Area has great diversity in existing land use, the State's criteria allow for a differentiation in the designation land use types and consequently allow for a differential in guidelines to apply to development and redevelopment in those areas. The Town's Critical Area falls into three general land use categories which are: 1) Intensely Developed Areas (IDA); 2) Limited Development Areas (LDA); and 3) Resource Conservation Areas (RCA).

Recognizing the extreme sensitivity of the vegetated shoreline contiguous to aquatic habitat, the Town has created another zone of management , the Buffer which will have unique development constraints. The buffer extends throughout the Town's shorefront across IDA, LDA, and RCA areas. Initially mapped as 100' from mean high water or tidal wetlands as required by State Criteria it has been modified where the presence of sensitive resources indicated 100' would be inadequate to protect water quality or unique habitats. For a more detailed explanation of Buffer requirements see the Buffer section in the Habitat Protection Element of this protection program.

Critical Area Acreage in the Town of St. Michaels

The Town of St. Michaels occupies roughly 556.76 acres (or about 0.87 square miles).[1] Of that total, approximately 320.68 acres are included in the Critical Area. This

EXHIBIT 25

tally comprises nearly 57.59 percent of the Town's overall acreage.

Intensely Developed Area

In the Town of St. Michaels about 199 acres are classified as intensely developed. Intensely developed areas (IDAs) embrace nearly 35.76 percent of the Town's total acreage and around 62.09 percent of the Town's total Critical Area acreage. IDAs are defined in the Critical Area Criteria guidebook as follows:

> IDA's include any area of 20 or more contiguous acres, or the entire upland portion of a municipality within the Critical Area (whichever is less) where residential, commercial, institutional and/or industrial development is predominant and relatively little natural habitat occurs. In addition, the area is to have one of the following characteristics:
>
> 1. Housing density is equal to or greater than four dwelling units per acre;
> 2. Industrial, institutional or commercial uses are concentrated in the area; or
> 3. Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre.[2]

Limited Development Area

Approximately 23.53 acres of the Town of St. Michaels are classified as having limited development. It is estimated that 4.23 percent of the Town's total acreage comes under the limited development (LDA) category. Nearly 7.34 percent of the total acreage for the Town of St. Michaels Critical Area is deemed to be LDA. According to the Critical Area Criteria guidebook, an area manifests limited development potential if it fits the following description:

> LDA's include any area currently developed in low or moderate intensity uses that contain areas of natural plant and wildlife habitat and where the quality of run-off from such areas has not been substantially altered or degraded. In addition, the area is to have at least one of the following characteristics:
>
> 1. Housing density between one unit per five acres up to four dwelling units per acre;
> 2. Area not dominated by agriculture, wetland, forest, barren land, surface water or open space;
> 3. Areas having the characteristics of the Intensely Developed Area, but less than 20 acres in extent; or
> 4. Areas having public water or sewer or both.[3]

Resource Conservation Area

The Town of St. Michaels has nearly 98.04 acres that are classified for resource conservation (RCA). Approximately 17.61 percent of the Town's total acreage is RCA. Resource conservation areas comprise about 30.57% percent of the total Critical Area land in the Town.

The Critical Area Criteria guidebook explains RCAs as follows:

> RCA's are any area predominated by wetlands, forests, and forestry activities, abandoned fields, agriculture, fishery activities, or aquaculture. In addition, the area is to have at least one of the following characteristics:
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> 1. Housing density less than one dwelling unit per five acres; or
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Location and Extent of Future Intensely Developed (IDA) and Limited Development (LDA) Areas

The Critical Area Criteria provide for the designation of new IDA and LDA's in the Critical Area. Generally the amount of total Resource Conservation Area acreage which can be converted to a more dense or intense land use is limited to five percent (5%) of the total RCA area in the County. The computation of the what is termed the "growth allocation" excludes tidal wetlands in the RCA. In addition the Critical Areas Criteria mandate that the County establish a process that accommodates the growth needs of municipalities.

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

New IDA and LDA's should be located in order to minimize impacts to Habitat Protection Areas and in a manner that optimize benefits to water quality.

1. If the County is able to utilize its growth allocation as prescribed above, no more than half of the expansion allocated in the Criteria of the Commission may be located in RCA's (adjacent to LDA's or IDA's).

2. If the County is unable to utilize a portion of the growth allocated to the County within or adjacent to existing IDA's or LDA's as demonstrated in the Talbot County Local Program approved by the Commission, then that portion of allocated expansion which cannot be so located may be located in the RCA in addition to expansion allocated in 4 above. A developer shall be required to cluster any development in any area authorized.

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Program Goals

Using the designated development areas, the Town has established the following general goals to guide the creation of specific regulations within the Critical Area.

1. To direct future intense development to locations outside the Town's Critical Area to the extent possible. When future intense development activities are proposed in the Critical Area they shall be accommodated exclusively in designated Intensely Developed Areas.

2. To maintain medium development densities in the Limited Development Areas.

3. To reserve a portion of Resource Conservation Areas for compatible uses including but not limited to, fisheries, resource utilization activities (e.g., park land or passive recreation) and for achieving habitat protection objectives.

Growth Allocation:

a. An area of land calculated as five (5%) percent of the total Resource Conservation Area (excluding tidal wetlands and federally owned land), that the County may convert to more intense management areas to accommodate land development; also

b. An act of the Mayor and Council, which provides for conversion of a property or properties located in a Resource Conservation Area (RCA) and/or the Limited Development Area (LDA) in the "O" Critical Area Overlay District to another land management classification which allows an increase in the permitted density.

Habitat Protection Areas -- Includes the Buffer, Non-Tidal Wetlands, Threatened and Endangered Species, Plant and Wildlife Habitats, Anadromous Fish Spawning Propagation Waters and Species in Need of Conservation, as defined in COMAR 14.15.09.

Highly erodible soils -- Soils with a slope greater than 15 percent; or those soils with a K value greater than 0.35 with slopes greater than 5 percent.

Hydric soils -- Soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition or growth, or both, of plants on those soils.

Immediate Family -- Father, mother, son, daughter, grandfather, grandmother, grandson, or granddaughter.

Land clearing -- Any activity that removes the vegetative ground cover.

Marina -- Any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other non-commercial boat docking and storage facilities.

Mean High Water Line -- The average level of high tides at a given location.

Natural Vegetation -- Plant communities that develop in the absence of human activities.

Natural features -- Components and processes present in or produced by nature, including but not limited to soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, and wildlife.

Non-tidal wetlands -- Refers to those lands in the Critical Area (excluding tidal wetlands regulated under Title 9 of Natural Resources Article, Annotated Code of Maryland) farm ponds and other man-made bodies of water whose purpose is to impound water for agriculture, water supply, recreation, or waterfowl habitat) where the water table is usually at or near the surface, or lands where the soil or substrate is covered by shallow water at some time during the

2. Location of slips in a manner which minimizes dredging needs and volumes. Dredged channels should decrease in width and depth toward shore with provision made for berthing deeper draft boats farthest from shore. Design of slips which are two feet (2) deeper at mean low water than the lowest projection of boats moored in them will minimize turbidity and bottom disturbances.

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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.

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Section IX. Growth Allocation Process

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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.

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Project Location Criteria

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2. New LDA's should be located adjacent to existing LDA's or IDA's.

3. New IDA and LDA's should be located in order to minimize impacts to Habitat Protection Areas and in a manner that optimize benefits to water quality.

4. New IDA's or LDA's located in the RCA shall conform to all Criteria of the St. Michaels Local Program for such areas and shall be designated on the St. Michaels Zoning Map for information purposes (note: Growth Allocation assigned to a property shall not constitute a zoning map amendment as per Article 66B unless there is a change in the underlying/existing zoning classification and shall be submitted to the Critical Area Commission as per COMAR 8-1809 (g) (Proposed Amendments) of the Chesapeake Bay Critical Areas Criteria.

Time Limitations

Applications for growth allocation shall include a schedule of project development and project phases. Project approval and award of growth allocation shall be limited to those phases of the project that can be completed within two (2) years of project approval. If after two (2) years the project is not completed, the applicant may request and the Town Commissioners may grant an extension of the time limit provided the Town Commissioners finds that reasons for project delay were not caused by the applicant but are for reasons beyond the applicant's control. The Town Commissioners shall withdraw the growth allocation from projects which are not completed within two (2) years or which are not granted an extension by the Town Commissioners.

Subsequent phases of the project which will require more than two (2) years, to complete are eligible for subsequent growth allocation awards and successful completion of approved phases of a project may be taken into consideration by the Planning Commission when considering subsequent phases of the project for growth allocation provided the applicant has substantially complied with all conditions of approval.

Submission Requirements

Development activities in the St. Michaels Critical Area which are submitted for growth allocation must comply with the applicable requirements of the Town's Local Chesapeake Bay Critical Area Protection Program and the St. Michaels Comprehensive Plan, Zoning Ordinance and Subdivision Regulations. To insure project review by the Town is completed in the minimum time possible and that proposed projects fully comply with all applicable regulations, applicants for development actions will adhere to the site plan requirements contained in Sections 7 and 8 as applicable.

Section X. Amendments to Storm Water Management and Sediment Control Ordinances

The following provisions are recommended to adapt the existing Town (or County) Stormwater Management Ordinance to the Critical Area Program by limiting exemptions and waivers.

FUTURE GROWTH AREAS

Map II-1

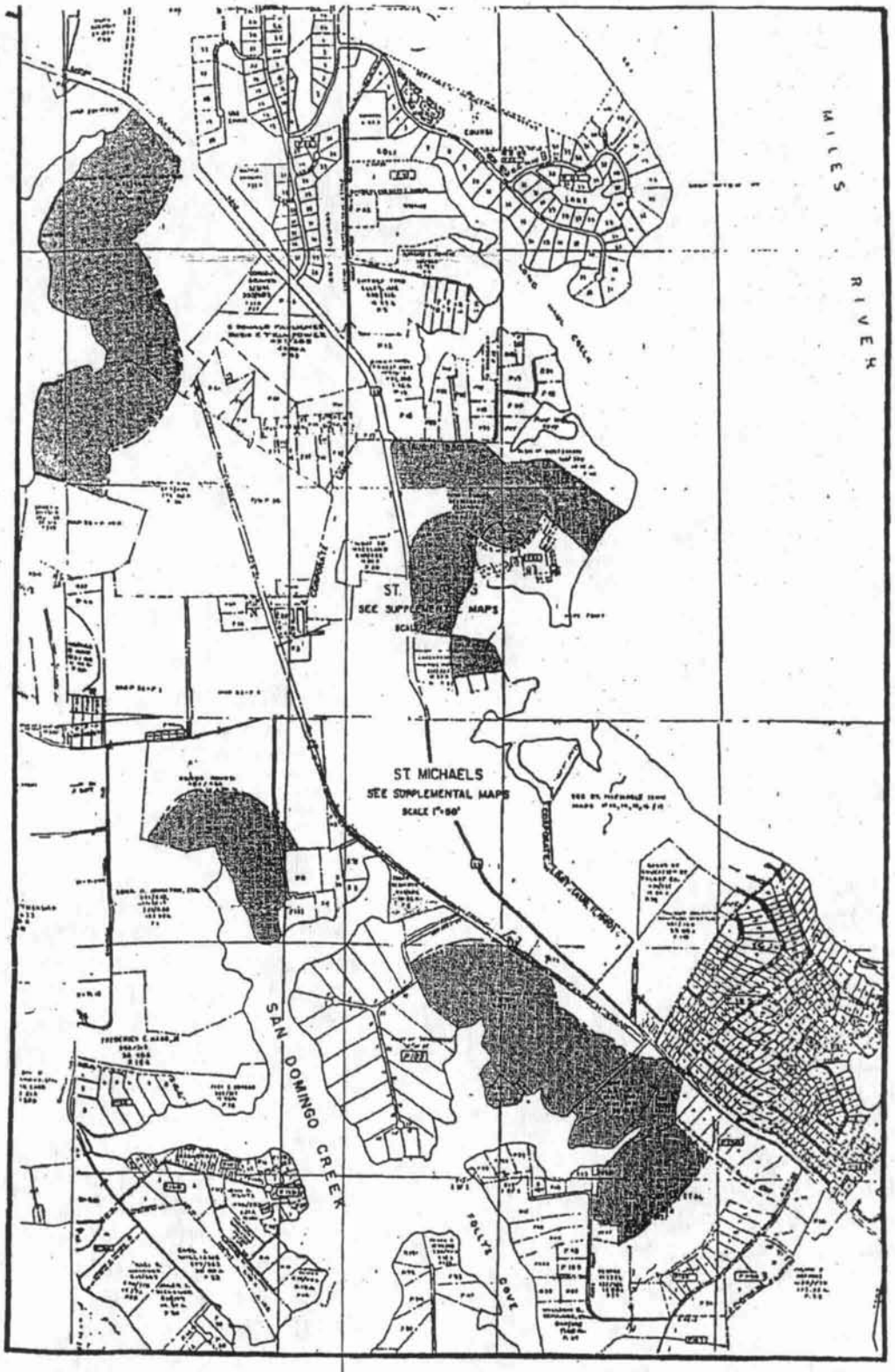
APPX. 403.1 ACRES

FUTURE GROWTH AREAS

ST. MICHAELS, MARYLAND

REDMAN/JOHNSTON
ASSOCIATES

E. 1834


MILES
RIVER
ST.
SEE SUPPLEMENTAL MAPS
ST MICHAELS
SEE SUPPLEMENTAL MAPS
SCALE 1"=50'
SAN DOMINGO CREEK
FOLLYS COVE

E. 1835

NOTICE: This document constitutes a compilation of Ordinance No. 109, As Amended, through Ordinance No. 306 which became effective May 18, 2004. In the event of a discrepancy between the language contained in this document and an Ordinance, the language in the Ordinance shall take precedence.

ZONING ORDINANCE

ST. MICHAELS

MARYLAND

Approved: December 9, 1975

Amended:

June 14, 1977 (Ord. #115)
February 14, 1978 (Ord. #118)
June 27, 1980 (Ord. #124)
October 11, 1983 (Ord. #137)
May 22, 1984 (Ord. #139)
July 10, 1984 (Ord. #141)
September 18, 1984 (Ord. 152)
January 8, 1985 (Ord. #157)
May 14, 1985 (Ord. 162)
October 8, 1985 (Ord. #171)
July 8, 1986 (Ord. #172)
September 9, 1986 (Ord. #173)
February 17, 1987 (Ord. #177)
September 8, 1987 (Ord. #181)
May 10, 1988 (Ord. #183)
June 14, 1988 (Ord. #185)
October 10, 1988 (Ord. #186)
August 9, 1988 (Ord. #187)
February 14, 1989 (Ord. #189)
March 14, 1989 (Ord. #191)
April 14, 1989 (Ord. #192)
July 11, 1989 (Ord. #193)
November 14, 1989 (Ord. #198)
December 14, 1990 (Ord. #200)
April 9, 1991 (Ord. #201)
September 10, 1991 (Ord. #202)
March 10, 1992 (Ord. #206)
March 18, 1992 (Ord. #208)
July 12, 1994 (Ord. #213)
December 14, 1993 (Ord.#214)
February 14, 1995 (Ord. #220)
April 11, 1995 (Ord. #221)
February 13, 1996 (Ord. #222)
November 14, 1995 (Ord. #224)
February 13, 1996 (Ord. #225)
March 12, 1996 (Ord. #227)
March 12, 1996 (Ord. #228)
September 8, 1997 (Ord. #237)
February 10, 1998 (Ord. #238)
September 14, 1999 (Ord. #241)
September 14, 1999 (Ord. #242)
June 8, 1999 (Ord. #244)
July 13, 1999 (Ord. #245)
January 11, 2000 (Ord. #246)
December 14, 1999 (Ord. #248)
March 28, 2000 (Ord. #249)
July 11, 2000 (Ord. #250)
July 12, 2001 (Ord. #253)
June 20, 2000 (Ord. #254)
July 11, 2000 (Ord. #255)
May 8, 2001 (Ord. #259)
October 9, 2001 (Ord. #266)
January 8, 2002 (Ord. #264)
January 8, 2002 (Ord. #267)
January 8, 2002 (Ord. #270)
July 3, 2002 (Ord. #258)
December 31, 2002 (Ord. #275)

EXHIBIT
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February 3, 2003 (Ordinance #279)
February 17, 2003 (Ordinance #282)
September 1, 2003 (Ordinance #291)
September 1, 2003 (Ordinance #293)
November 4, 2003 (Ordinance #295)
December 2, 2003 (Ordinance #290)
December 2, 2003 (Ordinance #297)
December 30, 2003 (Ordinance #298)
February 10, 2004 (Ordinance #304)
March 16, 2004 (Ordinance #299)
May 18, 2004 (Ordinance #305)
May 18, 2004 (Ordinance #306)

The preparation of this document was financed in part through a comprehensive planning grant from the Department of Housing and Urban Development, as administered by the Maryland Department of State Planning.

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

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

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

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

11. Growth Allocation District - GA

a. Purpose

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

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

b. Intent

Growth Allocation is a finite resource, created by the State and delegated to the counties of Maryland. Talbot County has delegated a part of its Growth Allocation to the Town and the surrounding area. Because it is limited in amount, and that amount is intended to serve the needs of the Town forever, Growth Allocation must be managed to address the most meritorious current needs of the Town, and conserved to meet the future needs of the Town. Despite the fact that the Town may currently have more acres of unawarded

Growth Allocation assigned to it than the number of undeveloped acres currently located within the RCA and/or LDA overlay zones in the Town, there are hundreds of additional acres of land located within the Chesapeake Bay Critical Area and within close proximity to the Town, such that substantial additional acres classified as RCA and/or LDA could be annexed to the Town in the future. Consistent with the "smart Growth" policy of the State, encouraging expansion of development in and around established population centers, it is anticipated that pressure on the Town for such annexations will increase in the future. Therefore, Growth allocation is a precious resource which must be conserved and managed wisely by the Town in accordance with the goals and objectives of the Town's comprehensive plan.

c. Procedures. The following procedures specified by this part c shall apply exclusively to all applications for the award of growth allocation, pursuant to this subsection 11 (Growth Allocation District).

1) Submission Requirements. An application to the Town for the award of growth allocation shall be accompanied by the following:

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

b) Concept plans shall be prepared as per the applicable requirements of the Zoning Ordinance.

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

2) Processing GA District Applications. Where the purpose or effect of an application to the Town is the award of growth allocation for the purposes of this subsection 11 (Growth Allocation District), the following procedures shall be followed:

a) Public notice shall be given in accordance with subsection 4 (Notice of Public Hearings) of section 15 (Amendments).

b) The processing and/or granting of an application for the award of growth allocation does not constitute or replace any other required land-use process, approval or permit.

c) Multiple applications:

i) An applicant may withdraw an application for the award of Growth Allocation at any time; however, such withdrawal

THE CIRCUIT COURT FOR TALBOT COUNTY

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2005 DEC 8 PM 2 45

TALBOT COUNTY MARYLAND :

v. : Civil # 2-C-04-005095 D

DEPARTMENT OF NATURAL RESOURCES :
CRITICAL AREA COMMISSION, et al :

: : : : :

ORDER GRANTING RIGHT TO INTERVENE AND SUPPLEMENTAL SCHEDULING ORDER

The Court having carefully considered the splendid memoranda addressing the motion to intervene filed on October 19, 2005, by Miles Point Property, LLC and the Midland Companies, Inc. (movants) and finding that no hearing is required; that movants claim an interest relating to the property or transaction which is the subject of this action and that movants are so situated that the disposition of the action may as a practical matter impair or impede their ability to protect that interest; that their private, parochial interest is not adequately represented by existing parties; and that, upon application of the provisions of paragraph 4 of this Order, the motion is timely, it is **ORDERED** that:

1. Subject to the remaining provisions of this Order, movants are allowed to intervene, designated as defendants, in this action.

2. The proposed answer attached to movants' motion to intervene, having already been served upon all parties with that motion, is accepted as movants' answer to the complaint as of the date when this Order is filed, without necessity for further service upon other parties.

3. Movants shall have sole responsibility to acquaint themselves with all pleadings, motions and other papers previously filed in this action, without any requirement or necessity for any other party to serve or otherwise furnish copies of any paper heretofore filed by it.

4. This Order is conditioned upon the following:

a-As promised in their memorandum, movants may not initiate any discovery under Title 2, Chapter 400, of the Rules.

b-The motion for summary judgment previously filed by plaintiff shall be taken and construed as including a request for such relief against movants.

c-Movants must file any motion for summary judgment or response to plaintiff's motion for summary judgment on or before December 22, 2005.

d-Responses to movants' motion for summary judgment must be filed on or before January 15, 2006. Other parties are urged to make liberal use of Rule 2-303 (d) in their responses and not restate argument, recitations of fact or affidavits contained in papers previously filed by them.

e-Responses shall be limited to those referred to in Rule 2-311. Responses to a response are not permitted.

e-This action may be set for trial or hearing at any time after January 15, 2006. Movants may not object to the scheduling of any trial or hearing on the basis of a need for additional time to prepare for such proceeding.

f-Except as provided in this paragraph, all other provisions of the prior scheduling order remain in effect.

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

December 7, 2005

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2005 DEC 14 PM 12:03

TALBOT COUNTY, MARYLAND	:	
Plaintiff	:	
v.	:	
DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION, et al.	:	Civil Action No. 2-C-04-005095 DJ
	:	
Defendants	:	
	:	

TALBOT COUNTY'S OPPOSITION TO DEPARTMENT OF NATURAL RESOURCES' MOTION FOR SUMMARY JUDGMENT

Talbot County, Maryland, by and through ALLEN, KARPINSKI, BRYANT & KARP,DANIEL KARP and VICTORIA M. SHEARER, and MICHAEL L. PULLEN, Talbot County Attorney, its attorneys, submits the instant opposition to the Department of Natural Resources' (Critical Areas Commission or "CAC's") motion for summary judgment.

INTRODUCTION

Talbot County has already filed its own Motion for Summary Judgment in this case, which sets forth the pertinent background and facts of this case. Talbot County therefore adopts and incorporates herein its Motion for Summary Judgment, as if fully set forth.

ert L. Ehrlich, Jr.
Governor

'ichael S. Steele
.t Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

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

May 14, 2004

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

Re: Talbot County Proposal
Program Amendment: Bill 933

Dear Mr. Kinney:

This letter notifies you of action taken by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays. At its regularly scheduled meeting on May 5, 2004 the Critical Area Commission considered County Bill #933, Talbot County's proposed amendment to its local Critical Area program concerning the reallocation of growth allocation reserve acres. Upon the recommendation of the panel of Commission members who conducted a public hearing on County Bill #933, and further upon consideration of the Panel's Report and its Supplement (both attached), statements made by members of the public who attended the Commission's meeting, and discussion among the Commission members, the Commission voted to deny approval of County Bill #933 as an amendment to Talbot County's local Critical Area program. The vote was unanimous, with one member abstaining.

The basis for the Commission's decision, as set out in the Supplement to the Panel Report, was as follows:

> Accepting Bill 933 would negate at least one previous Commission action approving a local program change. This is the refinement to the St. Michaels program for the Strausburg growth allocation approved in October 2003.
>
> Accepting Bill 933 would create conflicts between the County program and several approved municipal programs. The municipal programs have their own approved growth allocation procedures premised on the growth allocation reserves provided by the County. The conflict that Bill 933 would create is contrary to the Commission's oversight responsibility to ensure that local programs are implemented in a consistent and uniform manner.

E. 1843

001552

EXHIBIT 1

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

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

EXHIBIT
2

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; <u>underlining</u> 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.

MEETING OF A PANEL

OF

THE STATE OF MARYLAND

CRITICAL AREA COMMISSION

FOR THE

CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: May 5, 2004 (Meeting No. 2)

Time: 10:15 a.m.

Location: Department of Housing and Community Development, Crownsville, Maryland

Reported by: Linda A. Crockett

E. 1850

EXHIBIT 3

MEMBERS OF THE PANEL:

Gary Setzer, Chair
Judith Evans
Joseph Jackson
Edwin Richards
David Blazer

Marianne Mason, Assistant Attorney General

P R O C E E D I N G S

CHAIRMAN SETZER: We'll convene this discussion by the hearing panel. Sitting on the panel is Judith Evans, Joe Jackson, Ed Richards and Davis Blazer. The three issues that we have before us all relate to the town of St. Michael's, ordinance 304, changes in zoning and critical area map amendment procedures; resolution 2003-06 which deals with the annexation of Miles Point property; and then we have growth allocation request for Miles Point III.

Much like the previous discussion I think two out of three proposals we could probably dispose of quickly. So why don't we move to ordinance Number 304 which deals with the text changes and I'll open it up for discussion. Do you want to summarize your staff report?

MS. HOERGER: There are two basic changes with ordinance 304. One is to amend some procedures in the town's critical area program with respect to eliminating duplication of amendment processes. For example, when an applicant would come before the town for growth allocation, the commissioners would award that and they would come back a second time to change the actual physical town map. So the town has changed that so that it is one process instead of two.

The second change involves the correction of the order that the town commissioners and this Commission review text and map amendments affecting the critical area. This process was corrected for growth allocation reviews in 1999. And now they're correcting the other types of processes so that, again, the order would be town commissioner vote and then it comes to the Commission for review. And that's essentially it.

CHAIRMAN SETZER: Any discussion? Do I have a motion?

MR. BLAZER: I move that we accept 304.

MS. EVANS: I second.

CHAIRMAN SETZER: Any discussion? All those in favor say aye.

(All said aye.)

CHAIRMAN SETZER: No opposition. 304 is approved.

The second issue on the agenda is the resolution 2003-06. Could you please summarize?

MS. HOERGER: We have a map up here which is essentially for the next item of discussion. This will show the annexation piece, the Miles Point Property, LLC was annexed into the town, this area, the upland portion is 17.136 acres. They have annexed a total of 42 acres which includes some lands of the bed of the Miles River, and the reason for that is the town has a board of port ordinance and a water management ordinance, so they have some jurisdiction to annex land under state waters, so that's why you'll see that number in your staff report. It

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1 has come into the town as a resource conservation
2 area and will remain as a resource conservation
3 area.
4 CHAIRMAN SETZER: Discussion? A motion?
5 MR. BLAZER: I have a motion that we
6 approve.
7 MR. JACKSON: Second.
8 CHAIRMAN SETZER: All those in favor say
9 aye.
10 (All said aye.)
11 CHAIRMAN SETZER: No opposition.
12 The third issue on the agenda has to do
13 with Miles Point III growth allocation. I'll
14 turn to Lisa to summarize.
15 MS. OWENS: I'm doing this one. This
16 project involves the use and growth allocation by
17 the town of St. Michael's of 70.863 acres to
18 change the critical area designation from RCA to
19 IDA. That's the conceptual plan for the project.
20 Essentially the property is undeveloped. It's
21 been used for agriculture. It's basically a

Page 7

1 fairly level open field with a few, a little bit
2 of fringe of trees in the buffer. The town is
3 proposing to deduct the entire acreage of the
parcel located on the east side of Maryland 33.
There is a portion of property located on the --
for this project.
Just to summarize a little bit. I'm
just going to walk you through my staff report.
The Commission has several standards of review.
They are primarily looking at the goals of the
ritical area program to minimize adverse impacts
water quality, to conserve fish, wildlife,
ant habitat; and establish land use policies
f development in the Critical Area but also
ress the fact that even if pollution is
trolled, the number, movement and activities
eople in the area can create adverse
ronmental impacts.
To summarize the panel's discussion
down into several categories. The most
as the discussion about protecting habitat

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1 and water quality. And the COMAR provides some
2 guidelines for growth allocation that basically
3 talk about minimizing impacts to habitat
4 protection areas. There are two habitat
5 protection areas on the site. One is the
6 100-foot buffer and the other is the water
7 conservation area. I'm going to turn it over to
8 Claudia to talk about that. The next goal is to
9 minimize the impact of the defined land use of
10 the RCA; and the third is that new IDA and LDA
11 located in RCA should be located at least 300
12 feet beyond the landward edge of tidal wetlands
13 or tidal waters. Again, these are guidelines.
14 I think important points of the
15 discussion had to do with the fact that this is
16 going to be a fairly intense development of this
17 site. There will be 280 new dwelling units, an
18 inn, and also the buffer is proposed to be used
19 by the town as a park. So most of the site is
20 going to be developed. Impervious surface levels
21 are going to increase from 0 percent to roughly

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1 33 percent. There are going to be dramatic
2 changes in water quality. And the primary ways
3 that impacts to the water quality are going to be
4 addressed is the agricultural use of the property
5 is going to cease, stormwater management is going
6 to be provided, and forested buffers will be
7 established.
8 There has been a lot of discussion about
9 the forested buffer. The width has been an
10 issue, whether it's going to be 100 or 300 feet,
11 whatever. Also the project involves the creation
12 of a marsh for shore erosion control. Sometimes
13 there can be some conflicts created by trying to
14 establish a forest buffer, there's some balancing
15 that needs to go in there. The town has viewed
16 the fact that they are providing the marsh as
17 being sort of a trade-off, they don't need to
18 provide the 300-foot setback because they're
19 going to be providing this area of marsh.
20 There was also a lot of discussion about
21 the use of the 100-foot buffer that is proposed

1 in the project as a park. The town proposes
2 there will be gathering areas used for concerts
3 and potentially other civic events. We don't
4 have any details for the park yet. We do believe
5 that because there's not a lot of publicly owned
6 land in the town of St. Michael's and not a lot
7 of waterfront that it would be used heavily and
8 quite frequently.
9 The 300-foot setback was talked about
10 quite a bit. I'm on Page 4 now, some of the
11 points sort of summarized and broken down into
12 six points, things that were discussed about the
13 purpose of the 300-foot setback: Providing a
14 buffer between areas of intense human activity.
15 To potentially provide some type of wildlife
16 corridor system on the property. To provide
17 protection to the waterfowl staging and
18 concentration areas located in the Miles River.
19 The 300-foot setback also can have the effect of
20 reducing overall impervious surface area
21 associated with the project and the volume of

1 waterfront be outside the fall and wintering
2 period for these species. He recommends that
3 bulkheading not be done, to keep it as natural as
4 possible, either marsh grass and/or stone. He
5 also recommends that setbacks for building
6 construction, walkways, et cetera be set back as
7 far as possible or screening of plantings to
8 minimize the activities.
9 I did not get to follow up with Larry to
10 see what he felt as far as marsh creation. The
11 forest buffer for waterfowl, although he did say
12 that springing was recommended. I did talk to
13 Stan Causey at the Department of the Environment
14 and he said he has already issued several years
15 ago a permit for riprap along the shoreline and
16 he hasn't seen an application yet for marsh
17 creation, but he didn't feel like it was the best
18 candidate.
19 I also looked at an article that was
20 done by Fish and Wildlife Service as well as the
21 U.S. Forest Service Chesapeake Bay Program, in

1 stormwater, and it also increases the areas
2 available for infiltration -- provides for
3 recharge. If you minimize the effects of
4 shoreline erosion by basically providing a wider
5 area in which to deal with erosion control. And
6 then providing an area of sufficient size and
7 width to accommodate both the resource protection
8 benefits of the buffer and accommodate the
9 recreational needs of the town.
10 With that I was hoping that maybe
11 Claudia could talk a little bit about the
12 waterfowl concentration areas.
13 MS. JONES: We got some comments from
14 Larry Heinman from the Department of Natural
15 Resources. And he says it's used by large
16 numbers of wintering Atlantic Canada geese,
17 cambusbacks (phonetic), tundra swans, golden eye,
18 (inaudible) and mallards. Two of the species,
19 cambusbacks and tundra swans, are in decline in
20 the Maryland portion of the bay. He recommends
21 that any proposed construction along the

1 1995, and they talk about discouraging people
2 from a full scale shift to marsh creation versus
3 a forested shoreline saying that most of the
4 research has been done and it's undisputed how
5 valuable large areas of salt marsh are to aquatic
6 life.
7 However, when they did sampling along
8 fringe marshes versus forested shorelines, they
9 found a lot more use by aquatic species along the
10 forested shorelines versus a forested buffer
11 where you had some debris that provided hiding
12 areas for aquatic species, fish and crabs.
13 MS. MASON: Just to follow up on
14 something Claudia said, the record that the town
15 submitted at the public hearing included a number
16 of boxes which I think are over there on that
17 hand cart. And we have gone through those and in
18 those boxes there were documents referencing the
19 applications for riprap permits, just to follow
20 up. That's somewhere in one of those boxes. The
21 excerpts were provided, anything that was

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1 relevant to the Commission's review, excluding
2 traffic, volume of cars, things like that were
3 provided to the panel.
4 MS. OWENS: Page 4, the next thing that
5 was discussed was wildlife habitat and corridors.
6 That site certainly is used by wildlife, even
7 though it may not be the typical thing we
8 envision, since it's basically an open field. It
9 certainly is a goal to provide for the habitat.
10 That's why we've established the buffer and try
11 to provide vegetative corridor wherever possible.
12 There was some discussion about the various areas
13 where stormwater management is proposed. And
14 there are actually four of them. What's proposed
15 is here, here, here, and here. And the idea of
16 possibly working that stormwater quality
17 management and ponding management into some type
18 of habitat areas as well through (inaudible).
19 The next issue that was discussed was
20 shoreline access and buffer management. As I
21 said earlier, the 100-foot buffer on the project

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as proposed is supposed to be dedicated to the
town for use as a town park. We do know they
plan to use the area for walkways and gathering
areas. We do not know too much else about that.
We don't have a detailed plan of the area as of
yet.

Certainly in the past the Commission has
requested -- required that a Buffer Management
Plan be submitted for review and approval by the
Commission at a later date and that may be
something to contemplate on this because we don't
know a lot yet about what's going to happen.

Stormwater management, just touched on
at before, areas that are proposed to be
vided. They have performed preliminary
culations based on their conceptual plan and
ieve that volume and runoff of stormwater can
controlled and they can meet the 10 percent
ction requirement.

All of this is subject to them getting
detailed soil information once they know

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1 more about impervious surface area. It does look
2 feasible that they would be able to provide all
3 the necessaries for water management on site.
4 Shore erosion control, we talked about
5 that. Their proposal at the moment is implement
6 a marsh creation program and a structural
7 element, which is a sill basically to protect the
8 marsh. There was a lot of discussion about
9 shading of the grasses. Certainly that's
10 something, if they're shaded and don't get
11 sufficiently established, they don't do as good a
12 job at protecting the shore. Most of you were
13 out on the site, you saw how severely it's
14 eroded. Even in the two times Lisa was there she
15 felt there was more erosion.
16 MS. MASON: Can I add something on that
17 too? There was information that was provided to
18 the panel from the town indicating that the
19 erosion was somewhere at the rate of 2 feet per
20 year.
21 MS. OWENS: Which based on our

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1 definition is considered significantly eroding.
2 What I think we're not clear on yet is whether if
3 we're trying to establish a forested buffer and
4 also providing a marsh creation, we want to be
5 successful at what distance would forest
6 vegetation need to be set back from the edge of
7 the bank in order to not shade the grass. We
8 haven't quite gotten a definitive answer on that.
9 The last issue that was discussed was
10 wastewater treatment. There were some concerns
11 about wastewater treatment problems in St.
12 Michael's and the limitation of their plan.
13 Based on the information that we were provided at
14 the last panel meeting, it was our understanding
15 that the plan is to be substantially upgraded
16 prior to any of the structures that are proposing
17 to be built on the site to be connected to it.
18 MDE is the kind of watchdog agency ensuring that
19 that is adequate. We believe they have the
20 measures in place and the conditions placed by
21 the town council to do that. That's basically

1 it.

2 CHAIRMAN SETZER: Any questions?

3 MR. BLAZER: This I guess goes back to

4 the permit for the shoreline, that was not for

5 the wetland creation, that was only to stabilize

6 the shoreline.

7 MS. JONES: That's my understanding.

8 MR. BLAZER: We're still looking at

9 basically the same area?

10 MS. JONES: Yes.

11 CHAIRMAN SETZER: In terms of my review

12 of the request there are several issues. One has

13 to do with the buffer and the use of a 100-foot

14 buffer in lieu of a 300-foot buffer and the

15 suggestion that that distance may preserve

16 improvement compensated by marsh creation. Based

17 on the review from staff as well as information

18 the -- the success of marsh creation on the

19 shoreline significantly (inaudible).

20 I don't know that in terms of water

21 quality benefits that we want to sacrifice a

1 to look at in terms of the town's use of that

2 area.

3 MS. MASON: You have a criteria that

4 does encourage public access to the waterfront.

5 You need to keep that in mind as well. Something

6 else on the plan and in the information provided

7 to the panel, and I believe it was pointed out in

8 the public hearing, although I'm not sure. The

9 developer has proposed more than a 100-foot

10 buffer in some places up there, perhaps even

11 substantially more. Some of the line goes into

12 the stormwater management which the Commission

13 has in the past found that's not permitted to be

14 in the buffer. So it really can't be counted as

15 part of the buffer area.

16 Nonetheless, if you look carefully where

17 the line is there is a provision -- in other

18 words, it's not a static line. So when you're

19 discussing that issue you need to be aware of the

20 fluctuation in the setback, which it could change

21 based on where it's measured from. I don't

1 lesser buffer for a highly engineered marsh

2 creation, so I think I personally would like to

3 have us discuss implementing a larger buffer.

4 The criteria is looking at a 300-foot buffer.

5 MR. SEREY: The criteria do not -- the

6 guidelines does not call for a 300-foot buffer.

7 It's a 300-foot setback between the new growth

8 allocation and the tidal waters, and I think the

9 idea behind that is not necessarily to achieve a

10 300-foot area with the exact same buffer

11 functions that you would get from a 100-foot

12 buffer, but to have that 100-foot buffer and

13 those functions associated with it and then an

14 additional setback. It's not a 100 versus a 300.

15 CHAIRMAN SETZER: So the 100-foot buffer

16 would be what we would be looking for highly

17 vegetated establishing some habitat value on site

18 and taking this discussion one step further,

19 based on the use by the town of that area for

20 public use, public functions, we need to look at

21 what types of restrictions the Commission wants

1 recall seeing any information as to when the line

2 on the plan -- where it was drawn from and if the

3 shoreline is eroding, that could make a

4 difference.

5 MR. SEREY: My understanding is that the

6 line from which the buffers and setbacks are

7 measured was taken in November of last year,

8 about seven months old. That's my understanding.

9 CHAIRMAN SETZER: The other issue that

10 is of concern for me has to do with the treatment

11 of stormwater on site, the proposal at this point

12 is conceptual and certainly takes advantage of

13 surface control techniques in terms of dealing

14 with quantity and quality. Personally, I would

15 like to see at least an attempt to use more of

16 the environmental sensitive techniques, and some

17 other opportunities, at least keep them in

18 reserve until you find out what the soils are on

19 site and whether they're applicable before going

20 to the surface water treatment system. We

21 already touched on the shore erosion.

1 Personally I don't want to discourage
2 the creation of marsh along the shoreline, but
3 then again, the use of that shoreline is more
4 appropriate for a buffer than a marsh creation
5 project. That might be something to consider
6 whether the investment in the structural marsh
7 system is worthwhile. I guess at the exclusion
8 of other --
9 MR. JACKSON: If it's highly engineered
10 that usually means high maintenance. Is that
11 true, Claudia?
12 MS. JONES: Not necessarily. Gary might
13 be better to answer this. If it's engineered
14 properly then they shouldn't have to maintain too
15 much. If they do it right, correctly.
16 CHAIRMAN SETZER: I think it can be
17 done. When MDE was out on site Claudia spoke
18 with them and that's when the project, shore
19 erosion, marsh creation really even looked into
20 that process. His position is that it was part
21 of the department's charge and it's also within a

1 period where -- we looked at no treatment, marsh
2 creation and -- you go out on site, they're
3 looking at the site again. That's not to say I
4 necessarily want to discourage marsh creation.
5 MS. JONES: But it's telling that there
6 was one little patch where it looked like there
7 was some kind of marsh grass growing along the
8 shoreline maybe about this wide and the rest of
9 it was just sand. So it's not happening
10 naturally, although it might be something for
11 them to consider doing marsh creation on one side
12 and riprap on the other. I don't think the marsh
13 creation should be traded for buffer.
14 MR. BLAZER: The permit for the riprap
15 is actually only on the point out front. It
16 stops where the property line exists. So if you
17 look at the map, the point that's furthest east,
18 I guess, right, from there all of the way north
19 around, to that is all permit for the riprap.
20 The lower section is not part of this permit.
21 There might be a second permit.

1 CHAIRMAN SETZER: What I would like to
2 do, if you all agree, is because there are a lot
3 of issues that kind of are swirling around, to
4 close the meeting and have an opportunity to
5 discuss some of these issues with counsel and
6 determine whether or not --
7 MR. RICHARDS: The legal process.
8 CHAIRMAN SETZER: The legal process. We
9 can close the meeting to consult with counsel and
10 take legal advice. So I would like to close the
11 meeting to consult with counsel to obtain legal
12 advice under the applicable sections of the
13 applicable area of law, to consult with counsel
14 to obtain legal advice in the context of
15 recommending Commission action on the growth
16 allocation, to consult with counsel to obtain
17 legal advice on the interplay between this
18 proposed program and the amendment on the 933,
19 and to consult with counsel to obtain legal
20 advice.
21 MR. BLAZER: I make a motion that we go

1 into closed session.
2 MR. JACKSON: Second.
3 CHAIRMAN SETZER: All those in favor?
4 (All said aye.)
5 CHAIRMAN SETZER: To summarize our
6 discussion, the issues that have jumped out at me
7 in terms of considering the -- open for
8 discussion.
9 MR. BLAZER: I think we were talking
10 before about the 300-foot buffer. I think one of
11 the concerns that the shore erosion issue is kind
12 of a moot point. We see that as something we
13 need to deliberate. A 300-foot buffer in my
14 eyes --
15 MS. MASON: Setback in the criteria,
16 that setback?
17 MR. BLAZER: No. I think my issue with
18 that directly is the amount of impervious surface
19 that you need to have a 300-foot setback because
20 of the habitat and the criteria that's laid out
21 for water quality habitat considerations would be

1 more in line with the goals of the program.
2 I think my other point was I'm looking
3 at it from that perspective as opposed to the
4 trade-off that's recommended within the proposal.
5 I think our purviews are looking at water quality
6 and habitat issues, the 300-foot buffer would be
7 more adequate. Especially my concerns with
8 impervious surface, going from 0 to 30 or 60
9 percent I think the number was, than the argument
10 laid out in the proposal about marsh creation.
11 That is something to me that is a little bit
12 different.
13 CHAIRMAN SETZER: I think with the marsh
14 creation, MDE went out, to advance that to a
15 vegetated shoreline which certainly is viable to
16 protect the shoreline. I think the concern for
17 us is, and we heard this in some of the
18 discussion previously, is whether or not we can
19 use that as a trade-off to adjust the buffer and
20 setback. That's what we need to focus on.
21 MR. RICHARDS: In addition to the

1 against the intent of the law. So I think
2 procedurally, I do not think the town met the
3 requirements of the regulations. They did not
4 take appropriate considerations to the guidelines
5 300-foot setback.
6 Now all the lawyers can write me a
7 letter and fax me all the stuff to tell me it's
8 wrong.
9 MR. BLAZER: My issue about impervious
10 surface, I think the design of the development,
11 trying to use cluster development, trying to use
12 new urban techniques, it's been at the expense of
13 open space and at the expense of what should be a
14 better buffer. You know, they have got their
15 density; they have got the site design, but open
16 space requirements really aren't there. And the
17 buffer, looking at water quality and habitat
18 considerations, I think in this case is very
19 appropriate.
20 CHAIRMAN SETZER: A buffer, the statute
21 of regulations will provide that with land use

1 environmental issues, I would like to raise a
2 procedural issue as far as the 300-foot setback
3 is concerned. The attorneys are going to go
4 berserk. As a layman I have my own definitions
5 of what shall or should be. And basically I
6 think in the regulations that we're working from
7 we have a should reinforce by and shall use and
8 shall use as the guideline shall be used and it
9 says there should be a 300-foot setback. My
10 layman's definition says that shall is stronger
11 than should. But when they're used together it
12 says should means that there will be a 300-foot
13 setback unless there are very compelling reasons
14 why they cannot have the 300-foot setback or that
15 a 300-foot setback would work against the intent
16 of the law.
17 And the three reasons the town gave for
18 not requiring a 300-foot setback did not meet my
19 standards. And I do not know of any compelling
20 reason why there cannot be a 300-foot setback.
21 And I do not feel a 300-foot setback would work

1 changes from agricultural use to -- that the
2 buffer has to be established. And it's not just
3 a vegetative buffer. It says forest and
4 vegetation needs to be established. So there's a
5 number of opportunities to point to in the
6 statute that directly concentrate on providing an
7 adequate buffer with the habitat and water
8 quality considerations.
9 MR. RICHARDS: I think another argument
10 in addition to the environmental. Basically
11 dealing with growth allocation, the stipulation
12 we're accommodating growth which we're required
13 to do. However, even if pollution is controlled,
14 we have to take into consideration that people
15 create adverse environmental impacts, and
16 essentially the 300-foot setback is to protect
17 the water from us, not just the stormwater, not
18 just the runoff, not just the other problems, but
19 basically us walking there, driving there create
20 problems.
21 One way to mitigate that is to keep the

1 problem 300 feet away from the water. That's why
2 I believe that should is a very strong indication
3 of what we should be doing.
4 CHAIRMAN SETZER: Not to solely
5 concentrate on the environment issues that relate
6 to water quality and habitat and as it relates to
7 both the setback and buffer, one of the other
8 issues that the Commission needs to address is
9 giving the public an opportunity to reach the
10 water and enjoy the water. So while I think we
11 all kind of agree that we need to deal with both
12 the reestablishment of a 100-foot buffer and
13 perhaps a larger setback than what's being
14 proposed by the development, in that same context
15 we also need to provide an opportunity for public
16 access, and somehow there needs to be that
17 balance between buffer setback and public access
18 to the water. We need to be able to accomplish
19 all those objectives.
20 MR. BLAZER: Would that be incorporated
21 into a Buffer Management Plan? I mean, it's not

that specific that we'd have to agree to today.
But I think making some condition we need a
Buffer Management Plan.
MS. OWENS: We could acknowledge that
the plan would have public access.
MR. BLAZER: And it needs to come back
to the Commission.
CHAIRMAN SETZER: Under that Buffer
Management Plan you could address not only the
100-foot buffer but an adequate setback.
MS. OWENS: Yes, or we could do it in
two conditions. It would have one that talks
about providing a 300-foot setback and one that
talks about establishing a buffer as required by
the criteria. I guess if the 300-foot setback
exists, we have the public access in the 200 feet
that aren't forest.
MR. RICHARDS: I think they're two
different issues. The 200 foot we're talking
about passive recreation, that should be
allable for passive recreation. I think the

1 problems with this is since there's no provision
2 for a forested buffer, I think 100 foot is what
3 in the management plan talk about what part is
4 going to be forested and how it's going to be
5 forested and what provisions will be there for
6 public access. Part of the issue with
7 accommodating growth is being able to use the
8 bay. I think that's been an issue and I think
9 that has to be addressed.
10 CHAIRMAN SETZER: Any further
11 discussion?
12 MS. OWENS: What about stormwater
13 management?
14 MR. RICHARDS: I'll approach it from
15 another standpoint, Greg, I would defer to you
16 because I've had to deal with water plans, but I
17 don't like them. I think one of the issues that
18 I have is a conflict in looking at this
19 development, I think it is an appropriate site
20 for development. I think the cluster or
21 traditional town approach they have used is very

1 appropriate. However, I think that by using it
2 it requires us to go from a more controlled
3 growth under a limited development area to an
4 IDA. And I have some problems with that because
5 the LDA has some criteria that are weighed
6 because we're going by the IDA. I recognize that
7 if you stay with the LDA, you can't stay with the
8 cluster. But I think there are a lot of
9 advantages to some of the criteria in the LDA,
10 which I don't know whether it's appropriate for
11 us to talk about those.
12 But I think some of the issues have
13 already been raised and I think most of them
14 addressed the stormwater problem. One is the
15 restriction on impervious surfaces and, you know,
16 whether or not that could be applied, I don't
17 know. But I think it should at least be used as
18 the basis for evaluating the proposal and who
19 would evaluate it, would it be the town or us, I
20 don't know.
21 Another one is forestation. I have a

1 problem with the less trees than we had before
2 and there are provisions for that. One of the
3 things that I think the guidelines should be is
4 the cap on the number of units in an LDA which I
5 look at about 212, which I don't think is
6 necessarily hard and fast. But I think as a
7 planning guide that gives us a good instrument to
8 look at. The difference between the impact of an
9 LDA and IDA and I think all of this needs to be
10 looked at by someone and I don't know who that
11 someone is.
12 But anyway, going back to the issue of
13 stormwater. I don't like to deal with stormwater.
14 If you went back to some of these LDA standards,
15 you would reduce the problems for the stormwater
16 management engineering because you'll reduce the
17 runoff and the speed of runoff.
18 I don't know how to approach those, but
19 they're certainly concerns that came up in my
20 mind when I was looking through all of the
21 material. And I just had to throw it out on the

1 table. Sorry.
2 MS. MASON: I think that the decision as
3 to whether the town -- whether to request growth
4 allocation to go from RCA to LDA or RCA to IDA is
5 within the town's purview. The town decided they
6 wanted to and that's how the Commission needs to
7 consider it. I think within that set of facts
8 that you have, that the town has requested IDA, I
9 think the Commission would be straying from its
10 statutoried and regulatory home if it were to
11 say, well, we think this should be LDA instead of
12 IDA. My advice is you need to take it as it is,
13 that is IDA.
14 But that said, the criteria that you all
15 have discussed regarding the conversion of
16 agriculture uses to other uses apply equally.
17 The protection of the habitat, waterfowl staging
18 areas, the number, use and activities of people
19 in the buffer, the wildlife and habitat benefits
20 of a larger setback would apply.
21 So I think you've been discussing lots

1 of issues and I think the question of LDA versus
2 IDA is one that I would advise that it's not in
3 our ball court.
4 MR. RICHARDS: I think it has to stay
5 IDA.
6 MS. MASON: But even in terms of
7 applying that --
8 MR. RICHARDS: I thought you were going
9 to say that.
10 CHAIRMAN SETZER: As far as Mary's staff
11 report, I think she indicated that at least
12 conceptually a way to treat stormwater would
13 address critical area requirements in terms of --
14 I guess from my perspective the only thing that I
15 would like to see on the stormwater side is that
16 at this early juncture in the design of the
17 project, that we will close the door on other
18 best management practices that may be -- we may
19 have a better opportunity in terms of filtration
20 or other types of best management practices as
21 opposed to dis -- I'd just as soon keep it very

1 general and just make that that all opportunities
2 are investigated in terms of using best
3 management practices before jumping to surface
4 water treatment. Discussion?
5 MS. OWENS: Do you want to see that
6 stormwater plan similar to -- you've done that
7 before on other projects?
8 CHAIRMAN SETZER: I think North Bay is
9 an excellent example. We had a very conceptual
10 stormwater proposal and the Commission worked
11 very closely -- at that -- with that particular
12 project because it was a state project, we were
13 able to work with MDE and move forward in terms
14 of stormwater management. The Commission's
15 staff -- I think they have a -- work with staff
16 and the Commission to come up with stormwater
17 treatment.
18 Discussion. Does anyone want to venture
19 on a motion, a discussion here?
20 MR. RICHARDS: I move that we approve
21 Miles Point with those conditions. And you'll

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1 have to help me with the wording, 300-foot
2 setback, 100-foot buffer management that allows
3 planting of trees and public access to the water
4 and a condition that -- stormwater, whatever Greg
5 just said.
6 MR. BLAZER: Encourage the use of best
7 management.
8 MR. RICHARDS: And it comes back for
9 review. Any other conditions anybody wants to
0 throw in?
1 CHAIRMAN SETZER: I think we want those
2 to come back not just for review, but also
3 approval.
4 MR. BLAZER: Did the Buffer Management
5 Plan get incorporated or is that a separate
6 condition?
7 MR. RICHARDS: I put it in as one
1 condition. But you can put it in as two separate
) conditions. Two conditions, one that there be a
300-foot setback allowing for passage,
recreation -- 200 feet beyond the 100-foot

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forested buffer, and two, there be a forested
buffer with a management plan that would allow
for public access. That's three conditions, I
think.
CHAIRMAN SETZER: In terms of developing
the buffer management plan and the stormwater
plan, work with both the Commission and the
Commission staff to address these issues and to
bring that result back to the Commission for
approval.
MS. OWENS: The plans, the buffer and
tormwater.
MR. SEREY: Do you want us to verify our
nderstanding that the buffer and any setbacks
e being measured from a line set last November,
d if so, do you have any further question about
at?
MS. OWENS: Shouldn't it be whatever the
sting shoreline is when they do the project?
MR. RICHARDS: 100 foot through the
ting shoreline.

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1 MR. JACKSON: If we have another Isabel
2 come through you don't know where the shoreline
3 will be.
4 MR. RICHARDS: So moved.
5 MR. BLAZER: I'll second.
6 CHAIRMAN SETZER: As part of the
7 discussion, why don't we ask Ren or Mary who are
8 taking copious notes to read back the motion.
9 MS. OWENS: The conditions are that the
10 project will include a 300-foot setback, that it
11 include a 100-foot forested buffer that includes
12 provisions for public access, that a Buffer
13 Management Plan be developed, and that they work
14 with both the Commission and Commission staff on
15 the development to be submitted for approval by
16 the Commission, that a stormwater management plan
17 be developed that explores all options for
18 infiltration and buyer retention and that that
19 plan, that they work on that with the Commission
20 and Commission's staff and that it be brought
21 back to the Commission for approval.

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1 CHAIRMAN SETZER: Discussion?
2 MR. SEREY: There was one other element
3 that Ed had mentioned about passive recreation
4 and the 300-foot setback.
5 MS. MASON: And the measurement?
6 MR. SEREY: I've got that.
7 CHAIRMAN SETZER: Can we take a play off
8 this morning and move it as a conditional
9 approval with final vote coming after staff has
10 had an opportunity to put the final motion
11 together?
12 MS. MASON: Before the 1:00 meeting?
13 CHAIRMAN SETZER: Yes. Further
14 discussion? All those in favor?
15 (All said aye.)
16 CHAIRMAN SETZER: No opposition.
17 Approved.
18 (Proceedings concluded.)
19
20
21

E. 1860

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1 STATE OF MARYLAND SS:

2 I, LINDA A. CROCKETT, a Notary Public of the

3 State of Maryland, do hereby certify that these

4 proceedings took place before me at the time and

5 place herein set out, and the proceedings were

6 recorded stenographically by me and this

7 transcript is a true record of the proceedings.

8 I further certify that I am not of counsel to

9 any of the parties nor an employee of counsel nor

10 related to any of the parties nor in any way

11 interested in the outcome of this action.

12

13 As witness my hand and notarial seal this 9th

14 day of June, 2004.

15

16 My commission expires

17 December 1, 2004 Notary Public

18

19

20

21

E. 1861

MEETING OF A PANEL

OF

THE STATE OF MARYLAND

CRITICAL AREA COMMISSION

FOR THE

CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: May 5, 2004 (Meeting No. 3)

Time: 1:00 p.m.

Location: Department of Housing and

Community Development,

Crownsville, Maryland

Reported by: Linda A. Crockett

MEMBERS OF THE PANEL:

Martin G. Madden, Chair

Peggy G. Campbell

Ren Serey

Marianne Mason, Assistant Attorney General

P R O C E E D I N G S

CHAIRMAN MADDEN: I'm asking us to go into a brief closed session. One, to consult with counsel to obtain legal advice on the applicable sections of the critical area law and criteria governing the Commission's deliberations. Two, consult on the applicability of other state laws, policies and regulations, including but not limited to planning and zoning. Three, to consult with counsel to seek legal advice whether the Commission should consider the effect of a program approved by the Commission; four, to consult with counsel to obtain legal advice on the interplay between Talbot County Bill 762 and Bill 933. Five, to consult with counsel to obtain legal advice on the interplay between the proposed amendments from St. Mary's and St. Michael's Miles Point III growth allocation. Six, to consult with counsel to obtain legal advice on the scope of the Commission's authority in the context of taking action such as approval or denial on a program amendment for growth allocation. Seven, to consult with counsel to obtain legal advice on the meaning of Commission criteria COMAR 27.01.02.06A and B. This would be available in the minutes for the full meeting are available. Having made that motion, can I have a second?

COMMISSIONER: Second.

CHAIRMAN MADDEN: All in favor say aye.

(All said aye.)

(Recess.)

MS. HOERGER: You have a staff report titled town of St. Michael's ordinance Number 304, and attached to that is the actual bill that the town commissioners passed. It is correcting essentially two items in their existing critical area program. The first change has to do with eliminating a duplicative process for applicants who, for example, may be seeking a growth allocation request before the town commissioners receive that or not. But if they do, then they have to come back again to get the maps amended. The town is simply eliminating that duplication and when someone comes to the town commissioners for that it will only be one time.

The second change involves the correction of order in which things like text changes, map amendments are approved and adopted between the town commissioners and this Commission. The current town program is set up so that those changes come to this Commission first and then they go back to the town commissioners. The town has now changed that so the town commissioners first approve those types of changes and then they come to the Critical Area Commission. A couple of years ago that process was changed for growth allocation processes. That has already happened. This will fix the process for all these changes, including text changes.

That is the substance of Ordinance 304.

1 Chairman Madden appointed a five-member panel
2 which held a hearing in the town of St. Michael's
3 on April 1st. There were no substantive comments
4 on this ordinance. We did have some comments
5 from the town. That's all I have to report.
6 CHAIRMAN MADDEN: Any other comments?
7 Comments from the public?
8 MR. SETZER: The panel, as Lisa said,
9 discussed proposed ordinance and would like to
10 move before the entire Commission in accordance
11 with Lisa's staff report that ordinance 304 as
12 enacted by St. Michael's town commissioners which
13 amend growth allocation, zoning and critical area
14 map amendment procedures used by the town be
15 approved by the Commission.
16 We have a motion for approval. Do we
17 have a second?
18 MS. MASON: Second.
19 CHAIRMAN MADDEN: Any discussion? All
20 those in favor say aye?
21 (All say aye.)

1 CHAIRMAN MADDEN: Next we'll move to St.
2 Michael's annexation resolution 2003-06.
3 MS. HOERGER: The proposal is resolution
4 2003-06. I'm trying to do this so you all can
5 see it. I apologize if some of you can't. The
6 annexation request of the town of St. Michael's
7 is for 42.066 acres of land. 17 of those are
8 upland. The portion of the annexation on this
9 site plan is this area in green. This is the 17
0 acres of upland. The balance of that 46 acres
are the land that is under the Miles River. The
reason the town also annexed that area is because
they have a board of port ordinance and a
waterway management ordinance and they do have
the authority to annex state waters, in case
anyone had questions.
The critical area designation of the
annexation property as a resource conservation
area and as it was brought into the town, it will
emain as a resource conservation area. Chairman
adden appointed a five-member panel to hear this

1 request. It was heard at the April 1st hearing.
2 There were no substantive public comments. Does
3 anyone have any questions?
4 CHAIRMAN MADDEN: Any questions for
5 Lisa? If not, I'll turn it over to panel chair.
6 MR. SETZER: Once again the panel
7 discussed the proposed resolution and would like
8 to recommend to the Commission that it approve
9 resolution 2003-06 adopted by St. Michael's town
10 commissioners which annexes the 42.066 acre Miles
11 Point LLC property into the town.
12 Is there a motion to approve resolution
13 2003-06. Is there a second?
14 COMMISSIONER: Second.
15 CHAIRMAN MADDEN: Any additional
16 comment? All those in favor say aye.
17 (All said aye.)
18 CHAIRMAN MADDEN: Motion is approved.
19 Thank you, Lisa.
20 Next we move to St. Michael's growth
21 allocation for Miles Point III in Talbot County.

1 Mary Owens will lead the panel discussion.
2 MS. OWENS: This next item is an
3 application from the town of St. Michael's to
4 award some growth allocation to the Miles Point
5 III project. This is a site map of the project.
6 Then we have a couple pictures of the site. So
7 Lisa is going to go through those and I'll just
8 quickly kind of show you the site while I talk
9 about the project. It involves the award of
10 70.863 acres of the growth allocation to change
11 the critical area designation from RCA to IDA.
12 It's proposed to be a residential development
13 involving 251 single-family units, 20 townhouses,
14 8 live and work units, an inn, and a public
15 waterfront park.
16 As I get into my presentation I'll talk
17 about the erosion on the shoreline. But this
18 shows a shot of the shoreline and some of the
19 erosion that's on the property. This is another
20 view of the property that shows that it currently
21 does not have a vegetated buffer. It was

1 formerly farmed. So it's basically an open
2 field, fairly level. Shoreline varies. In some
3 places it's a little bit more of a cliff, maybe
4 seven or eight feet. Here it's about 2 or 3
5 feet. That's a view to across the project site
6 to an area of townhouses which is actually here
7 on the site plan. On this particular day the
8 tide was pretty far out so there is somewhat of a
9 sandy beach. But at a normal tide condition
10 there really isn't much of a beach there. It
11 shows a portion of the property that has been
12 protected already with a revetment.
13 Here again you can see the significant
14 erosion there. That's another shot basically of
15 the same view on a cloudier day. There isn't a
16 lot of vegetation on the edge of the shoreline
17 because a lot of it has eroded and fallen into
18 the water. Here's another shot of the shore.
19 This is looking across the project. It's
20 basically a field. There's not a whole lot of
21 vegetation. Again, another shot of the site, an

1 open field. That's basically it. It's fairly
2 straightforward. There's not a lot of vegetation
3 on the site.
4 There are two non-tidal wetland areas.
5 Essentially the project involves the use of the
6 growth allocation to change the critical area
7 designation from RCA to IDA. The property has a
8 long history, has undergone several revisions
9 over the years. It's been involved in extensive
10 litigation. But at this point the town has
11 submitted it to the Commission for approval. The
12 last revision involved this portion of the
13 property which was recently annexed was taken out
14 of the project.
15 The panel held a public hearing on
16 Thursday, April 1. It was well attended. There
17 was a lot of public comment on the issue and the
18 record was held open until Tuesday, April 13th.
19 We received a lot of public comment that was
20 provided to all of the panel members. The panel
21 met once after the public hearing and then met

1 again this morning to discuss this issue. And
2 I'm going to summarize their discussions, some of
3 which took place at the earlier panel meeting
4 which took place today.
5 In reviewing this application, the
6 Commission was really looking at primarily the
7 goals of the critical area program, which are to
8 minimize adverse impacts on water quality that
9 result from pollutants; to conserve fish, plant
10 and wildlife habitat; and then to establish land
11 use policies that accommodate growth and also the
12 fact that just people in the critical area can
13 have adverse environmental impacts.
14 In analyzing this project and I think
15 making an effort to look at whether it was
16 appropriate to approve it or deny it or approve
17 it with conditions, the panel analyzed several
18 aspects of the project. The first had to do with
19 protection of habitat and water quality. In
20 terms of looking at how the criteria addressed
21 the use of growth allocation, there are really

1 three areas that they focused on, new IDA and LDA
2 areas should be located to minimize impacts to
3 habitat protection areas and optimize benefit to
4 water quality. On this particular site there are
5 two primary habitat protection areas which are
6 the 100-foot buffer and a waterfowl staging and
7 concentration area in the Miles River. New IDA
8 should also be located where they minimize their
9 impacts on defined land use of the RCA.
10 And then something that the panel spent
11 a lot of time discussing was that new IDA and LDA
12 in the RCA should be located at least 300 feet
13 beyond the edge of tidal waters. And that
14 300-foot setback issue was discussed extensively,
15 primarily because the panel believes that this
16 project involves a very intense development.
17 There will be a lot of units and a lot of new
18 residents that will be in the area, and that most
19 of the site is going to be developed. There
20 aren't a lot of open space areas, and the
21 importance of the setback to meet the goals of

1 the critical area program became really the
2 primary way that impacts could be minimized and
3 habitat could be protected.
4 Another issue involved dealing with
5 stormwater on the site and water quality.
6 Impervious area is going from approximately 0
7 percent as the site is currently undeveloped up
8 to approximately 33 percent, which includes
9 roads, rooftop areas, et cetera. The primary
10 ways that water quality will be addressed will be
11 agricultural use of the property is going to stop
12 so they will no longer be applying fertilizer.
13 They also will be proposing to treat all
14 stormwater on the site and they're proposing
15 essentially four areas where stormwater will be
16 addressed, here, here, here, and here.
17 The other way that stormwater quality
18 will be addressed is through the provision of
19 forestation of the 100-foot buffer. One of the
20 issues that the panel also talked about is how
21 the 100-foot buffer is proposed to be dedicated

1 to the town for use as a park. And the panel was
2 concerned about how the use of the park -- the
3 use of the 100-foot buffer as a park could be
4 coordinated with the requirement to forest the
5 buffer and would those uses potentially be
6 conflicted.
7 In looking at the setback and the
8 buffer, the Commission -- and I'm on the middle
9 of Page 4 now -- talked about the ecological
0 benefits of providing a 300-foot setback, and the
1 benefits included providing a buffer between
! intense human activity and pollution and
sensitive aquatic resources; potentially
providing a wildlife corridor system, some sort
of habitat area for wildlife; providing
appropriate protection for the waterfowl staging
and concentration area; reducing overall
impervious surface on the area, and along with
that, reducing the volume of stormwater and
associated pollutants as well as increasing the
area available for infiltration; minimizing the

1 effects of shoreline erosion on the project by
2 having a wider area to deal with erosion control;
3 and then providing an area of sufficient size and
4 width to accommodate the needs or requirement to
5 provide a buffer and the requirement of the town
6 to provide recreational needs.
7 The panel also talked about wildlife
8 habitat, and their discussions focused on the
9 ability of the 300-foot setback to provide some
10 of those benefits and provide for wildlife to
11 continue to use the site. The panel spent a
12 considerable amount of time today talking about
13 the use of the buffer as a town park and
14 providing for shoreline access and the need to
15 deal with managing the buffer and providing an
16 appropriate plan.
17 As you saw from the pictures, there is
18 not much vegetation in the buffer. So the buffer
19 is going to have to be established. The site is
20 fairly exposed. It has an eroding shoreline.
21 There will need to be a significant investment in

1 getting that buffer established.
2 I think the important thing that the
3 panel really focused on this morning is that the
4 criteria required that the buffer be established
5 when agricultural use of the land ceases. And
6 that it's fairly specific in the criteria that in
7 establishing the buffer, management measures
8 shall be undertaken to provide forest vegetation
9 that assures the buffer functions to protection
10 of habitat and water quality.
11 The panel talked at length about other
12 projects that have involved the review and
13 approval of the Commission of a Buffer Management
14 Plan and felt that might be a way that they could
15 assure that a buffer was appropriately
16 established and that any other recreational uses
17 were appropriately accommodated.
18 The panel also talked about stormwater
19 management and discussed the conceptual design.
20 They were, I think, prudent in acknowledging that
21 at this point the design is conceptual. Although

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1 preliminary calculations have been performed and
2 indicate that the applicant will be able to meet
3 the 10 percent pollutant reduction requirement
4 which is required in intensely developed areas.
5 They're proposing four best management practices,
6 three pond wetland systems, and then a fourth
7 multiple pond system.
8 The Commission I think is concerned that
9 when we're providing for stormwater management,
10 that if possible, every effort should be made to
11 deal with conserving and providing habitat if
12 possible, and that environmentally sensitive
13 design in stormwater practices should be a
14 priority. There was a lot of discussion about
15 certain types of practices which require
16 attention and other types of practices and the
17 benefits that those types of practices may
18 provide over a typical surface water treatment
19 system such as a pond.
20 The panel also talked quite a bit about
21 shore erosion control on the project. Currently

1 there is an approved permit approved by MDE and
2 the Army Corps of Engineers for installation of a
3 revetment for shore erosion control. However,
4 what the applicant is currently proposing is to
5 deal with the shore erosion control issue through
6 a marsh creation, which is basically a
7 nonstructural measure that provides some habitat
8 benefits.
9 Some of the information provided in the
10 record indicated that the town believed that
11 providing the marsh creation as a shore erosion
12 control measure was sort of a trade-off in terms
13 of the habitat benefit with the 300-foot setback.
14 That was discussed extensively by the panel.
15 Another concern with providing the marsh
16 creation was a concern about whether there would
17 be conflicts created with shading of the marsh
18 grass which might prevent it from being effective
19 as a shoreline stabilization strategy and whether
20 the providing of a 100-foot buffer as required
21 was going to create conflicts there.

1 The last issue addressed by the panel
2 and not talked about too much today but more at
3 the prior panel meetings was wastewater treatment
4 and concerns about whether the town's wastewater
5 treatment plant was going to be adequate to
6 accommodate all of this new development. The
7 town is proposing to do a major upgrade of their
8 sewage treatment plant which is actually operated
9 by the County. The new or renovated treatment
10 plants will provide nutrient reduction and state
11 of the art technology for wastewater treatment.
12 St. Michael's Town Council approval of the growth
13 allocation actually included conditions that
14 addressed the need to complete the upgrade of the
15 plant before any building permits could be issued
16 for development on this site. So the panel
17 believed that those conditions were adequate to
18 deal with the wastewater issue.
19 That's pretty much my summary of the
20 panel report.
21 CHAIRMAN MADDEN: Any questions? Thank

1 you very much. I'll open it up for public
2 comments. I want to start up with the town of
3 St. Michael's.
4 MR. HICKSON: My name is Michael
5 Hickson, Mr. Chairman, Commission members. I'm
6 the town attorney for St. Michael's. It would be
7 helpful if we had the recommendation from the
8 panel so that I could address that. But I don't
9 know how you feel about that motion.
10 CHAIRMAN MADDEN: The panel has voted on
11 the recommendation. They haven't reported it to
12 the Commission yet at this point. The Commission
13 has not discussed it. So the recommendation is
14 approval with conditions.
15 MR. HICKSON: I understand that. And I
16 wanted to discuss the conditions is why I was
17 hoping that that would be introduced. But I will
18 obviously do whatever you wish me to do.
19 Proceed?
20 CHAIRMAN MADDEN: Proceed.
21 MR. HICKSON: The town of St. Michael's

1 has been dealing with an application on this
2 particular site since 1998. There has been, as I
3 said earlier, extensive litigation. It has been
4 represented that the town is beleaguered, that
5 they're tired of this, that they can't afford to
6 continue the battle if that's what it takes, and
7 that sort of thing. That is simply not true. We
8 have received -- in the beginning we received not
9 only my advice, but we sought a second opinion on
10 a number of legal issues from a law firm by the
11 name of Lenos & Blocker that concentrates its
12 practice in land use law, and Lenos & Blocker
13 have been with the town, they have been advising
14 the town with me ever since 1999.
15 We established a strategy in 1999 and we
16 pursued that strategy and the strategy has played
17 out. We litigated with the developer for as long
18 as the developer wanted to litigate. As
19 mentioned earlier, there have been several
20 applications on this property, and each time an
21 application was submitted that we didn't think

1 was adequate, we turned them down flat. But if
2 they wanted to go to court about it, that was
3 fine. We went to court and met them in court and
4 we defeated them.
5 Part of our strategy was that this is
6 our town and judges don't necessarily make good
7 land use planners. And we didn't want the future
8 of our town decided by a judge. We wanted it
9 decided by our own committees and our own town
10 commissioners. When we felt we were at a point
11 where suggestion was appropriate to sit down with
12 a developer and try to get to a better plan. We
13 did that. And we did it in several ways.
14 We invited in Professor Richard Collins,
15 who was previously head of the planning
16 department of the University of Virginia and also
17 a founder of an organization, if I can get it
18 right, the Foundation for Environmental
19 Mediation. He's done a lot of mediation in land
20 use disputes, not only in Virginia, but in other
21 states as well as Maryland. We called him in and

1 he assembled a citizen group that included the
2 developer and representatives from all sides and
3 they mediated what should happen on this project
4 and proposed plans for most of the summer of
5 2002.
6 In addition to that, included with that
7 group, we invited a gentleman by the name of Ed
8 McMahon, vice president of the Conservation Fund.
9 Mr. McMahon has written about conservation and
10 development and he's lectured extensively around
11 the country. And we used him and Professor
12 Collins as a sounding board as to the site, the
13 quality of the proposed plan at that time and
14 what should happen to it. The mediation group
15 was led by Professor Collins and that went
16 throughout the summer of 2002.
17 And at the end of it there were -- the
18 opinion was not uniform. There was a majority
19 opinion and a minority opinion. But many of the
20 points were agreed on and it formed a basis for
21 more dialogue. And after that there was a public

1 workshop that involved the town commissioners and
2 developer and ultimately a plan similar to this
3 was arrived at. All the while, if the developer
4 was not willing to listen to reason, we were
5 prepared to go to court.
6 But as I said before, we didn't want our
7 town planned in court. So this project proceeded
8 from that point and has gone through the Planning
9 Commission, has gone through the town
10 commissioners at both levels, and received
11 unanimous approvals. The records in this case
12 from the town is over there. Most of that stuff
13 came from the town record. We had three full
14 boxes we submitted to this Commission. The
15 Planning Commission's recommendation was, I
16 believe 70-some pages long and the town
17 commissioners' decision adopted most of that
18 recommendation, but was 20-some pages in addition
19 to that.
20 As you will hear from the panel, most of
21 the concern here seems to be the 300-foot area,

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1 the buffer and a hundred foot minimum and beyond
2 that as well as the shoreline treatment. I sent
3 to Chairman Madden a few days ago -- actually, I
4 sent it in care of Ms. Mason for her to do as she
5 wishes. Included with the letter was a list that
6 was three pages long that lists issues that the
7 town commissioners and the Planning Commission
8 considered in dealing with the 300-foot buffer
9 and making their decision that in this case
10 300-foot buffer was not appropriate or needed.
11 One of the reasons that they decided
12 that the 300-foot buffer was not appropriate or
13 needed was because the proposal was to do a
14 vegetative shoreline stabilization whereby marsh
15 would be constructed with some low level stone to
16 keep the sand in place by an organization known
17 as Environmental Concern, Gene Slear from
18 Environmental Concern is here today. He
19 addressed the town commissioners and the Planning
20 Commission. The testimony is on record from him
21 and that testimony is in those boxes over there.

1 But again, among the things that I sent
2 to Commissioner Madden through Ms. Mason were
3 some excerpts from that testimony. The testimony
4 was given after Hurricane Isabel, and Mr. Slear
5 was asked what has been the effects on similar
6 projects from Hurricane Isabel, and the testimony
7 was that there were no permanent effects at all.
8 There were minor impacts. For instance, the
9 vegetation, that the marsh grass was laid down
10 for a while but in a few days it popped back up
11 on its own accord. We think that is a better way
12 and we think it will enhance the qualities of the
13 Miles River. And based on the testimony that
14 we've got and we've seen, and we did investigate
15 it, we think this method will work and it's
16 better to do it that way.
17 Now, what is the incentive for a
18 developer to spend almost twice as much to do a
19 project like that rather than put in revetment if
20 you don't give him something in return? What we
21 gave him in return was we didn't make him put in

1 the full 300-foot buffer. The buffer is, however
2 -- at every location is more than 100 feet. In
3 many cases it's substantially more than 100 feet.
4 Now, we're concerned here, the
5 recommendation is that a full 100-foot buffer and
6 an additional 200 foot, as I understand it,
7 setback area be established. A uniform distance
8 all along this project. Now, the town has
9 invested six years in the development of this
10 property. In the beginning we were totally
11 opposed to it. But this piece of property is
12 subject to an annexation agreement that was
13 entered into with the land owner in 1981. At
14 that point, when that property came into town
15 through an annexation agreement where certain
16 zoning for residential development was guaranteed
17 to the owner, the die was cast at that time that
18 this property was going to be developed.
19 So the town commissioners ultimately
20 came to the position that they should find -- if
21 there was going to be development, it was in

1 their best interest not to simply deny it, but to
2 work for the best outcome, and they believe this
3 is the best outcome.
4 This decision is here in a situation
5 procedurally where there's not much room for
6 negotiation. In another project, Four Seasons,
7 it came before this Commission when the County
8 commissioners who were the final authority had
9 not made their final decision. There was some
10 negotiation done here, the buffer was extended.
11 It then went back to the County for a final vote.
12 We don't have that situation here.
13 As you heard Ms. Owens say, we were
14 required to change our zoning ordinance in 1999.
15 Before that time the process was it went to the
16 Planning Commission, if it was a favorable
17 recommendation, it would come up here for the
18 Critical Care Commission to review and make its
19 decision and then back to the town commissioners.
20 But that's not the way it is now and that's not
21 the way it has been throughout this project. The

1 town commissioners made its final decision, a
2 site-specific, plan-specific decision. And if
3 you do very much with this decision of the town
4 commissioners it will be tantamount to a denial
5 and we'll have to start all over again.
6 I would suggest that as far as what will
7 be recommended, that instead of setting a uniform
8 300-foot setback, that you give the staff and the
9 town an opportunity to work together and try to
10 find a resolution to what has been the panel's
11 concerns. Thank you very much.
12 CHAIRMAN MADDEN: Thank you,
13 Mr. Hickson. Any members of the public like to
14 comment? We ask you to keep it to the matters
15 germane as outlined by the Attorney General and
16 keep it to no more than two minutes. Yes, sir.
17 MR. SLEAR: Good afternoon. My name is
18 Gene Slear. I'm the vice president with
19 Environmental Concern. We're a public
20 not-for-profit company established to restore
21 wetlands, educate the public regarding the value

1 of wetlands, and to do research in the benefits
2 of wetlands for water quality and habitat
3 enhancement. We've been at the same location in
4 St. Michael's, Maryland since 1972. We were
5 engaged by the Midland Corporation to evaluate
6 the needs for water quality enhancement and
7 habitat enhancement on this site, initially in
8 1997, I believe, and more recently in 2002. Our
9 findings are part of the record.
10 The panel's findings suggest that there
11 is some -- there was some discussion regarding
12 certain aspects of our findings and I'd like to
13 address those. I'm not adding any new
14 information, just summarizing what's already in
15 the record.
16 The area that will receive the -- the
17 shoreline that will be protected by marsh
18 vegetation starts from the southerly property
19 line and proceeds up to this boundary here, a
20 distance of about 800-some-odd feet. It was
21 suggested in the panel's report that it would

1 have to be a highly engineered site in order for
2 that marsh to work properly.
3 I want to submit a couple of additional
4 facts for your consideration. The property owner
5 immediately to the south is the Fogg Cove
6 Condominium Association. We designed a marsh
7 vegetation shoreline protection system for the
8 Fogg Cove Condominium Association seven years
9 ago. It's right in here, functioning
10 beautifully, continues to function beautifully.
11 It is engineered to a lower standard than what
12 we've engineered for this area. The reason
13 simply is it receives less fetch; it's more
14 protected. As we proceed on this roughly
15 north-south access, there is more fetch and
16 therefore more energy interacting with the
17 unprotected shoreline.
18 We have, instead of just a system of
19 groins and sand, planted we have established a
20 sill which protects the vertical edge of the new
21 marsh from the energy. I'd like to bore you with

1 two short details, one is that the energy we have
2 to deal with, there are two components to that,
3 one is the rate at which the water attacks the
4 shoreline, and the mass of that. And the mass is
5 a function of how deep the water is. The water
6 is very shallow along this area. So the
7 engineering, as we come away from that property
8 line and proceed up and around, it's very easy --
9 we have done sites that have the same engineering
10 requirements that's in the record. We've shown
11 pictures of what happened after Isabel to those
12 sites.
13 CHAIRMAN MADDEN: You need to sum up.
14 MR. SLEAR: The shoreline is part of an
15 eco-system which includes best management
16 practices for stormwater management and a
17 forested buffer and the tidal marsh. The tidal
18 marsh in this area runs along the north-south
19 axis. The forested buffer will not shade that
20 marsh to any extent because the sun comes up in
21 the east and goes down in the west. So we're

1 very comfortable to work out something with the
2 Commission to fully forest that. That working
3 with the constructed wetlands that will be part
4 of the stormwater management system provide a
5 superior system as defined by the U.S. Wildlife
6 Service as recently as 2002.
7 CHAIRMAN MADDEN: Thank you very much.
8 MR. SLEAR: Thank you.
9 MR. DICKSON: My name is Sidney Dickson.
10 I've lived in the environs of St. Michael's.
11 I've lived within three miles of it for most of
12 my 63 years. I'm one of those who gave up
13 development rights on my 37 acres adjacent to
14 town in order to prevent such unhealthy
15 developments as we are faced with today.
16 Read between the lines here, please, pay
17 attention. From what you've heard today all is
18 roses. It seems to me that the public input has
19 not been considered. I assure you that the
20 community of Talbot, the Eastern Shore, I know
21 the watermen, the builders, the land owners are

1 dead set against this development. No matter
2 what you hear about how they have gotten together
3 and made these arrangements. These are silly
4 details that you're being confused with. The
5 point is once this land is ruined, it's going to
6 stay ruined until the next ice age. These
7 buildings aren't going away if you let them be
8 put there. I implore you, do not let this go
9 through.
10 They say, oh, you've got to compromise.
11 You don't have to compromise. Right is right and
12 wrong is wrong. This is wrong. This is good
13 habitat. On normal storms in the summer of St.
14 Michael's contaminated wastewater and sewage
15 actually runs in and out of one of the food
16 stores. I've seen it happen. It's Lady's
17 Market. They're prepared with sand bags. This
18 is not unusual.
19 There's something worse. It's not so
20 much what they're doing, it's how they're doing
21 it. Through incessant lawsuits, contrary to what

1 you might have heard. They have demonstrated
2 they'll dump enough money into this project to
3 prevail. It seems clear that Midlands will stop
4 at nothing and take the golden egg and leave a
5 devastated goose. This was made clear to me
6 person to person in a very chilling way.
7 Before the Town Commission folded into
8 submissive compromise, before any of these little
9 meetings, I was told by a sitting town
10 commissioner, Rob Nobile, by name, that few
11 supported the Midlands proposition. But he said
12 townspeople had been taxed to the limit to the
13 point they considered Midlands to be unstoppable.
14 Furthermore, get this, this is untenable, could
15 be very easily implied, and I can't prove it, but
16 this town commissioner told me this, and I'd like
17 to see the town commissioners and the lawyers
18 deny it, the town commissioners were informed
19 that if they continue to stand in the way of
20 Midlands, they stood risk of being sued
21 personally and individually for being in the way.

1 Rob Nobile told me this. I testified under oath
2 that he told me this and that they had caved
3 because they thought Midland was unstoppable and
4 they were -- could not raise taxes further and
5 they certainly couldn't have their families
6 ruined by this money.
7 This is a matter of money. The
8 community does not want this. Who wants this?
9 Midlands. And one or two contractors in the area
10 who have been paid to agree with them. The
11 builders don't want it. You see no builders
12 saying we want to build these houses. Our
13 builders are busy. We have plenty of growth.
14 CHAIRMAN MADDEN: I need you to sum up,
15 please. Your time is up. I need you to sum up.
16 MR. DICKSON: Turn it down flat. Thank
17 you.
18 CHAIRMAN MADDEN: Thank you, sir.
19 MR. DEMING: Chairman Madden, members of
20 the Commission. I'm Thomas Deming, I'm an
21 attorney for the St. Michael's Bay Hundred

1 Alliance. The Commission's charge under Natural
2 Resources Article Section 8-1809 is to determine
3 whether the program amendment as proposed meets
4 the goals of the statute and the criteria. You
5 will hear in the panel's recommendation that was
6 forecast in the staff report several specific
7 instances in which the panel members express
8 grave concern whether this project meets the
9 criteria. Most specifically the 300-foot
10 setback. The criteria say that the town shall
11 use the guideline that proposed new IDA should be
12 located at least 300 feet from the tidal waters
13 and tidal wetlands.
14 As a member of this morning's panel
15 said, that's a strong should and it's backed up
16 by a shall. But the record in this case shows
17 that rather than using the 300-foot setback, the
18 town accepted rationales from the developer as to
19 why there should be no 300-foot setback. This is
20 but one instance of several that are reflected in
21 the panel's comments that indicate that this

1 proposal as submitted does not meet the criteria.
2 And I would submit to you that rather than
3 approving this proposal with conditions, that the
4 more straightforward action for this Commission
5 to take under the terms of the statute is to vote
6 it up or down and I would urge that your vote
7 should be to disapprove the proposed program
8 amendment. Thank you.
CHAIRMAN MADDEN: Thank you.
MR. ALSPACH: Thank you, Mr. Chairman.
Ladies and gentlemen, good afternoon. My name is
Tom Alspach. I represent Talbot Preservation
Alliance, Inc. We are a volunteer citizens
organization with a large number of members in
Talbot County and in St. Michael's.
We are opposed to this project
specifically for the reasons that it does not
comport with the criteria that this Commission
must apply under the Critical Area law. You'll
hear the staff report about problems with
compliance with the 300-foot setback. We

1 certainly agree with that.
2 I'd like to draw your attention to the
3 additional criterion, mandatory criterion with
4 which this project does not apply. That is the
5 criterion relative to development in intensely
6 developed areas which recites that to the extent
7 practicable, future development shall use cluster
8 development as a means to reduce impervious
9 surface and maximize areas of natural vegetation.
10 COMAR defines cluster development as a means of
11 residential development where dwelling units are
12 concentrated in selected areas or in a selected
13 area or selected areas of a development tract so
14 as to provide natural habitat or other open space
15 uses on remainder.
16 Ladies and gentlemen, the developer here
17 has done the clustering of the houses. But they
18 forgot about the open space. There is none. The
19 rationale is you have this 100-foot buffer. If
20 you look at the rest of this development plat,
21 all we have is houses. There is some open space,

1 but it's impervious surface; it's tennis courts.
2 The requirement under the COMAR statute is to
3 reduce impervious areas through cluster housing.
4 This does not reduce impervious areas, as you
5 heard, it increases impervious areas from 0
6 percent to 55 percent of the site. There is no
7 dedicated open space on this plat.
8 Now, I think you will hear that the idea
9 of extending the 300-foot setback to 300 feet is
10 some sort of substitute for the creation of open
11 space. I submit to you that it's not. The
12 rationale of the 300-foot setback is to protect
13 the shoreline against human impact. That's right
14 in the Critical Area law. That's a separate and
15 distinct criterion from the clustering criterion
16 which requires open space as a means to reduce
17 impervious areas and maximize areas of natural
18 vegetation. There are no areas of natural
19 vegetation that are being provided for on this
20 project. This project does not comply with the
21 criteria. I thank you for my time.

1 CHAIRMAN MADDEN: Thank you very much.
2 DR. McCARTHY: Chairman Madden and
3 members of the Critical Area Commission. Thank
4 you for allowing me to speak. I'm Dr. John
5 McCarthy, and I represent the Talbot River
6 Protection Association, of which I serve as
7 executive director.
8 TRPA, as we're best known, was created
9 about eight years ago in an attempt to protect
10 the rivers and creeks in Talbot County from the
11 constant degradation that they were experiencing,
12 and one of those of which is, of course, the
13 Miles River. Eight years later it would appear
14 that we're not succeeding.
15 In the past two weeks our Talbot County
16 newspaper, The Star Democrat, has featured news
17 articles telling us that the oyster harvest this
18 year is the lowest ever and Chesapeake oysters
19 have fallen to 1 percent of their normal
20 population. The seafood industry on the
21 Chesapeake has fallen from its predominant place

1 of just a few years ago and the watermen who
2 survived on it are now searching for other means
3 of livelihood. A sport fisherman is suffering
4 from a serious systemic infection caused by an
5 infected rockfish, and this is not an isolated
6 incident. What do all those three things have in
7 common? They're all related to the condition of
8 the water of the Chesapeake Bay and the rivers
9 flowing into it.
10 This should not be news to anyone. I'm
11 sure you all realize that just recently Governor
12 Ehrlich and the Maryland legislature passed
13 landmark legislation funding over a number of
14 years upgrading of the larger wastewater
15 treatment plants in the estuary. One of these
16 plants is hoped to be the Talbot County-owned
17 plant serving St. Michael's into which the
18 proposed 300 Miles Point III homes would send
19 their sewage. A year ago TRPA, with the
20 assistance and coordination of the Horn Point
21 Laboratories of the University of Maryland,

1 completed a three-year study of the discharge
2 from the St. Michael's wastewater treatment plant
3 into the Miles River.
4 That study concluded that the
5 nutrient-generated loss of dissolved oxygen at
6 that site in the river was lethal to all marine
7 life. The State of Maryland, in part as a result
8 of this study, declared the Miles River to be
9 impaired. Unfortunately, this is not an isolated
10 situation. TRPA and the creek watchers have been
11 collecting water samples from all the rivers and
12 creeks in Talbot County, including the Miles
13 River, and it found that in many cases the
14 results are comparable and that marine life and
15 plant life is not compatible with what is there.
16 This is the same wastewater treatment
17 plant that exists today. Nothing has changed.
18 It's the same overburdened and malfunctioning
19 sewage removal system that routinely, as you've
20 already heard, allows partially treated or even
21 untreated sewage to flow in the streets of St.

1 Michael's during heavy weather situations.
2 We cannot allow the wastewater and
3 stormwater from 300 more homes to be added to it.
4 Even if the wastewater treatment plant is
5 improved it will cost millions to Talbot County
6 and Maryland, and the Miles River will not be
7 capable of handling the discharge.
8 CHAIRMAN MADDEN: I need you to sum up.
9 DR. McCARTHY: The significance of this
10 involves the welfare of a major Maryland
11 industry, the well-being of all of our citizens
12 and their ability to enjoy their surroundings,
13 and most importantly the public health of all
14 those who live and travel. We urge not that the
15 proposed Miles Point III growth allocation be
16 sent back to the town for improvement, but it be
17 rejected without conditions. Thank you.
18 CHAIRMAN MADDEN: Thank you. Please try
19 to adhere to the time limit in fairness to
20 everybody else.
21 SPEAKER: I'm afraid that there's no way

1 to hold it up. This is a portrayal of the area
2 of St. Michael's showing the river. I just
3 wanted to point out this was used recently. This
4 is a DNR product. It indicates the oyster bars
5 here at St. Michael's, the oyster bars that exist
6 in this region where the present consideration is
7 underway for the impact on the oyster stocks in
8 the Miles River.
9 I would like to say to the Commission
10 this: It seems to me that in history -- and I
11 personally was involved years ago with the
12 efforts that were made to put the critical area
13 law into place and design it for its purpose. I
14 understood, and people still today do, understood
15 its objective was to guarantee that we would
16 protect the water, the fishery, and the seafood
17 stock, the capability of the water being what it
18 was at one time.
19 It seems to me that we're off that mark
20 with many of the decisions we're making today,
21 and this one in particular. The Miles River

1 cannot assimilate what's being proposed here.
2 The commissioners paid $40,000 for three years of
3 study to find out what the nutrients were in the
4 river right in the vicinity of St. Michael's
5 where this project is proposed. And the results
6 were very clear. The nutrients were out of
7 control and because the nutrients were whatever
8 they are, the dissolved oxygen was lethal to all
9 marine life.
10 I have to ask all of you, what did we
11 start out to do? This isn't what we're doing.
12 It was to protect these resources, these
13 fisheries. We're not doing it. How can we allow
14 more impact to the already threatened and
15 seriously declined capabilities of the Miles
16 River? Thank you.
17 CHAIRMAN MADDEN: Thank you, sir.
18 MR. DETAR: Thank you, Mr. Chairman,
19 members of the Commission. My name is Richard
20 DeTar from Miles & Stockbridge. I represent the
21 applicants. The comments that I would like to

1 focus on exclusively go to one of the conditions
2 the panel has proposed, which is a uniform
3 300-foot setback. And the first thing that I
4 want you to understand is that in the entire
5 history of the Critical Area Commission, you have
6 never imposed a 300-foot setback contrary to the
7 local governing body's approval and contrary to
8 the application, never in the history of any
9 application that has ever been before you. You
10 are asked today to do something extraordinary in
11 your path.
12 The second thing I want you to know is
13 one of the reasons for that is for the last 11
14 years, the Critical Area Commission has had a
15 written policy that says the 300 feet should
16 guideline is one for the locality to consider.
17 The locality must have a 100-foot buffer and it
18 is to consider the 300-foot setback, combining a
19 200-foot setback with the 100-foot buffer. And
20 if it isn't going to increase the setback, it
21 needs to explain why.

1 But the point is your written policy
2 says that discretion is with the locality. The
3 exhibit is Exhibit 25 in the record. Don't take
4 my word for it. Ask your lawyer -- if you've
5 ever done it before -- ask your lawyer if that's
6 what the policy says.
7 Now, having said that, the Critical Area
8 Commission has influenced setbacks before, and
9 the way that you've done it is you've negotiated
10 with the municipality and the applicant, and
11 you've reached mutual agreement. That's what
12 happened in Hovnanian. It wasn't forced, it was
13 through agreement because of particularly
14 sensitive features.
15 When you vote on this I'd like you to
16 consider a couple of things. If you force for
17 the first time in your history a 300-foot
18 setback, you force a legal decision on whether or
19 not you have that authority. And if you do that,
20 it's not just about whether or not you erode your
21 ability to have influence on this project, if a

1 court says you don't have that authority, it
2 influences your ability to have that influence on
3 other projects, like Hovnanian.
4 The second thing I want you to know is
5 nobody ever asked us to push back the setback.
6 It never came up despite meetings with the staff.
7 The applicant is willing to consider that. So
9 I'm not here to tell you leave it alone. I'm
9 here to say consider approving it with the
10 condition that the applicant and the town worked
11 with your staff based on the site conditions to
12 arrive at what makes sense for a setback.
13 CHAIRMAN MADDEN: I need you to sum up.
14 MR. DETAR: Not an arbitrary and uniform
15 300 feet. Look at the environmental features of
16 the site. Use your staff who are experts and
17 allow the process to work through communication
18 the way it should. I believe everybody will be
19 better served if that process, which is how it
20 has historically worked, takes effect in this
21 case.

1 town is not left dangling. In fact, that
2 agreement has already been recorded in the land
3 records of Talbot County, so it now will extend
4 not only to the current developer owner but to
5 any subsequent owner.
6 I heard something about cluster not
7 being a good idea here. I think people are
8 missing a lot of small pockets of open space that
9 do add up on this site. I know the mission of
10 this Commission is environmental protection, but
11 the mission of planning for communities and place
12 making in communities is to think about a lot of
13 other things. This development, designed by
14 Andre Skelarni, who is a world renowned designer
15 of traditional neighborhood developments,
16 Seaside, Florida, you guys have heard the litany,
17 I think it's an opportunity for the town to have
18 quality development and environmental protection.
19 There are much more open space than has been
20 given credit, and if we clustered this on 30
21 percent of the site and left the rest open space,

1 CHAIRMAN MADDEN: Thank you.
2 MR. REDMAN: My name is Tony Redman.
3 I'm a planner with a company called Redman-
4 Johnson Associates. I'm speaking on behalf of
5 the town of St. Michael's, where I work as a
6 consultant and have been very engaged in this
7 project. I have just a few comments.
8 There was concern that wetlands creation
9 on this edge might not be viable. I had
10 submitted only last week a copy of the wetlands
11 boundary map done by the State of Maryland back
12 in 1971 that shows much core grass marsh in this
13 area, which I think is a great indicator that it
14 is viable, that together with a reputation of
15 environmental concern and their history and track
16 record of building these things gives me great
17 reassurance of the work.
18 However, because we can't always be
19 certain, I want you to know that the town has
20 already secured a ten-year agreement with the
21 developer for maintenance of that wetland, so the

1 I would submit to you it would look nothing like
2 the existing town of St. Michael's. It would be
3 totally inconsistent with character and scale.
4 And in fact, in Talbot County and surrounding
5 areas that's what we've already got, lots of
6 cluster developments on two-acre lots. Using
7 land inefficiently, not housing people on less
8 land, it's very land wasteful.
9 Also there's a reference to this being
10 as high as 50 and 60 percent impervious surface.
11 It's not. The latest calculation from the
12 developer is 49. You look at me and say so what,
13 that's pretty high. Yes, it is high. But in the
14 IDA there is no limit on impervious surface. If
15 you wish to have a limit on impervious surface
16 through IDA, do the same thing you do in the LDA,
17 legislate an impervious surface limit. Until you
18 do, we don't have an option. Thank you.
19 CHAIRMAN MADDEN: Thank you very much.
20 Yes, sir.
21 DR. BAINES: Chairman Madden, ladies and

1 gentlemen, I'm Callan Baines. I'm a physician
2 practicing in Easton since 1968. I listened at
3 the initial presentation by the tall blond lady
4 who did a nice job pointing out all the good
5 features. And then I said when is she going to
6 address the question of sewage disposal? Right
7 at the end I thought she let the cat out of the
8 bag because she said the sewage plant will be
9 rebuilt by Talbot County.
10 So I ask you are you going to permit
11 approximately 60,000 gallons per day of sewage
12 going into a plant which is already failing which
13 in turn goes into a river which is heavily
14 polluted? Let me remind you, sewage is dangerous
15 stuff. I don't want to tax our transcriptionist,
16 but you've got salmonella and shigella, E. coli,
17 crypto-sporidium, mycobacterium marinum, and
18 hepatitis virus. If she gets that right I'll
19 congratulate her. Pfisteria causes loss of
20 intellect which sometimes is permanent. We've
21 had it on the Pocomoke River. The Miles River is

1 frequently closed because of E. coli
2 contamination in the oysters.
3 The wastewater treatment plant there
4 quite regularly fails, puts raw sewage straight
5 out because it doesn't have the holding capacity
6 for a town of 600 people. Now, this developer
7 wants to add 251 houses at his last count, 251
8 houses each putting out 250 gallons a day comes
9 out to about an extra load of 60,000 gallons
10 going into a plant which is already failing.
11 This development, if it goes through in
12 its present form, abruptly doubles the population
13 of St. Michael's. For those of you who don't
14 live in that county, St. Michael's in places is
15 only about a thousand feet wide. There's an
16 impact on the sewage, impact on the highways and
17 the rights of citizens that live there to travel
18 freely upon the highway.
19 CHAIRMAN MADDEN: Doctor, I'm going to
20 ask you to sum up, please.
21 DR. BAINES: Right. Bill 933 was an

1 attempt to provide adequate sewage disposal and
2 to enforce better cooperation between the town
3 and county. This plant is a county
4 responsibility. The counties are responsible for
5 public health. Therefore, 933 is essential if
6 they are to protect the health and welfare of the
7 people that live there. I ask that this project
8 not be allowed until the wastewater treatment
9 plant have been improved. Thank you.
10 CHAIRMAN MADDEN: Thank you, Doctor.
11 Yes, ma'am.
12 MS. JONES: Good afternoon. My name is
13 Beth Jones. I'm president of the Bay Hundred
14 Foundation, an all-volunteer organization devoted
15 to preserving and enhancing the historic,
16 cultural and environmental qualities that make
17 our region so special.
18 This project is located in the Bay
19 Hundred area. As you probably know, Talbot
20 County has 660 miles of shoreline, more than any
21 other county in the United States. Bay Hundred

1 has the lion's share of that shoreline.
2 Dr. Baines was talking about the fact it's only a
3 thousand feet across. I have to say I'm so
4 delighted to live in a state that had the
5 leadership and the foresight to create the
6 Critical Area Commission 20-some years ago. And
7 I guess my question to you is if not here, then
8 where? This is the heart of what critical area
9 is all about.
10 The second question I have is about what
11 I heard the attorney for Midlands to say. If I
12 heard him correctly, it sounds like he was
13 implying that there might be a lawsuit against
14 you if you didn't give them what they wanted.
15 And if that's the case, unfortunately we've been
16 down this pike before. That has been the modus
17 operandi.
18 CHAIRMAN MADDEN: Thank you, Ms. Jones.
19 MR. DIES: My name is Russell Dies. I'm
20 vice president of the Maryland Watermen
21 Association. I live at Tilghman, Maryland.

1 Harvested seafood, shellfish out of Miles River
2 all my life until here recently. And last summer
3 Miles River was shut down for two weeks and we
4 couldn't harvest shellfish in Miles River because
5 of the overflow of the sewage treatment plant in
6 St. Michael's.
7 If you add, double the amount of
8 effluent going out of there, I see real danger
9 for the watermen in that area. Take a good look
10 at me. You might not want to, but you won't see
11 us much longer. As commissions okay these plans,
12 they're writing my death certificate. Because as
13 a waterman in Miles River and other rivers in
14 Talbot County, we soon no longer would be able to
15 make a living. We're right at that point now.
16 But I hail them for making new
17 marshland. But what's going to come from the
18 houses, the development, the overflow into the
19 Miles River is going to wipe away any benefits.
20 It can be the best plan and the best laid out
21 community, but if it puts people out of work. My

1 family has been working on the water since 1670.
2 We all have been watermen captains. I own a
3 50-foot skipjack. I can no longer make a living
4 because -- this is one reason, the oysters are
5 dead. If you have any feeling for the watermen,
6 turn this down.
7 CHAIRMAN MADDEN: Thank you.
8 MR. MARTIN: Good afternoon. For the
9 record, my name is Warren Martin. I'm a resident
10 of St. Michael's, Talbot County, Maryland. I'm
11 also co-chairman of SOS, Save Our St. Michael's.
12 Perhaps you've seen some of our bumper stickers
13 in the last seven years. We are an organization
14 of approximately 300 residents who have followed
15 and monitored this issue for seven years. I have
16 probably attended close to 100 of these meetings
17 in that period of time.
18 This Midland project is simply too dense
19 for our fragile Bay Hundred peninsula. To the
20 south of this project we have two units per acre.
21 Immediately to the north we have two acres per

1 unit. On Monday the third of this week the
2 voters of St. Michael's went to the polls and
3 elected two of the three slow growth limited
4 control growth candidates, and each of those
5 gentlemen are here today.
6 Without further redundancy, SOS would
7 like to endorse the testimony of our attorneys
8 Deming and Asplach and other opponents who have
9 spoken before me. Thank you for hearing our
10 plea. Please help us preserve our way of life,
11 our environment, and our Chesapeake Bay
12 tributaries. Please vote no on this growth
13 allocation.
14 CHAIRMAN SETZER: Thank you, Mr. Martin.
15 Commissioner Carroll.
16 MR. CARROLL: I'm Peter Carroll, Talbot
17 County Council. I'd like to talk a little bit
18 about that waste treatment plant. St. Michael's
19 plant is actually a regional plant. It deals
20 with St. Michael's, Royal Oaks, and a number of
21 houses and developments that are along that

1 route, that state road that comes in. The County
2 took that over a number of years ago because the
3 town was operating it and was not able to keep it
4 up to an acceptable standard. There has been
5 significant deterioration of the stirring paddles
6 and the processing equipment. So we have
7 ownership of that facility now.
8 A couple years ago a plan was to put in
9 place to increase the size of that plant to
10 800,000 gallons. It's a 300,000 gallon plant
11 today. Last year we took a look at that because,
12 as the governor has said to all of us, we need to
13 do a better job about environmental controls.
14 The processes that we have in place today simply
15 aren't getting the job done, and local
16 governments need to do more.
17 So we went back and revisited that
18 800,000 gallon plant and sized it to 660,000
19 gallons. That's the size of the plant that MDE
20 had originally recommended be put in place. That
21 downsizing brought to the surface another

1 critical issue. St. Michael's is an old historic
2 town, and the sewer collection lines, the lines
3 from the houses, the regional collectors that
4 lead into the main collection lines, are leaking,
5 and we have enormous infusion and of course
6 rainwater flowing into those lines so that the
7 plant on a nominal average runs around 300 to
8 350,000 gallons a day.
9 But when we have storm events it can go
10 to a million, a million and a half or a million
11 eight in some cases. Those are the cases that
12 cause raw sewage to flow out of manhole covers,
13 pops the lids off and sends that out into the
14 streets and into the town. We think that this
15 project is not right yet. It should not go
16 forward. And we sent a letter to you asking you
17 to delay this project because we are very
18 concerned about getting a new wastewater
19 treatment plant in place and being able to cope
20 with it.
21 The plant alone will not fix the

1 problem. We need to do something about the INI.
2 We are spending money on that. That's a part of
3 our upgrade program. But unless we can bring
4 that flow down to I'm going to say in storm
5 events to something like 700,000 or 800,000
6 gallons per day, a new plant isn't going to solve
7 the problem. All these new homes are going to
8 exacerbate that.
9 We're here to ask you not to do this
10 now. Let us get our house in order. Let's get
11 the waste treatment plant back on line, and let's
12 go into St. Michael's and fix all those
13 connections and leaders and then we're ready to
14 move on with it. Thank you very much.
CHAIRMAN MADDEN: Thank you, Council
Member Carroll.
MR. VALANOS: Good afternoon. My name
is George Valanos. I'm the developer of the
Miles Point project. I'd like to pick up on
something that Mr. Carroll said. Our engineers
are working with the County director of

1 utilities, Ray Clark, to address the INI problem.
2 We recognize that that's an issue, and certainly
3 before we go forward we're going to have to
4 address it and see to it that the INI issue is
5 taken care of, as well as working with them with
6 respect to the capacity of the existing
7 wastewater treatment plant.
8 Also I'd like to make a comment about
9 what our firm stands for is about smart growth,
10 pedestrian-friendly development. I know that
11 density has been an issue. But I also -- my
12 feeling of the critical area legislation, and
13 maybe some of you agree and some of you don't, is
14 to really identify through your planning process,
15 through smart growth issues, where development is
16 to take place and to identify those areas that
17 are priority places and also to look at them in
18 compact planning. Because what you're doing by
19 developing compactly is creating a pedestrian
20 environment where people can walk or bike, and if
21 it's close into town, which this project is, then

1 they will actually reduce car trips. And also
2 you can centralize your stormwater management and
3 provide best practices for that.
4 Outside of the town of St. Michael's
5 there is in the Bay Hundred region on average
6 over the last two decades roughly 30 units per
7 year, 300 every decade that are being developed
8 on large lots. And what a development like this
9 will do, in my opinion, is will redirect that
10 development to areas where development should
11 take place.
12 With that I want to thank you for your
13 time.
14 CHAIRMAN MADDEN: Thank you,
15 Mr. Valanos.
16 MR. DUNCAN: Mr. Chairman, members of
17 the Commission, let me introduce myself. My name
18 is Thomas Duncan. I'm a member of the Talbot
19 County Council. I was on that council, as a
20 matter of fact, I was president of Talbot County
21 Council when the Critical Areas legislation was

1 enacted, and the towns were given a certain
2 amount of growth allocation, along with the fact
3 that we did a new comprehensive plan and a voting
4 ordinance at that time. So as you can see it was
5 quite hectic at the time that I was on that
6 council.
7 I would like to speak to you not on the
8 issues of engineering or chemicals, or whatever.
9 I'd like to speak to you on the emotional issue
10 of this bill and it's this: My great-grandmother
11 was a Native American. My grandfather made a
12 living on the water. My father made a living on
13 the water. I grew up on the water. I would
14 suggest that the representatives of the town here
15 were not residents of the Talbot County. I've
16 been in Talbot County 67 years and I've seen the
17 progression or I should say regression of the
18 waters of Talbot County.
19 You ask why am I here and why am I so
20 emotional about this subject matter. The fact of
21 the matter is it's not going to make any

1 difference to me. At my age, I'll be gone. It
2 doesn't matter. But I have 12 grandchildren that
3 are going to accept what I leave for my
4 grandchildren. We're not asking for no growth in
5 Talbot County. All we're asking for is the
6 opportunity to get it right, to get it right.
7 That's all we're asking. And the fact of the
8 matter is we're at a crossroads right now. If we
9 can't get it right now, you can forget about
10 Talbot County. Why do people like to come to
11 Talbot County? It's pristine; it's beautiful.
12 Because Talbot County was the first county on the
13 Eastern Shore that had zoning. And that, in
14 fact, is what made Talbot County what it is, plus
15 we had some very wise people in government and
16 some very wise people in the civilian sector that
17 came forward and helped us guide our county.
18 So please give Talbot County the
19 opportunity to plan for the future. Thank you
20 for your time, Mr. Chairman.
21 CHAIRMAN MADDEN: Thank you, Council

1 Member Duncan. Anybody else? Judge North.
2 JUDGE NORTH: Good afternoon,
3 Mr. Chairman, ladies and gentlemen. I commend
4 you upon your patience and your attentiveness.
5 You've heard a great deal this afternoon and I
6 have just a few more words. This property is
7 near mine. So I'm very familiar with it. But I
8 assure you that if it were miles and miles away I
9 would have the same concern. St. Michael's is on
10 a very delicate area of land. It is an isthmus
11 connecting two bodies of land with water on each
12 side of it.
13 The waters of the Miles River have been
14 terribly, terribly damaged over the years. There
15 are no oysters in the Miles River any longer.
16 There are very few crabs and fish, and very
17 little bottom grasses. The Miles is in terrible
18 condition, due very largely to what happens in
19 St. Michael's and at the St. Michael's wastewater
20 treatment plant. I would urge you to give every
21 consideration not to compromise this matter

1 because we are, as has been said, at a
2 crossroads. The Miles and the bay have never
3 ever been in as terrible a condition as they are
4 today.
5 And recognizing this, I must point out
6 to you that a great number of people, the great
7 majority of people familiar with this situation
8 have voiced opposition to it. I took the liberty
9 of sending out a memo to all of you together with
10 supporting letters of people who had written in
11 concern, and in summary I would point out to you
12 that in favor of this proposition there is the
13 Midlands Corporation, the St. Michael's Town
14 Council, or part of them now, and a handful of
15 real estate brokers and other individuals.
16 Against this proposal, totally against it, are
17 Governor Harry Hughes who would be here today
18 save for a preexisting medical appointment;
19 Russell Trane, the first head of the
20 Environmental Protection Agency; Chuck Fox,
21 former secretary of DNR; several former St.

1 Michael's town commissioners who have written:
2 all four former Critical Area Commission members
3 from Talbot County, the Bay Hundred Foundation,
4 Fogg Cove Homeowners Association, Historic St.
5 Michael's, Maryland Watermen's Association, Save
6 Our St. Michael's, St. Michael's Preservation
7 Coalition, Talbot County Historical Trust, Talbot
8 County Oystermen's Association, Talbot
9 Preservation Alliance, Talbot River Protection
10 Association, and hundreds of citizens throughout
11 Talbot County.
12 In closing let me say that I thought
13 Mr. DeTar was very candid in his comments and he
14 has followed the path that his client has
15 followed previously. He says to you, in effect,
16 if you go along with this requirement at 300-foot
17 setback you're going to go to court. You're
18 going to be hamstrung in the future. That's his
19 threat. There is an easy way of resolving that
20 matter. Very easy. Turn it down flat, no
21 conditions. Turn it down flat. Thank you.

1 CHAIRMAN MADDEN: Thank you, Judge
2 North. Would anybody else from the public like
3 to make a brief comment? We thank you. I would
4 like to turn to the chair of the panel for
5 additional information and recommendations.
6 MR. SETZER: Over the past 45 minutes to
7 an hour you all had a small taste of what we
8 experienced for three to four hours when we had
9 the public hearing for this particular growth
0 allocation. And you add those comments along
1 with the cart of backup material that's been
2 supplied to the Commission in support and
1 opposition to the project, and you can see the
type of issues that we as a panel have been
wrestling with over the past several weeks.
As a result of what was offered this
afternoon, I guess I'd just like to address a
couple points so at least you all have some idea
of the discussion that the panel had in moving
forward with this recommendation. First off,
there was a lot of discussion about the 300-foot

1 setback and how that relates to the design of the
2 development, the fact that it's very intense
3 development, and the fact that it is going to
4 increase the impervious surface on the site.
5 According to Mr. Redman the new figure is 49
6 percent. But obviously the increase in
7 impervious surface is going to be significant.
8 And those were the things that we looked at when
9 we were discussing the 300-foot setback.
10 We recognized, and again, Mr. Redman
11 pointed it out in the plan, that there are a
12 number of open space areas distributed throughout
13 the development. But we also thought that it was
14 important, because of the intensity of the
15 development and because of the impervious
16 surfaces, that we provide a more significant
17 setback to help the Commission deal with its
18 regulatory issues in terms of water quality and
19 habitat protection and those types of issues.
20 We talked at considerable length about
21 the use of the 100-foot buffer and we looked at

1 it from both a plant and wildlife habitat issue
2 as well as public access. And we recognized that
3 in terms of the Critical Area criteria those are
4 both important issues. But I think all the panel
5 members came down on the side of a more heavily
6 vegetated 100-foot buffer, again, to promote the
7 water quality and habitat protection requirements
8 of the Critical Area Commission.
9 We talked about stormwater management
10 and appropriate best management practices for the
11 site. There's a number, I think three or four
12 surface treatment ponds on the site which
13 obviously you can vegetate and provide some
14 wetland vegetation. But we thought that as the
15 design for the project moved forward, that there
16 should be additional consideration for
17 environmentally sensitive design for the
18 buildings in terms of rooftop disconnects, what
19 other opportunities may exist based on the
20 geology of the site, and opportunity for
21 infiltration and those types of issues so that we

1 had an opportunity to kind of look for some
2 expertise and guidance in the stormwater
3 management area, and we asked Ken Pensill from
4 MDE to sit in on panel discussions and provide
5 some background in terms of the type of treatment
6 options that are available to deal with
7 stormwater management.
8 The panel also discussed, and discussed
9 it quite heavily this morning, shoreline
10 treatment. We talked about marsh creation versus
11 revetment. There's an existing permit issued by
12 MDE for revetment on part of the property. We
13 talked a lot about whether or not marsh creation
14 would be successful. And all of that discussion
15 was fine, but when it came down to a
16 recommendation, what the panel really looked at
17 was whether or not providing a vegetated
18 shoreline treatment was an appropriate trade-off
19 for a forested, vegetated 100-foot buffer.
20 We also heard, both during the hearing
21 as well as over the past hour, a lot of concerns

1 about wastewater treatment. And again, the panel
2 was interested in making sure that we understood
3 the situation as it exists today as well as what
4 was on the horizon for wastewater treatment for
5 Talbot County in the St. Michael's area.
6 We asked again MDE from the MPDS program
7 to come in and talk to the panel and discuss the
8 issues related to this treatment plant,
9 infiltration, the overflows, and what was being
10 done now and in the future to address the sewage
11 treatment issues.
12 And I think the panel report that Mary
13 put together kind of puts it in context. MDE has
14 issued a new permit allowing for the increase of
15 the treatment plant to 660,000 gallons per day.
16 They're required to put in biological nutrient
17 reduction. They're required to put together a
18 plan to address the infiltration into the system,
19 which is a big concern and a big part of the
20 overflows that are being experienced. And it's
21 our understanding that the town has qualified the

1 construction on this property contingent upon
2 appropriate availability of sewage treatment.
3 So we've looked at the issue; we've
4 talked about the issue, and the agencies that are
5 responsible for dealing with the issue have all
6 been engaged and are working toward a resolution.
7 So we've heard the issue; we've tried to
8 understand the issue, and the agencies
9 responsible for dealing with the issue have all
10 been engaged, and from that point we've moved on.
11 From my notes that's all I have.
12 If you don't mind, if there's anyone
13 else on the panel that would like to provide
14 other observations before we move forward with
15 the recommendation.
16 CHAIRMAN MADDEN: I'd be happy to take
17 those. I want to compliment the panel. They
18 have put a lot of time and debate into this. I
19 want to commend the members. Any other panel
20 members?
21 MR. SETZER: I call for the chairman to

1 make a recommendation.
2 What's being distributed now is a
3 supplement to the panel report which is basically
4 the recommendation for a vote. The panel
5 discussed Miles Point III growth allocation
6 request in regard to the consistency of the
7 request with the goals of the Criteria Area Act
8 and the Commission's Criteria required by Natural
9 Resources Article 8-1809(j). As a result of the
10 panel discussions the panel would move for the
11 approval of the growth allocation request with
12 the following conditions; one, that the
13 development shall be set back from the landward
14 edge of tidal waters at least 300 feet. Passive
15 recreation activities may be allowed outside of
16 the 100-foot buffer; two, the 100-foot buffer
17 shall be established. And in establishing the
18 buffer, management measures shall be undertaken
19 to provide forest vegetation that assures the
20 buffer functions set forth in Critical Area
21 Criteria.

1 Before final recordation of any
2 subdivision plats or grading of the site, a
3 Buffer Management Plan shall be developed
4 cooperatively with the town and the Commission
5 and the respective staffs. The Buffer Management
6 Plan shall be approved and reviewed by the
7 Commission and may provide for public access;
8 three, in measuring the 300-foot setback and
9 100-foot buffer, the measurement shall be based
10 on the existing shoreline at the time the Buffer
11 Management Plan is submitted to the Commission;
12 four, a stormwater management plan shall be
13 developed that promotes environmentally sensitive
14 design and explores all opportunities for
15 infiltration and bioretention before utilizing
16 surface water treatment measures. The stormwater
17 management plan shall be developed cooperatively
18 with the town, the Commission, and their staff.
19 The Stormwater Management Plan shall be reviewed
20 and approved by the Commission.
21 CHAIRMAN MADDEN: Do we have a second?

1 COMMISSIONER: Second. Meg Andrews.
2 MS. ANDREWS: Can you clarify for me, is
3 it the panel's understanding that this
4 enhancement to the wastewater treatment system
5 would have to be in place before the development
6 went forward or there would just have to be a
7 plan for it?
8 MR. SETZER: It's our understanding that
9 the authorization has been made to increase the
10 capacity of the treatment plant. That also
11 requires the County to develop a plan that
12 addresses the infiltration problems that are
13 resulting in some of the overflows that have been
14 described. We don't have, I guess, an exact
15 timetable for when that plan is going to be
16 constructed or when that plan is going to be in
17 effect.
18 However, the conditions placed on the
19 evelopment by the town requires that there's
20 dequate capacity for whatever component of the
21 oject moves forward. So basically they're not

1 going to be able to build on the site. And I
2 think that construction isn't just the new
3 housing units, but also I believe to the
4 infrastructure, unless there's the appropriate
5 capacity not only available, but granted to the
6 town to move the construction forward. That's
7 the panel's understanding.
8 CHAIRMAN MADDEN: Any other discussion
9 or comments?
10 MR. RICHARDS: Edwin Richards. My
11 understanding in reading the material is that
12 there is a condition that limits the construction
13 to a capacity of the -- very specific, and I
14 can't remember the exact wording, but it
15 basically says they cannot use any septic tanks,
16 no other intermediate system, and they have to
17 have approval, not only capacity, but they have
18 to have approval before they can actually start
19 construction. We looked at it -- or I looked at
20 it and I thought that was very restrictive and I
21 felt dealt with the issue of capacity.

1 CHAIRMAN MADDEN: Any other discussion?
2 MS. SAMORAJCZYK: Who makes that
3 decision?
4 MR. RICHARDS: It's between the County
5 and the Department of Environment. Anything that
6 the County does has to agree with the regulations
7 being administered by the Department of
8 Environment. And I'm sure after what's gone on
9 in Centreville that that will be tightened up.
10 So I think both County and Department of
11 Environment will be involved.
12 CHAIRMAN MADDEN: Any other questions or
13 comments?
14 MS. ENNIS: Is the current capacity of
15 the sewage treatment plant such that on an
16 ordinary day there would be allocation available
17 for this development, or must it be enlarged in
18 order to meet the basic statement that there's
19 allocation available?
20 MR. SETZER: I don't recall.
21 MR. RICHARDS: As I recall, the

1 statement made by the representative of the
2 Department of Environment was that there is
3 existing capacity that could allow it to move
4 forward. However, the INI issue is one that has
5 been raised in testimony here and I think it's
6 one that's going to be closely investigated
7 before -- there was a statement that there may be
8 a re-evaluation of the capacity of the facility.
9 So at least at this point theoretically there is
10 capacity to move ahead.
11 But I think that's going to be placed
12 under investigation.
13 MS. ENNIS: So it could go forward
14 without any of it?
15 MS. MASON: There wasn't enough for the
16 whole development.
17 MR. RICHARDS: No. This is a staged
18 development over a number of years. I think
19 there's going to be a lot of work done before any
20 approvals are given.
21 MR. SETZER: I guess from a panel

1 perspective the issue was laid on the table. We
2 asked the agency that was responsible for sewage
3 treatment and discharge permits to come to speak
4 to the panel to at least make sure that we
5 understood the existing condition and prospects
6 for the future, and you have to kind of tread
7 lightly here because of certain jurisdictional
8 areas that it's important for whether or not this
9 project moves forward from an MDE and County
10 perspective in terms of sewage treatment.
11 We felt, as far as the Commission was
12 concerned, the fact that this issue was being
13 examined, that Ed recalls there was capacity
14 available for portions of the development to go
15 forward. There were controls placed on the
16 development for -- to have capacity available for
17 the further build-out of the development of that
18 sewage treatment plant was being addressed.
19 MS. ENNIS: I'm very new to this so
20 maybe I don't understand. It sounds like if
21 there's available capacity right now, even though

1 there are major problems here, there's no
2 requirement on the County or the town to make
3 those improvements prior to this, or at least the
4 first phase.
5 MR. RICHARDS: I'll quote two things,
6 one is the statement from the representative of
7 the Department of Environment that said that that
8 was under investigation. And secondly, there was
9 testimony today that there has been money
10 committed at the County level. I believe it was
11 Councilman Carroll who said they are
12 investigating it and it is underway right now as
13 far as the County is concerned.
14 Also there was some written testimony
15 submitted indicating something like $400,000 had
16 been committed already to begin the process to
17 correct these problems.
18 MS. MASON: Also in the panel report,
19 going along with what Gary said --
20 MR. SETZER: Page 7 of the staff report.
21 MS. MASON: -- which summarizes the

1 information that the panel received from the MDE
2 representative. That's the information that the
3 panel received.
4 MS. ENNIS: I guess my concern is that
5 the permits have been issued. Then you get to
6 the point can the town and the County afford to
7 make the improvements and will those improvements
8 have to be in place before the first part of the
9 development moves forward? And I mean, my
10 concern is that our first charge is to protect
11 the water and the fish and wildlife, and even if
12 we try to be objective and discount emotional
13 appeals of what is said here today and what I'm
14 sure the panel has heard, from a practical
15 standpoint of being involved with government, can
16 we be sure that this sewage treatment plant
17 improvement and expansion is going to take place?
18 MR. SETZER: I guess that raises the
19 question, do we have the authority to petition --
20 MS. MASON: That's a very good question,
21 and that's one that the panel discussed with me,

1 actually, early on in the process. And the
2 Critical Area Commission has always worked
3 cooperatively with the permitting agencies. And
4 in this case the Department of the Environment
5 would be the agency that issues the permits for
6 upgrading or for making sure that the sewage
7 treatment plant is functioning in accordance with
8 the state regulations.
9 This Commission has no direct authority
10 to require MDE or the town to do anything with
11 regard to its sewage treatment plant, in my
12 opinion. The panel took the initiative and asked
13 for information from the appropriate people at
14 MDE, which I believe is well within their
15 authority to get as much information as they can.
16 The MDE representative informed them
17 that MDE was in charge and taking care of the
18 sewage treatment plant matters. So I believe
19 that the panel report, as far as it went, really
20 I think states that the panel discharged their
21 duty because they did get information presented

1 at the public hearing similar to what you heard
2 today, only a lot more of it, that addressed
3 concerns and questions about the current
4 situation in St. Michael's and I think that the
5 panel was right to get additional information.
6 Beyond that, the panel did not discuss
7 recommending any kind of condition. So I didn't
8 give them advice on that. But my advice would
9 probably be that they should defer to the
10 Department of the Environment on the sewage
11 treatment issue.
12 MR. SETZER: If it's okay with you I
13 found a fax sheet that MDE provided us.
14 Fax sheet update, Talbot County region 2
15 wastewater treatment plant ENR upgrade and
16 expansion. The proposed project involves the
17 upgrade of the existing region 2 St. Michael's
18 wastewater treatment plant with enhanced nutrient
19 removal facilities to achieve total nitrogen
20 removal for a yearly average of 3 milligrams per
21 liter with expansion from .5 to .66 million

1 gallons per day. Originally the County requested
2 to expand the plant to one million gallons per
3 day and MDE rejected that request as unreasonable
4 growth. The County agreed to go down to .8
5 million gallons per day. After design was
6 completed at this capacity the County Council
7 changed the expansion to .66 million gallons per
8 day.
9 The County is initiating the redesign
10 with the new capacity. The schedule design start
11 was February of 2002. Design completion was
12 October of 2003. The design start was January of
13 2004. Redesign completion is June 2004, with
14 construction start of September 2004 and
15 construction completion by December of 2005. It
16 says the service area is experiencing excessive
17 infiltration and inflow with 1,000 percent
18 variation of flows in some locations that
19 occasionally result in overflow. Maryland
20 Environmental Service has completed a study and
21 identified the areas with excessive infiltration

1 and inflow. During their July 22, 2003 meeting
2 the County Council decided to proceed with INI
3 corrections immediately. The corrections are
4 estimated to cost $600,000.
5 MDE advised the County to apply for MDE
6 and USDA world grants and loans. Also MES's
7 study discovered that some INI was due to house
8 connections, and the County has been advised that
9 some homeowners might be eligible for CPPC
10 funding.
11 As far as the ENR agreement, the County
12 signed the ENR agreement, which is enhanced
13 nutrient removal. With MDE, the County's meeting
14 with MDE on October 29th, 2003 was to discuss how
15 to proceed with the ENR project at the new
16 capacity of .66 million gallons per day.
17 CHAIRMAN MADDEN: Do you want to
18 summarize that for us? Any other discussion?
19 MS. PRETTIMAN: I would like to add on
20 that it's to any entity's benefit that owns a
21 water treatment plant or a septic plant to

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1 upgrade so that -- when they have overflows the
2 MDE comes down very hard on them and fines them.
3 So it would be to their benefit. My question,
4 though, is on the ENR, and I didn't quite hear
5 you. They agreed to go down to 3 with the
6 enhancement?
7 MR. SETZER: Right.
8 MS. PRETTIMAN: Will their capacity go
9 up because they will be running more efficiently
10 then with going down to 3?
11 MR. SETZER: The impression that I got
12 was that ENR was a function of the .66.
13 MS. PRETTIMAN: And you don't know what
14 capacity they are right now?
15 MR. SETZER: I think they're authorized
16 for .3.
17 CHAIRMAN MADDEN: Commissioner McKay.
18 MR. McKAY: Thank you. I'm a bit
19 concerned about the area, the 300-foot setback.
20 While I recognize that I think it should be part
21 of this project, and that might be my personal

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1 feeling, I'm concerned that from the 100-foot out
2 to the 300-foot, that that should maintain -- we
3 should maintain a local government or local
4 jurisdiction, kind of working together with the
5 Critical Areas Commission as well as the
6 developer to try to make that work as best as it
7 can for that particular project.
8 I am very concerned that we're
9 establishing a precedent that would really --
10 probably is something that's best left to the
11 local jurisdictions to do it as they should, as
12 the legislation says they should. And I just
13 think it's something that should be the locals
14 working with the Critical Area Commission to try
15 to accomplish that. I certainly support the
16 300-foot setback. I just feel like you're taking
17 away some flexibility with the local
18 jurisdictions in trying to accomplish other
19 benefits as they deal with that area of setbacks.
20 And I would like to see us revise it to
21 have this -- this particular project to have the

Page

1 town of St. Michael's work with the Critical
2 Areas Commission to accomplish that setback as
3 best as possible.
4 CHAIRMAN MADDEN: I would defer over to
5 the panel chairperson because I know they gave a
6 lot of thought to the proposal. I also will ask
7 the counsel to give a historical perspective on
8 whether we've applied 300-foot buffers before.
9 Do you want to give us some thought behind the
10 recommendation?
11 MR. SETZER: I guess as I mentioned
12 earlier that looking at the intensity of the
13 development and the increase in the
14 imperviousness, we just thought it was important
15 to provide the maximum available setback that the
16 Commission authorized. We didn't discuss really
17 straying from the 300-foot setback, that I can
18 recall. I think right out of the gate the panel
19 started to talk about establishing a 300-foot
20 setback on the development, on the parcel. If
21 anybody on the panel has a different

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1 recollection. That's my recollection.
2 MR. GILLISS: If the growth allocation
3 request requires this Commission to consider the
4 standards set out in 8-1809(J), and 8-1809(J)
5 directs us to the goals of the program in 8-1808,
6 one of which is to minimize impacts on water
7 quality, then we don't need to foundationally be
8 based upon the regulations which talk about
9 development from RCA to intense development, and
10 the shoulds and the shalls, but instead can rely
11 upon the fact that 8-1808(B)(1) directs us to
12 look at water quality, and one way to protect
13 water quality is to have a 300-foot buffer.
14 MS. MASON: Following up on what you
15 said, (B)(3), which directs the Commission to
16 look at the number of movement and activity and
17 persons in an area which is also something that
18 the panel discussed very very in-depth with the
19 proposed use of the 100-foot buffer proposed to
20 be a fairly intensive public recreation and
21 access area. The panel's discussions that I

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1 recall were centered on how much protection for
2 habitat and water quality would that 100-foot
3 buffer actually achieve if it's going to be used
4 for a public park and the need for some
5 additional area to achieve those goals of the
6 program.
7 CHAIRMAN MADDEN: Any further
8 discussion?
9 MR. RICHARDS: The commissioner raised a
10 point about the local government participation.
11 That's one of the initiatives that's been very
12 much a concern to me throughout this.
13 My issue with the 300-foot is it was
14 more procedurally at this point than it is an
15 environmental concern. Although I think
16 ultimately that would be a top concern. But the
17 regulations, to try and paraphrase them,
18 basically says that the local jurisdictions shall
19 use guidelines, and one of the guidelines is it
20 should have a 300-foot setback.
21 In the submittals that they have they

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1 claim to have addressed them, which they're also
2 required to do elsewhere, as I recall. And they
3 gave three reasons. We couldn't buy into any of
4 those reasons as to reasons why they should not
5 have a 300-foot. So basically we said they
6 really did not give the full merit to the
7 "should." And my feeling is that the "should" is
8 a very strong thing that says that they will do
9 it unless there's a compelling reason why they
10 don't or it runs counter to the intent of the
11 program.
12 And so right off the bat my feeling was
13 and the reason why I didn't address the issue
14 whether there should be something less than 300
15 feet, it says it should be 300 feet. So it's
16 time to drop it back in their lap.
17 I agree with you, if they want to come
18 back and say there is a compelling reason why we
19 cannot do it at 300 feet and then I, as an
20 individual, not speaking for the Commission,
21 would be glad to consider it. On a procedural

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1 standpoint.
2 On the environmental I think there are
3 some arguments against it. I think that the town
4 was given an opportunity and they didn't do it
5 appropriately. And I have to address some of the
6 testimony because it really bothers me. There
7 was a conflict between the two attorneys,
8 Mr. Hickson and the gentleman from Miles &
9 Stockbridge, which I did not get his name, about
10 the 100-foot buffer and the 300 feet. The
11 gentleman from Miles & Stockbridge says that the
12 developer, or his client, the issue of 300 feet
13 never came up. Which to me undermines anything
14 the town says if that is true, undermines
15 anything the town says about whether or not they
16 dealt with that issue. They got the opportunity.
17 And if that's true, that even goes further in
18 undermining the three points that they gave us.
19 The other conflict that I have is
20 because in addition to the 300-foot, there's the
21 question of the 100-foot forested buffer. I

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1 heard the attorney for the town of St. Michael's
2 saying we had to give him something in exchange
3 for putting in the marsh. And what he gave in
4 exchange was the 300 feet plus 100 feet of
5 forested buffer. And why did he give up the 100
6 feet of forested buffer? Because it would create
7 shade which would make the marsh impractical.
8 So basically in addressing the issue of
9 how the local government dealt with it, I think
10 that point, to me, was the most critical element
11 in this thing as to why it should be returned
12 with conditions, because that issue was not
13 appropriately addressed by the town. It should
14 be returned to make sure they address it.
15 And if they want to negotiate something
16 with the developer, then well and good.
17 Personally I have a feeling that if they can come
18 up with a compelling reason, I will listen, but I
19 will listen very critically.
20 MR. McKAY: I appreciate those comments
21 and I concur with you as long as the feeling here

1 is that we're requiring the 300-foot setback
2 because the local jurisdiction did not, in our
3 opinion, fully explore that -- doing that, then
4 that's fine. But I feel very uncomfortable if we
5 are doing it simply because we feel this
6 project -- and I do feel that 300-foot is
7 required here, but simply because we feel it's
8 required and the local jurisdiction has made
9 every effort possible to meet the 300. I want to
10 make sure we don't feel like we're establishing a
11 precedent.
12 CHAIRMAN MADDEN: This is the conclusion
13 the panel has reached.
14 MS. SAMORE: I would just like to raise
15 the point that the criteria established, the 300
16 feet, that it's the minimum, not the maximum,
17 that should be located at least. So it's the
18 minimum requirement in order to meet the goals of
19 the program which is to minimize adverse impacts
20 on water quality. So I think that's a very
21 important point.

1 correct certain mistakes, conflicts or omissions
2 in their local program. And there were about
3 four of those, three of which have all been
4 corrected either prior to today, will be
5 corrected through the bills today, or in the
6 future. So essentially those items have or will
7 be addressed.
8 The other primary thrust behind these
9 bills that are in your staff report is part of
10 the County's comprehensive update that's required
11 every six years by each county. Last month we
12 did Anne Arundel County. We just updated them
13 for the third time. This is Talbot County's
14 first comprehensive review. I'll direct you to
15 your staff report. There are six bills that were
16 sent to us by the County. And I'm going to go
17 through each one of them bill by bill.
18 The first one is Bill 922, and this bill
19 includes specific provisions for the notification
20 of property owners for certain types of
21 development applications before the Office of

1 CHAIRMAN MADDEN: Thank you. Are we
2 ready to vote? We have a motion in front of us
3 to approve the Miles Point Growth Allocation
4 Request with four conditions. All those in favor
5 say aye.
6 (All say aye.)
7 CHAIRMAN SETZER: Opposed?
8 MS. ENNIS: Only because of the sewage
9 treatment.
10 CHAIRMAN MADDEN: The motion is
11 approved.
12 Next on the agenda is the Talbot County
13 Comprehensive Review Amendments. I'll ask Lisa
14 to come up and give that presentation.
15 (Recess.)
16 MS. HOERGER: This has been a long
17 process for us, and the County Commissioners have
18 finally enacted a series of several bills that
19 are doing primarily two things. One is, for
20 those of you that were here in September of 2002,
21 this Commission sent the County a directive to

1 Planning and Zoning. The panel has no changes to
2 this bill. The way that you received it and read
3 it is the way that we propose to accept it.
4 The second bill is 926, and this is a
5 section in the County's current zoning ordinance
6 where all the definitions are laid out. And they
7 are adding some definitions. A definition for a
8 champion tree forest, preservation plan is a new
9 definition for the County, marsh vegetation,
10 mitigation, and disturbance.
11 There are two definitions in this bill
12 that the panel, which you will hear later from
13 the panel chair, are proposing to amend. One is
14 the definition of a dwelling unit, and the second
15 is their definition of shoreline development
16 buffer which is their definition of the 100-foot
17 buffer. And there will be one minor change to
18 their definition of development activities.
19 The next bill is Bill 927. This is the
20 section of the County Zoning Ordinance which
21 lists those uses that are permissible in the

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1 County's resource conservation areas. If you
2 have a copy of your bill you can see those uses.
3 They're all acceptable to the Commission.
4 However, the panel has recommended a few
5 changes to those. One is for parks and
6 playgrounds. You may recall last month Anne
7 Arundel County had a similar provision in their
8 RCA use list and this Commission recommended and
9 approved an amendment to their comprehensive
10 review that it specifically be limited to passive
11 recreation, and that's the same type of
12 limitation that we're going to be asking for on
13 this bill.
14 The other issues in this bill with
15 regard to resource conservation area uses have to
16 do with the County's limit on treated septage
17 land application, community sewage treatment
18 plants, and sludge application for agricultural
19 and horticultural purposes. The County has
20 restrictions on where these uses can occur. They
21 restrict them to within 200 feet of mean high

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1 water and tributary streams and we're going to
2 put in an addition to that to ensure that it's
3 also restricted from the buffer and the edge of
4 tidal wetlands because that wasn't clear in the
5 initial bill.
6 The next bill, Bill 929 amends the
7 agricultural and forestry management section of
8 the County zoning ordinance. In here the County
9 has done several things. They have reworked this
10 section of their ordinance quite a bit, inserting
11 the words 100 feet where appropriate, including
12 provisions for forest preservation plans.
13 This is something new for Talbot County.
14 This will require property owners in the critical
15 area to submit forest preservation plans when
16 they are undertaking clearing or development
17 activities within a 100-foot buffer or outside
18 the buffer.
19 They're also adding certain habitat
20 protection areas which didn't appear in the
21 County's original program, and they're adding a

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1 buffer exemption area program for the first time.
2 We do not have the maps yet, but the County
3 Council is working on those maps and once we
4 receive them, you will get a chance to see those
5 maps and approve them.
6 What you'll be approving today is the
7 supporting language in the County's ordinance
8 that instructs how development will occur in
9 buffer exemption areas.
10 We will be making a suggested change to
11 the County's forest preservation plan language.
12 With regard to the buffer exemption area language
13 that's proposed, it is essentially consistent
14 with your policy on buffer exemption areas. In
15 fact, there are several places in the new bill
16 where it is stricter.
17 However, there's one section with regard
18 to mitigation. As you know, in buffer exemption
19 areas, the prescribed mitigation ratio is at a 2
20 to 1 ratio, but that's for all development
21 activities in the buffer. The County's bill

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1 reads for new impervious in the buffer. So the
2 suggested change will be all development change.
3 So we can capture what will eventually be in the
4 buffer when the development takes place.
5 Bill 931, another section of the
6 County's zoning ordinance that pertains to the
7 general site plan requirements. Again, in this
8 section of the County Code there was
9 significant -- well, not significant changes, but
10 a lot of changes that the County made over the
11 years, and it adds waivers and certain
12 applications for site plans, talks about
13 extensions, and they have updated their language
14 with regard to when they refer to the appropriate
15 state agencies which have changed over the years.
16 There are a couple of changes to Bill
17 931 that the panel discussed today in the earlier
18 panel discussion. One of the issues is that in
19 the criteria there is a requirement that lots or
20 parcels must be at least 15 percent forested. So
21 if you have a lot or parcel that is not, you have

1 to bring it up to that minimum threshold.
2 The way this bill is currently written
3 it exempts grandfathered lots or parcels that are
4 less than seven acres. Because that is
5 inconsistent with the criteria and other county
6 programs in the Critical Area, the panel is going
7 to recommend that those references be deleted
8 from the bill.
9 The other change to this section is with
10 regard to the mitigation ratios prescribed when
11 you're clearing in the Critical Area. When
12 you're clearing between 20 and 30 percent of a
13 lot or parcel, you're required to do one and a
14 half to one mitigation. The way the bill
15 currently reads, you'd only be required to do one
16 and a half to one for the portion of the clearing
17 that would be between 20 and 30 percent range.
18 So we're asking for that to be corrected.
19 The final bill is Bill 932. This bill
20 talks about the process for obtaining growth
21 allocations for applicants in Talbot County, and

1 on March 24th. There weren't a whole lot of
2 substantive public comments. We did receive a
3 few. County staff gave us a formal presentation.
4 And that concludes my presentation
5 unless you have any comments or questions.
6 CHAIRMAN MADDEN: I'll turn it over to
7 the chair.
8 MR. BLAZER: The panel discussed the
9 County Council bills that Lisa has gone over,
10 those are Talbot County Bills 922, 926, 927, 929,
11 931 and 932 as part of their comprehensive review
12 of their local program. We reviewed them with
13 regard to the consistency of the goals of the
14 Critical Care Act and the Commission's criteria
15 required in Natural Resources Article 8-1809(G).
16 Again, just briefly, these are the bills as part
17 of the comprehensive review.
18 On behalf of the panel I move the
19 approval of the County Council bills with the
20 following conditions, and I'll read through, Lisa
21 has given you a summary of them and they're in

1 the panel had no suggested changes to that bill.
2 The comprehensive review also includes
3 that the County provide us with updated habitat
4 protection area maps. This is in an effort to
5 keep their maps current so we know which HPAs are
6 occurring within the County and we know what has
7 changed. We are working with the Department of
8 Nature Resources on finalizing those maps and
9 having them available to County staff and
10 Commission staff.
11 The critical area acreage and growth
12 allocation was provided to the Critical Area
13 Commission staff by the County. I believe your
14 package has attached to it a chart that lists out
15 all the growth allocations that have taken place
16 since the inception of the Talbot program. It
17 also includes the three local municipalities, St.
18 Michael's, Oxford and Easton's growth allocation
19 deductions.
20 Chairman Madden appointed a five-member
21 panel. The panel held a public hearing in Easton

1 your handout that's been circulated here. In
2 Bill 926, Chapter 190 Article 2 definitions and
3 word usage, Section 190-14, Section 3, dwelling
4 unit. Change the definition of a dwelling unit
5 to state dwelling unit means a single unit
6 providing complete independent living facilities
7 for at least one person, including permanent
8 provisions for sanitation, cooking, eating,
9 sleeping, and other activities routinely
10 associated with daily life. A dwelling unit
11 includes a living quarters for domestic and other
12 employee or tenant, an in-law or accessory
13 apartment, a guest house, or a caretaker
14 residency.
15 The other section of Bill 926, Section
16 9, where we made a recommendation of shoreline
17 development buffer, amend the definition of a
18 shoreline development buffer to state that there
19 are at least 100 feet wide measured landward from
20 the mean high water line of tidal waters,
21 tributary streams, and tidal wetlands.

1 The other section with Bill 926, Section
2 1, development activities. They request that at
3 least two sentences in item B be deleted. This
4 is where the substantial alteration is defined.
5 In Bill 927, Chapter 190, article 4,
6 land use regulations by zoning districts, Section
7 190-19. Section 4 of that bill, parks and
8 playgrounds, add another bullet that states
9 limited to passive recreation. Sections 18, 20
10 and 21, we talked about treated septage land
11 application, community sewage treatment plant,
12 sludge application for agricultural and
13 horticultural purposes. The panel recommended
14 adding tidal wetlands to the bullet that
15 restricts these uses to within 200 feet of mean
16 high water or tributary streams. At a minimum
17 this bullet should include the language that says
18 or insure that it is otherwise restricted within
19 the 100-foot buffer of tidal wetlands.
20 In Bill 929, Chapter 190, Article 11,
21 Critical Area Special Provisions Section 190-88,

1 190-88(B)(3)(H). In place of H insert the
2 following language: The forest preservation plan
3 shall include either of the following: A, a time
4 period for implementing the plan and provisions
5 for a final inspection by the County after which
6 the plan will be certified complete, or B,
7 provisions for removal of invasive exotic species
8 and/or maintenance of native vegetation for a
9 period up to five years including provisions for
10 annual inspections by the County.
The other recommendation was
190-88.1(B)(6)(S), replace the language
mitigation equal to an area two times the square
footage of the proposed impervious surface in the
buffer area. Change that to the language that
states mitigation equal to an area two times the
square footage of the development activity in the
buffer area.
Bill 931, which is Chapter 190, article
2, site plan review, section 190-92 and
190-93(E)(9)(A), and 190-93(E)(9)(D)(1), delete

1 the references to parcels up to 7 acres. It must
2 provide 15 percent aforestation. This language
3 excludes grandfathered parcels under 7 acres for
4 the aforestation requirement. If it's the
5 County's intent to allow certain allowances for
6 grandfathered parcels under 7 acres, then the
7 County may propose an exemption for certain
8 classes of activities such as new dwellings.
9 And then the last recommendation for
10 Bill 931 is 190-93(E)(9)(D)(c), delete the phrase
11 "additional ten percent." These were the
12 recommendations of the panel.
13 CHAIRMAN MADDEN: We have a motion for
14 approval with conditions. Is there a second?
15 COMMISSIONER: Second.
16 CHAIRMAN MADDEN: Is there any
17 discussion? Hearing none, all those in favor say
18 aye.
19 (All said aye.)
20 CHAIRMAN MADDEN: Opposed nay. Ayes
21 have it.

1 We have another very important issue
2 coming up in front of the Commission right now,
3 Talbot County Bill Number 933, growth allocation
4 procedures. We had a panel that looked into this
5 extensively. Ren is going to give the panel
6 report. And then I will again ask for public
7 comment if anybody wishes to have it.
8 MR. SEREY: This amendment to the Talbot
9 County Critical Area Program is County Bill 933.
10 As the chairman explained, the panel conducted a
11 public hearing, met on the bill and discussed it
12 several times, and met again this morning. The
13 staff report that went out and the panel report
14 that went out also included a copy of the bill.
15 In 1989 the Talbot County Council
16 approved the County's Critical Area Program and
17 submitted that to the Commission. The Commission
18 approved that program. The program included what
19 the County called preservation of growth
20 allocation to the towns of St. Michael's, Easton
21 and Oxford. The County used the method of

1 providing the growth allocation acres to the
2 towns. There were no conditions placed on the
3 use of those acres. That was in the 1989
4 Critical Areas Program. The County gave the town
5 of Easton 155 acres, town of St. Michael's 245
6 acres, and the town of Oxford 195 acres. There
7 were maps attached to the Critical Area Program,
8 three maps that showed the potential areas for
9 annexation outside of the towns.
10 The understanding was that the growth
11 allocation would be used by the towns both within
12 their current boundaries, and the understanding
13 was in annexed areas. As Lisa explained on one
14 of the other previous items -- I was going to say
15 this morning, it seems like this morning, the
16 town of Easton used all of its growth allocation
17 and in 2000 the County instituted a new process
18 which they called their supplemental growth
19 allocation process, and that is a process that
20 involved joint hearings by the County Council and
21 town of Easton and joint approval of growth

1 allocations.
2 That process has been used recently for
3 the Easton Village and Ratcliffe growth
4 allocations that you may remember from a couple
5 months ago, I think that was January that the
6 Commission approved those. It's also been used
7 for the Cooke's Hope growth allocation in Easton.
8 Easton used their growth allocation.
9 Oxford has only used about 15 acres of its growth
10 allocation. And St. Michael's has used
11 approximately 21 acres for the Strausburg growth
12 allocation. And that is, as Lisa explained
13 earlier, a refinement that this Commission
14 approved in October of 2000.
15 Council Bill 933 prefaces the action
16 that the County took with a lot of explanation
17 about the use of growth allocation. What the
18 bill does is it removes that growth allocation
19 that has been unused by the town and has it
20 revert back to the County. And what the County
21 intends is that the process that they used when

1 Easton ran out of growth allocation, that is the
2 joint process, the supplemental process, the
3 County informs us that that would be the process
4 now after the growth allocation unused by the
5 towns is removed and reverted back to the County.
6 There are a lot of planning, growth
7 management clauses that are in the preface to the
8 bill, in the whereas clauses, and you have all
9 that information. It discusses the fact that it
10 was done in 1989 and things have changed. Growth
11 management has changed, that the original county
12 program required a four-year review of the County
13 program in addition to a review of the growth
14 allocation maps and the growth needs of the
15 towns. That review was not done. It has been
16 done now in the form of Bill 933, removing the
17 growth allocation.
18 The original county total of growth
19 allocation was 2,554 acres. And the County has a
20 process for using a portion of that in the RCA as
21 is set out in the Critical Area law and is

1 concerned, among other things, that its process
2 for using the growth allocation in the RCA will
3 be compromised unless it regains control of all
4 of the growth allocation that has since been
5 unused.
6 If you look in your staff report or
7 panel report, on page 2 in the middle, you'll see
8 some of those reasons that the County set out in
9 addition to the ones that I've just described.
10 As I said, this action, Bill 933, will
11 remove the growth allocation and revert back to
12 the County. In addition, and I think Lisa also
13 described this earlier, it will undo a previously
14 approved growth allocation, and that's the
15 Strausburg growth allocation that this Commission
16 approved as a refinement in October of last year.
17 The reason it would remove that growth allocation
18 is because the bill contains a clause that says
19 if any growth allocation is unutilized, and the
20 County goes on to define unutilized, then by the
21 effective date of the bill, which was I think

1 February of this year, then that growth
2 allocation also reverts back to the County.
3 And included in the definition of
4 unutilized is the provision that any growth
5 allocation awarded for which substantial
6 construction has not started based on a valid
7 building permit, that is also affected by the
8 bill and reverts back to the County.
9 There could be other growth allocations
10 in addition to the Strausburg. We have talked to
11 the towns of Easton and Oxford regarding their
12 previously approved growth allocations, and our
13 understanding is that there are a few lots that
14 are still undeveloped for which there are no
15 building permits yet that could also be affected
16 by this bill. But the Strausburg growth
17 allocation approved in October is obviously
18 affected.
19 At the panel's request the staff looked
20 into growth allocations and growth allocation
21 systems in use by the other counties, and we

1 for review of a proposed amendment. Those
2 standards are that the Commission must determine
3 or that the program amendments must meet the
4 goals of the Critical Area law, and they are set
5 out at the bottom of page 4, as well as the
6 provisions of the criteria. That is what the
7 panel discussed at length in its meetings and
8 again today.
9 That's all I have in summary of the
10 bill. Are there any questions regarding the
11 process or what the bill does?
12 CHAIRMAN MADDEN: Thank you very much.
13 Now we'll allow brief public comment, if anybody
14 chooses to do so. We're allocating a time to the
15 County to come up and address us, and then we'll
16 allow members of the public tp address us briefly
17 also.
18 MR. POLLEN: Thank you, my name is
19 Michael Pollen. I am the Talbot County attorney
20 and I would like to read to you a letter that was
21 addressed to Senator Madden on April 22nd which

1 summarized for the panel that generally those
2 growth allocation procedures of the counties fall
3 into three categories. And I'm on Page 4 of your
4 panel report. One category is where the County
5 simply gave the growth allocation to the towns
6 for their use, and that was the process that
7 Talbot County used.
8 Another selection of programs, another
9 category of growth allocation used is where a
10 county simply identifies a number of acres for a
11 town's use, growth allocation, but then awards
12 that growth allocation on an individual project
13 basis when the town requests it.
14 And the third category is a coordinated
15 process where both entities make the decisions
16 together. If you look at the bottom of Page 4
17 you'll see some information that we've been
18 talking about quite a bit today in regard to the
19 other amendments. Here you'll find about three
20 quarters of the way down a quote from the
21 Critical Area law that provides you the standards

1 contained the County's comments on the
2 subcommittee's review of Bill 933 that had
3 occurred on April 19th.
4 Dear Senator Madden: During the
5 Critical Area Commission Subcommittee Review on
6 April 19, 2004 of Talbot County's proposed
7 changes to its local program, several members
8 commented on the need for more information to
9 fully understand the various bills' language. I
10 am respectfully submitting this letter to respond
11 to those questions and I will address my comments
12 in the order in which the discussion occurred.
13 Consistency. The subcommittee initially
14 posed the question whether Bill 933 was
15 consistent with existing Critical Area Commission
16 policies and other approved programs. The first
17 part of the discussion articulated the correct
18 standard by which to judge consistency. The
19 discussion involved approvals of the program for
20 Caroline County, Saint Mary's County, Wicomico
21 County, Queen Anne's County, which all

1 demonstrate that the Critical Area Commission has
2 approved as a matter of policy different
3 approaches to county municipal growth allocation.
4 Bill 933 falls within the parameters of the
5 previously approved programs and policies of the
6 Critical Area Commission. This is the correct
7 standard and the correct conclusion.
8 Comparison of Bill 933 to inconsistent
9 provisions of existing municipal programs based
10 on the 1989 ordinance that is being repealed by
11 933 is not the correct approach to determine
12 consistency. By definition, a program amendment
13 is a change to a program and it will necessarily
14 be different than existing elements of the
15 current program.
16 In the case of Bill 933, Talbot County
17 municipality has adopted their own local programs
18 based on the 1989 ordinance that gave them
19 specific amounts of growth allocation. Bill 933
20 changes that. And any existing elements of
21 approved local programs inconsistent with Bill

1 government and a property owner, or in this case,
2 a municipality, has no legal right to rely on a
3 preexisting law or any assumption that
4 preexisting law would continue as originally
5 enacted.
6 There was some discussion about various
7 projects that were pending, and one in
8 particular, Cooke's Hope, was the subject of the
9 next paragraph.
10 Cooke's Hope. One topic of discussion
11 was the effect of Bill 933 on the Critical Area
12 Commission's previous approval of the Cooke's
13 Hope project. Talbot County Council has already
14 approved its Cooke's Hope project utilizing the
15 procedures adopted under Bill 762. Bill 762 is
16 the bill that was approved by this Commission in
17 2000 that established a joint review process with
18 the municipalities and the County in which the
19 applicant submits the application to the
20 municipality; it's forwarded to the County;
21 there's a joint review at the Planning Commission

1 933 are irrelevant to whether Bill 933 should be
2 approved.
3 If proposed amendments are compared with
4 inconsistent existing program elements for
5 consistency, no amendment would ever be
6 consistent, and therefore, no amendment would be
7 approved.
8 I'm sure the subcommittee's intention,
9 based on Ms. Mason's legal advice in considering
10 consistency, does not include consideration of
11 existing elements of the municipal Critical Area
12 programs that were premised on the 1989 ordinance
13 that are being changed by Bill 933.
14 Municipal reliance. Some of the
15 discussion centered upon expectations of various
16 municipalities premised on the 1989 award of the
17 growth allocation acreage. This is not an
18 appropriate consideration in evaluating Bill 933.
19 Maryland law is quite clear that absent vested
20 rights, which Bill 933 specifically does not
21 impair, zoning laws may be changed by local

1 level; there is a joint meeting of the town and
2 the county planning commissions. They separately
3 confer and form separate recommendations to their
4 respective bodies. That is followed by a joint
5 meeting between the town council and the County
6 Council to review the application. They then
7 separately confer among themselves and come up
8 with individual recommendations for approval or
9 not. Both, under Bill 762, both the town and the
10 County must approve the project.
11 Now, that procedure has been
12 successfully used with the town of Easton on
13 several occasions. The town of Easton has no
14 longer any growth allocation, as Ren Serey
15 indicated.
16 Back to the letter. One topic of
17 discussion was the effect of Bill 933 on the
18 Critical Area Commission's previous approval of
19 the Cooke's Hope project. The Talbot County
20 Council has already approved the Cooke's Hope
21 project utilizing the procedures adopted under

1 Bill 762. Bill 933 does not affect that
2 approval. This is readily apparent from the
3 language of the bill itself on page 6, line 216,
4 which states, growth allocation awarded by any
5 town that remains unutilized by the effective
6 date of the ordinance shall revert to the County.
7 Growth allocation awarded by the County prior to
8 or after the effective date of the ordinance
9 shall be deducted from the total growth
10 allocation allocated to the County under section
11 9-1909(1)(B).
12 So that project has been through the
13 joint review process and approved, and Bill 933
14 would have no effect on that project.
15 I want to skip ahead in the letter to
16 discussion of Bill 762. Other parts of the
17 discussion noted that Bill 762 was premised on
18 the assumption that it pertained to supplemental
19 awards of growth allocation after the use of
20 allocated acreage under the 1981 maps. When Bill
21 762 was enacted, and that was in 2002 -- or

1 excuse me, 2000, there was no intention to repeal
2 the 1980 maps. That does not forever enshrine
3 those maps and place them beyond the police power
4 of a future council. The premises or assumptions
5 upon which Bill 762 was enacted do not bear on
6 whether Bill 933 is consistent with the standards
7 and the criteria the Critical Area Commission is
8 required to consider under Natural Resources
9 Article Section 8-1809(J).
10 Bill 762 is the County-created procedure
11 required by COMAR to accommodate the growth needs
12 of municipalities. COMAR has a specific criteria
13 that says when planning future expansion of
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

1 and utilized with the town of Easton.
2 Bill 933 simply takes that existing
3 procedure and applies it uniformly throughout the
4 County to all of the towns, including St.
5 Michael's, including the town of Oxford.
6 Bill 762 is the County-created procedure
7 required by COMAR to accommodate needs of
8 municipalities. Bill 762 was drafted by the town
9 attorneys for the town of Easton and circulated
10 for comment to the town attorneys and town
11 commissioners for the town of Oxford and St.
12 Michael's prior to introduction by the County
13 Council.
14 The comments offered by the town
15 attorney for the town of St. Michael's, the only
16 comments received were incorporated into the
17 bill. Enactment of Bill 762 was in coordination
18 with affected municipalities, as required by
19 COMAR.
20 They then go on to discuss other
21 coordination between the County and the

1 municipalities because that was one of the
2 criteria, one of the elements in the criteria.
3 On the planning level Talbot County has
4 coordinated directly with each municipality to
5 establish growth boundaries around each of the
6 affected municipalities. This effort has
7 resulted in coordinated maps showing common plans
8 between the County and each municipality for
9 growth areas around the town. Examination of
10 those maps shows quite clearly the coordinated
11 result of that county municipal effort to
12 accommodate the growth needs of municipalities.
13 These maps are the definitive reference
14 point from which to evaluate county municipal
15 cooperation regarding growth boundaries of
16 municipalities and county accommodation of growth
17 needs. The matching plans between the County and
18 each of the effective municipalities shows a
19 level of cooperative effort that speaks for
20 itself. Any claim that there was not adequate
21 political coordination between the town and

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1 county elected officials in connection with
2 enactment of Bill 933 --
3 CHAIRMAN MADDEN: I'm going to ask you
4 to summarize because your time is expiring.
5 Mr. POLLEN: Mr. Chairman, it's the
6 County's position that this -- and as Mr. Serey
7 explained in his comments, many counties
8 throughout the state have adopted Critical Area
9 policies that do not give specific acreage growth
10 allocations to municipalities. Those county-wide
11 programs have been previously approved by this
12 Commission.
13 Bill 933 is within the state-delegated
14 power of the County Council to enact. We're a
15 charter county. We have the obligation to
16 develop our own program, delegate it not only
17 under our charter, but under the Critical Area
18 law. This policy has been previously promoted by
19 other counties and approved by the Critical Area
20 Commission. And we believe that it represents
21 not only good environmental policy, but it's well

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1 within the prerogative of the County Council to
2 adopt that policy being consistent with the goals
3 and criteria of the Critical Area Commission.
4 It's really designed to enhance and
5 protect the environment of the Chesapeake Bay and
6 protect its future. So we would urge that the
7 Critical Area Commission adopt this as a program
8 amendment to Talbot County's local program.
9 CHAIRMAN MADDEN: Thank you for your
10 comments? Any member of the public that would
11 like to speak to us briefly on Talbot County Bill
12 933?
13 MR. HICKSON: My name is Michael
14 Hickson, I'm the attorney for the town of St.
15 Michael's. The town opposes 933. The towns of
16 Easton and Oxford appeared at the local county
17 hearing and also opposed this bill.
18 We opposed it for several reasons.
19 First, we think it's different than other
20 situations that you have addressed because in
21 this situation you're yanking back or the County

Page 1

1 is attempting to yank back reserved acreage that
2 was originally given to the town and that the
3 town's programs were based on. They have been
4 functioning all these years, and the towns did
5 not receive any complaint from the County that
6 anything wasn't working well until we received
7 notice of this bill.
8 I testified at the local panel hearing.
9 We found evidence in the record here that the
10 County manager contacted Mr. Serey of this office
11 on October the 29th, 2003 to inform him that the
12 bill was in process and that he could expect it
13 to be up here for processing at the Critical Area
14 Commission in January of 2004. This bill was not
15 introduced to the public until some time in
16 November of 2003, and the towns were not
17 contacted about it and the problem was not raised
18 with the towns before the bill was introduced to
19 the public.
20 So there has been no coordination.
21 There's been no cooperation, and the effect of

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1 the bill will, as I said, yank back reserved
2 acreage and in my view run contrary to the way
3 that the state Critical Area laws and policies
4 are supposed to work, and that is they're
5 supposed to work in an organized and coordinated
6 fashion. Not to say that every county has to
7 work the same way, but by suddenly yanking back
8 these bills you have towns that in fact don't
9 have them; they can't function at all in terms of
10 Critical Area.
11 CHAIRMAN MADDEN: Your time is expiring.
12 Please summarize.
13 MR. HICKSON: We agree with what the
14 panel discussed this morning, that in effect it
15 will undo some decisions that the Critical Area
16 Commission had made, that it's inconsistent with
17 the existing town programs that exist in three
18 municipalities in the town and there's been no
19 cooperation or coordination in bringing this bill
20 forward. So we oppose it.
21 CHAIRMAN MADDEN: Thank you. Does

1 anybody else want to make any public comment?
2 MR. ALSPACH: Thank you again. My name
3 is Tom Alspach. I'm speaking on behalf of the
4 Public Preservation Alliance. I would not agree
5 with Mr. Hickson that the towns cannot function
6 with Bill 933. The purpose of Bill 933 is to
7 ensure that both the County and town and their
8 respective populaces equally have a stake in the
9 Critical Area, have their views taken into
10 account in the grand growth allocation.
11 The grand growth allocation in a town
12 like St. Michael's or Oxford affects all the
13 residents of the County who utilize the Miles
14 River, the Tred Avon River, Choptank River, et
15 cetera. What this process is intended to do is
16 to establish a joint review procedure whereby
17 both jurisdictions participate in that review.
18 Nothing is being taken away. The only two
19 instances that this process has already been used
20 with regard to the town of Easton, and in both
21 instances the growth allocation requests were

1 approved.
2 If you look at a map, some of you who
3 were at the public hearing for the panel,
4 remember I showed you what St. Michael's looks
5 like now. It looks like a big bar bell, a chunk
6 of lead here and a chunk of lead here and a
7 skinny bar that joins the two together. That's
8 what St. Michael's looks like now because they
9 annexed a piece of property three-quarters of a
10 mile out to the country by way of annexing a
11 roadbed. That piece of annexed property is out
12 in the middle of the county on a county river
13 surrounded by county residents, yet the residents
14 of the County had no say whatsoever when growth
15 allocation for this annexation was considered.
16 Given the fact that they will be
17 directly impacted by it, by annexations like in
18 the future, this procedure would ensure that
19 their concerns are taken into account as well as
20 those of people living in the town. By the way,
21 in response to a question that was asked, I think

1 by Mr. Jackson at the panel hearing, the question
2 was raised doesn't this give the County a veto
3 and it can prevent any growth allocation
4 whatsoever. No, it doesn't. The law requires
5 the counties to accommodate the growth needs of
6 the town. If the County were arbitrarily denying
7 growth allocation pursuant to this procedure, the
8 town would have relief available to it because
9 the County would not be accommodating its need
10 for growth. So that fear or concern is
11 misplaced. I would urge you to approve this
12 proposed program amendment. It does nothing but
13 assure that all parties affected by growth
14 allocation will be heard in the process.
15 CHAIRMAN MADDEN: Anything else? I'll
16 turn it over to panel chair for additional
17 comments and recommendations.
18 MR. BLAZER: I guess a couple things
19 while we're passing out the panel recommendations
20 and report. We only had three people I think
21 speak here. But the night of our panel we were

1 there for a good two and a half, three hours, had
2 quite a few people talk similar to the other St.
3 Michael's hearing. And a lot was presented and a
4 lot was discussed, and basically some of the
5 issues that we had to deal with and that we
6 focused on were basically -- we wanted to apply
7 the specific sections in the critical areas law.
8 We heard all kinds of things about planning and
9 smart growth and wastewater treatment and some of
10 the problems with the Miles River, you know, we
11 needed to focus on the Critical Area provisions
12 in the criteria and the law that we had. So
13 that's what we tried to focus on in our panel
14 discussions.
15 So, you know, with that, we also looked
16 at the effect of Bill 933 on other Critical Area
17 programs, program amendments, program
18 refinements, what the Critical Area COMAR section
19 said, so we had several meetings, a lot of
20 discussion, a lot of debate as we went through,
21 and I also want to thank the panel members,

1 because I think the debate and the discussion was
2 very healthy and I appreciate all of your input
3 on those.
4 A couple other introductory remarks. In
5 its review of Bill 933, the panel wanted to
6 encourage the County and towns to work together
7 on specific changes on the growth allocation
8 procedures that are going to affect all of them.
9 You heard a couple people talk about process
10 things and I think that's one of the things that
11 we'd like to see as this develops over time.
12 The panel believed that the time was
13 particularly appropriate for this kind of
14 cooperative effort and the analysis given that
15 the County has engaged in its comprehensive
16 review of its program.
17 The panel also believes that the
18 supplemental growth allocation process of Bill
19 762 that I believe Mr. Pollen talked a little bit
20 about which is incorporated in the County code
21 may be a desirable growth allocation process,

1 basis was accepted Bill 933 would create
2 conflicts between the County program and several
3 of the approved municipal programs that the
4 Commission has agreed to. The municipal programs
5 have their own approved growth allocation
6 procedures premised on the growth allocation
7 reserves provided by the County. The conflict
8 that Bill 933 would create was contrary to the
9 Commission's oversight responsibility to ensure
10 that local programs are implemented in a
11 consistent and uniform manner. So that's our
12 recommendation.
13 CHAIRMAN MADDEN: Do we have a motion
14 for denial of Talbot County Bill 933? Is there
15 a second?
16 COMMISSIONER: Second.
17 CHAIRMAN MADDEN: Any discussion? Yes,
18 Barbara?
19 SPEAKER: I would like to clarify
20 something. It's my understanding that the goals
21 of Bill 933 are consistent with the state

1 however, as presently drafted, Bill 933 really
2 doesn't harmonize or come in line with the
3 supplemental growth allocation process of the
4 County code. There were some inconsistencies
5 that the panel was uncomfortable with in our
6 determination of our recommendation.
7 I'd like to move on behalf of the panel
8 to deny approval of Talbot County Bill 933 as an
9 amendment to the County's Critical Area program
10 and to invite the County to work with the
11 Commission and its staff to develop new growth
12 allocation provisions that will be compatible
13 with the state Critical Area Act and its
14 criteria.
15 There are two major bases for the
16 motion. They are: If we accept Bill 933, we
17 would negate at least one previous Commission
18 action of approving a local program change, and
19 that's the refinement to the St. Michael's
20 program for the Strausburg growth allocation we
21 approved back in October 2003. And the second

1 delegation to the County, but the draftmanship is
2 creating some inconsistency, so with appropriate
3 draftmanship the goals could be realized; is that
4 correct?
5 MS. MASON: The process that the County
6 has said that they intend to use, that is the
7 joint process through Bill 762, the panel
8 believed was definitely in line with or
9 appropriate under the state law and criteria, but
10 the actual wording of the bill which is what the
11 panel had to look at created the problem for this
12 Commission of negating the Commission action.
13 SPEAKER: So it's basically an inartful
14 drafting as opposed to a noncompliance -- the
15 goals are not noncompliant, the draftsmanship --
16 CHAIRMAN MADDEN: Denial is articulated
17 in the motion. If we stick to the motion rather
18 than try to read something else into it. Any
19 other discussion?
20 MS. ENNIS: It seems to me when we look
21 at this issue, the thing that's most inconsistent

1 is that it will repeal an action that the
2 Commission has already approved, both the town
3 and the County approved and that the Commission
4 approved.
5 CHAIRMAN MADDEN: The town approved.
6 The Commission --
7 MS. ENNIS: It didn't have to go through
8 the County?
9 CHAIRMAN MADDEN: Correct.
10 MS. ENNIS: If that were corrected,
11 would we still be opposed to this?
12 CHAIRMAN MADDEN: I think again, we have
13 to look at the motion. The motion cites two
14 issues. The basis for the motion is the first
15 paragraph, accepting 933 would negate at least
16 one previous Commission action and, number two,
17 would create conflicts between the County program
18 and several approved municipal programs. That's
19 what we're basing this motion on. Any other
20 discussion? If not, we have a motion in front of
21 us for denial. All those in favor say aye.

1 (All said aye.)
2 CHAIRMAN MADDEN: Opposed nay?
3 Motion for denial is approved. Thank
4 you again, all panel members and Commission
5 members.
6 (Proceedings concluded at 5:00 p.m.)
7
8
9

1 STATE OF MARYLAND SS:
2 I, LINDA A. CROCKETT, a Notary Public of the
3 State of Maryland, do hereby certify that these
4 proceedings took place before me at the time and
5 place herein set out, and the proceedings were
6 recorded stenographically by me and this
7 transcript is a true record of the proceedings.
8 I further certify that I am not of counsel to
9 any of the parties nor an employee of counsel nor
10 related to any of the parties nor in any way
11 interested in the outcome of this action.
12
13 As witness my hand and notarial seal this 8th
14 day of June, 2004.
15
16 My commission expires
17 December 1, 2004 Notary Public
18
19
20
21

CRC-Salomon
(410) 821-4888 fax (410) 821-4890

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

1

000505

E. 1899

EXHIBIT
4

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 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 request shall be reviewed by the County for consistency with the County Comprehensive~~

E. 1903

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~~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

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

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

PUBLIC HEARING

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

BY THE COUNCIL

Read the third time.

ENACTED December 23, 2003*
AS AMENDED

By Order _____
Secretary

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

000512

E. 1906

GROWTH ALLOCATION COORDINATION BETWEEN COUNTIES AND MUNICIPALITIES
April 6, 2004

Anne Arundel County
(Currently undergoing comprehensive review, to be completed in April 2004)
The County allocated 11 acres of growth allocation to the City of Annapolis which represents five percent of the RCA lands within the City. The City controls the use of this growth allocation and may use it without County review or action. To date, the Commission has not reviewed any growth allocation applications within the City.

Baltimore County
Baltimore County does not have any municipalities with Critical Area Programs.

Calvert County
(Last comprehensive review completed February 1997, currently undergoing third round)
Calvert County allocated 100 acres of growth allocation to Chesapeake Beach and 20 acres to North Beach. The respective Towns control the use of this growth allocation and may use it without County review or action. To date, the Commission has not reviewed any growth allocation applications within the Towns.

Caroline County
(Comprehensive review initiated)
Caroline County did not allocate any growth allocation to the towns of Denton, Federalsburg, Greensboro or Hillsboro. The County did adopt procedures for the consideration and award of growth allocation, which are applicable to the Towns. The County would have to approve the use of growth allocation within any of the Towns. To date, no growth allocation has been used within the Towns.

Cecil County
(Last comprehensive review completed in July, 1994)
Cecil County did not allocate any growth allocation to the towns of Charlestown, Chesapeake City, Elkton, Northeast, Perryville, and Port Deposit. The County did adopt procedures for the consideration and award of growth allocation, which are applicable to the Towns. The County would have to approve the use of growth allocation within any of the Towns. When Towns approve growth allocation applications, they submit a request for growth allocation to the County with information about the project. To date, Charlestown, Northeast, and Port Deposit have not used any growth allocation, Chesapeake City has used 23.87 acres, Elkton has used 76.50 acres, and Perryville has used 58.66 acres.

Charles County
(Last comprehensive review completed in July 2001)
Charles County includes provisions in the County's Program stating that Indian Head and the County divide growth allocation acreage on the basis of population, i.e. if Indian Head has

001459

EXHIBIT 5

3.5% of the population, then the Town is entitled to 3.5% of the growth allocation. The calculations must be updated regularly, especially when a growth allocation application is submitted. To date, Indian Head has used 9.00 acres of growth allocation.

Dorchester

(Last comprehensive review completed in February 2001)

Dorchester has allocated 240 acres of growth allocation to the City of Cambridge, 30 acres to Vienna, 20 acres to Secretary, and 20 acres to be used jointly by Church Creek, Eldoardo, Brookview, and Galestown. The respective Towns control the use of this growth allocation and may use it without County review or action. These allocations reflected coordination between the municipalities and the County to identify the growth allocation needs of the municipalities an amendment to the County's Critical Area Program which was approved by the Commission in July 2001.

Harford County

(Last comprehensive review completed in August 2001)

Harford County did not allocate any growth allocation to the Town of Havre de Grace; however, the County's zoning ordinance includes provisions for using growth allocation for land proposed to be annexed by a municipality. These provisions require the review of applications through the County's procedures.

Kent County

(Last comprehensive review completed in March 2003)

Kent County has allocated 82.78 acres of growth allocation to the Town of Betterton, 84.00 acres to Chestertown, no acreage to the Town of Millington, and 66.73 acres to the Town of Rock Hall. The respective Towns control the use of this growth allocation and may use it without County review or action. Once this acreage is used, the Kent County Growth Allocation Policy would apply. It states, "It is policy to grant growth allocation to the incorporated towns of Betterton, Chestertown, Millington, and Rock Hall." The County would be involved in the review of projects requiring growth allocation in excess of the initial allotment.

Prince George's County

Prince George's County does not have any municipalities with Critical Area Programs.

Queen Anne's County

(Last comprehensive review completed in April, 1996)

The County has set aside 189 acres of growth allocation for Centreville, and 160 acres for Queenstown. The respective Towns control the use of this growth allocation and may use it without County review or action. To date, Centreville has not used any growth allocation and Queenstown has used 15.06 acres. The County's Program states that, "The Queen Annes' County Critical Area Program may be amended to provide that the remaining acres of municipal set aside may be reallocated to the County if any municipal set aside is not assigned within five years." At this time, the County has not reallocated any growth allocation set aside for the municipalities. Additional growth allocation may be used by these Towns, as well as Church Hill and Queen Anne, on a project-by-project basis, subject to review and approval by the County.

St. Mary's County
(Last comprehensive review completed in July 2002)
The County allocated 4 acres of growth allocation to the Town of Leonardtown, which represents five percent of the RCA lands within the Town. The Town controlled the use of this growth allocation and used it in 1998 for the Tudor Hall Village Project. The Town has requested additional growth allocation from the County for another part of the Tudor Hall Project and the Leonardtown Landing Project. In the Tudor Hall Project, the Town become an applicant to the County and went through the same formal review and approval process as a private landowner. Since that time, the County has completed their comprehensive review and amended their growth allocation process. Now the Town requests growth allocation from the County Commissioners, and the Commissioners may approve the request if it is consistent with the County's comprehensive plan. The Town is not required to submit the request with a specific project; however, the most recent growth allocation request was made specifically to accommodate the Leonardtown Landing Project, and specific plans were provided to the County with the Town's request.

2 sets of hearings

Since 2002: no double review process

Somerset County
(Last comprehensive review completed in December 1995)
Somerset County allocated 100 acres of growth allocation to Princess Anne and 100 acres to Crisfield. The respective Towns control the use of this growth allocation and may use it without County review or action. To date, the Commission has reviewed and approved the use of 17.12 acres of growth allocation within the Town of Crisfield.

Talbot County
(Currently undergoing a comprehensive review to be completed in 2004)
Talbot County allocated 155 acres of growth allocation to the Town of Easton, 195 acres to the Town of Oxford, and 245 acres to the Town of St. Michaels. The County's Critical Area provisions state that this reserved acreage shall be reviewed by June 1, 1993 for possible reallocation, and at least every four years thereafter. The respective Towns control the use of this growth allocation and may use it without County review or action. In May 2000, the County amended their Critical Area Program to provide for the award of supplemental growth allocation through a joint review process in which both the Town and County would participate. Easton has used 147.34 acres of its original allocation, plus an additional 156.0 acres through the "supplemental growth allocation" process. Oxford has used 15.22 acres of growth allocation, and St. Michaels has not used any growth allocation acreage.

Wicomico County
(Last comprehensive review completed in November 2001)
Wicomico County originally allocated half of its growth allocation to the City of Salisbury and the towns of Mardela Springs and Sharptown. The County's Program specified that after four years, any of this growth allocation that had not been used would become part of the countywide growth allocation pool. No growth allocation was used by Salisbury, Mardela Springs, or Sharptown during the four years, so all growth allocation has been consolidated in the countywide pool. At this time, the municipalities would have to request approval of the use of growth allocation by the County.

Worcester County – Chesapeake Bay
(Last comprehensive review completed in November 2003)

Worcester County did not allocate any growth allocation to the Town of Snow Hill. The Town must apply to the County to use growth allocation after the request is approved by the Town Council. The County reviews the application and holds a public hearing on the application. To date 1.63 acres of growth allocation have been used by Snow Hill.

Worcester County – Coastal Bays
(Program adopted in November 2002)

The only incorporated municipality in the Coastal Bays Critical Area of Worcester County is Ocean City. All of Ocean City is designated IDA, so no growth allocation would be needed unless additional land was annexed.

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND	:	
Plaintiff	:	
v.	:	
DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION, et al.	:	Civil Action No. 2-C-04-005095 DJ
	:	
Defendants	:	
	:	

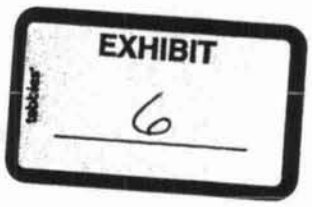
AFFIDAVIT OF THOMAS HAMILTON, EASTON TOWN PLANNER

Your affiant, being first duly sworn, deposes and says:

1. My name is Thomas Hamilton; I am employed by the town of Easton, Maryland as the Town Planner. I am over the age of 18 years, am competent to testify, and have personal knowledge of the facts recited herein.

2. The attached documents are part of the business records of the Town of Easton, they were made, kept, or received in the ordinary course of business by a person with knowledge of, or from information transmitted by a person with knowledge of the events, conditions, or acts, set forth, at or about the dates indicated, by a person whose duty it was to make, keep, or receive them, and it is the regular practice of the Town of Easton to make, keep, and receive the same.

E. 1911



I SOLEMNLY DECLARE AND AFFIRM UPON PERSONAL KNOWLEDGE AND UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING ARE TRUE AND CORRECT.

W Thomas I Hamilton

THOMAS HAMILTON

JUDGE SOLOMON LISS
CHAIRMAN

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREAS COMMISSION
DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING, D-4
ANNAPOLIS, MARYLAND 21401
974-2418 or 974-2426

SARAH J. TAYLOR, PhD
EXECUTIVE DIRECTOR

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Torrey Brown
Natural Resources
Constance Lieder
Planning

June 10, 1988

The Honorable George P. Murphy
Mayor
Town of Easton
P O Box 1146
Easton, Maryland 21601-1146

Dear Mayor Murphy:

I am pleased to inform you that its May 18, 1988 Meeting, the Critical Area Commission approved the local Critical Area Program for the Town of Easton with a vote of 21 in favor with no opposition. A copy of the approved amendments to the Town's Zoning and Subdivision Ordinances are enclosed. You have previously received a copy of the Program document from Redman/Johnston Associates.

Please be advised that the Commission approved the use of a portion of Talbot County's Growth Allocation to develop the parcel of land located southwest of the Oxford Road (shown as parcel 1 on the attached map) and designated as Resource Conservation Area (RCA). We understand that the County has authorized the Town's use of Growth Allocation for this purpose. In regard to the parcel located northeast of the Oxford Road (shown as parcel 2), although this property is mapped as RCA, its development is grandfathered because it received Town approval prior to December 1, 1985, and because "interim findings" were made as required under Section 8-1813 of the Critical Area Law.

The Commission did not approve the use of Growth Allocation for lands presently not within the Town boundaries. At the time annexation is proposed, the Town will need to submit an amendment to its Critical Area Program to the Commission for approval.

I would appreciate your informing me when the Town's Ordinances and any other necessary part of the Program are finally adopted. We would also like to receive two final copies of the Program as approved.

Sincerely,

Solomon Liss

Solomon Liss
Chairman

SL/jjd

Enclosure

cc: Mr. Christopher Kehoe
Mr. Daniel Cohee
Mr. Tony Redman
Dr. Kevin Sullivan

JUDGE JOHN C. NORTH, II
CHAIRMAN
410-822-9047 OR 410-974-2418
410-820-5093 FAX

SARAH J. TAYLOR, PhD.
EXECUTIVE DIRECTOR
410-974-2418/26
410-974-5338 FAX

WESTERN SHORE OFFICE
45 CALVERT ST., 2ND FLOOR
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

September 11, 1992

Mr. Lynn Thomas, Jr.
Assistant Town Planner
Town of Easton
Box 520
Easton, Maryland 21601

Re: Easton Club

Dear Mr. Thomas:

I have reviewed your letter and the accompanying materials. Thank you for the detail of your explanantion of the history of the site. It was very helpful. After careful review, the Commission staff has concluded that the "deal" that was made for the Portico project does not grandfather the current project. Judge Liss found that the project fell within the interim findings and was therefore grandfathered. This only grandfathers the Portico project, not the property or subsequent projects. Therefore, the new project, Easton Club, will need Growth Allocation. I will review the file and notify you regarding the proper process for formal submittal of a Growth Allocation request. Thank you for your assistance with this complicated project.

Sincerely,

Theresa I. Corless
Natural Resources Planner

cc: Deborah Renshaw
George Gay

E. 1915

Town of Easton
Jurisdiction

(3) SIX MONTH SUMMARY OF APPLICATIONS WHICH AFFECT GROWTH ALLOCATION

From 1/1/[illegible] to 6/30/[illegible]
Reporting Period

T.M.	BLOCK/ GRID	PARCEL/ LOT	LOCATION OF PARCEL	NAME OF DEVELOPER/ SUBDIVISION	C.A. DESIG. BEFORE G.A.	C.A. DESIG. AFTER G.A.	ACREAGE OF G. A. USED BY PROJECT	TYPE OF DEV.	ACREAGE OF G.A. REMAINING
34	–	122	MD Rte 333	Easton Club	RCA	IDA	119	PUD	7.653

LAW OFFICES
BANKS, NASON & HICKSON
A Professional Association
113 South Baptist Street
P.O. Box 44
Salisbury, Maryland 21803-0044

EDWARD G. BANKS, JR.
JOHN C. NASON
H. MICHAEL HICKSON

Telephone: 410-546-4644
Facsimile: 410-548-2568
e-mail: hickson@bnhlaw.com

December 29, 2003

David R. Thompson, Esquire
Cowdrey, Thompson, & Karsten, P. A.
P. O. Box 1747
Easton, Maryland 21601

Re: Strausburg Annexation to St. Michaels

Dear David:

As you may know, Talbot County voted to retain zoning control over the Hunteman property, as the County is permitted to do according to Maryland Code, Art. 23A, § 9 (c). As the result, the Town is without the authority, for a period of up to five years after the effective date of the annexation of the Hunteman property, to grant the land-use classifications that have been requested for that land. Since the annexation agreement makes the granting of those certain land-use classifications for that land conditions of the annexation, in my opinion the annexation of the Hunteman property will never become effective because the five-year period, provided for by Maryland Code, Art. 23A, § 9 (c), will not begin to run until the requested zoning is granted by the Town. According to my reading of Maryland Code, Art. 23A, § 9 (c), the Town lacks the authority to grant the requested zoning until after the five-year period is exhausted. Therefore, the Town lacks the authority to adopt a resolution today that would reclassify the Hunteman property five years hence.

As the result, the Town of St. Michaels and Midland are considering amendments to the annexation agreement for the Hunteman property, whereby the conditions for zoning are removed, so that the annexation would become effective immediately. By the terms of the amendment the owner is granted the right to de-annex the Hunteman property from the Town: (1) if the Town is presented with request from the owner for a certain rezoning of the Hunteman property within a year after the County loses its zoning control over the Hunteman property; (2) if the Town a fails to reclassify the Hunteman property as described in the Amendment; and (3) if Town infrastructure has not been extended to the Hunteman property at the request of the owner.

EXHIBIT
7

It is my opinion that the award of growth allocation may well be included within the ambit of the reclassifications that are the subject of Maryland Code, Art. 23A, § 9 (c).

I have no idea of how committed the Strausburgs are to the annexation of their land to the Town of St. Michaels. While the Strausburgs do not share the sewer issues with Midland, they do share concerns about the validity of County Bill No. 933. This is a question that Midland may help to resolve for the Strausburgs without any expense to the Strausburgs.

If the Strausburgs continue to be committed to that annexation I have a couple of suggestions. I don't recall that the County has yet voted to retain zoning control over the Strausburg land, but I assume that the County will eventually do so. Therefore, my first suggestion is to amend the annexation agreement to remove all contingencies so that the five-year period for the Strausburg land will start to run. I feel certain that the Town would understand and agree that the conservation easement would not be required until the Strausburgs are assured that they will actually be receiving the growth allocation that they were awarded by the Town and the Critical Area Commission.

If the county retains zoning control, then we may want to take the position that the rezoning of the Strausburg land was not compatible with current County plans, so that the current County zoning remains in place. When you consider the number of units that the Strausburgs could have under current County zoning (including the units permitted on the land located outside of the Critical Area based on the current County zoning), I am hoping that the number of permitted units would influence the neighboring property owners and the County Council to support the requested zoning and growth allocation for the Strausburg property. By annexing the land it appears to me that the Town could classify that land the same as it is now zoned by the County, and thereby preserve that zoning despite what the County may do in the future regarding its own zoning and planning maps.

My second suggestion is, despite our previous discussion to the contrary, a development rights and responsibilities agreement ("DRRA") may be of value in this situation since the State has sanctioned such agreements for the purpose of vesting development rights. Although one may argue that a DRRA may carry no more weight than an annexation agreement, the annexation agreement did not go through the formal requirements of a DRRA and was not created expressly for the purpose of vesting development rights. The DRRA could preserve the current County zoning unless and until the requested zoning, growth allocation and subdivision approvals, consistent with the plan that was present to the Town for annexation and growth allocation approval, are granted by the Town and consented to by the County. The amendment to the annexation agreement could provide that if the upon the approval of all such land-use approvals the Strausburgs will relinquish their rights to the present zoning of their land and will grant the perpetual easement.

Based on my exposure to the Strausburgs, it appears that they have the time to wait and see how this power struggle plays out. Through the mechanism of an amendment to the annexation agreement it appears to me that we might improve their position so that the County is

more inclined to step aside and allow the award of growth allocation.

I will await your consideration and response.

Very Truly Yours,

H. Michael Hickson

HMH/

cc: Cheril S. Thomas, Town Manager

F:\A\HMH\StMic\CHARTER\Annex 2003 Strausburg\Annexation Agreement Amendment\Ltr01 Thompson - hmh re Strausburg amendment to annexation agreement.doc

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
05 DEC 14 PM 12 05 DJ

TALBOT COUNTY, MARYLAND	:	
Plaintiff	:	
v.	:	
DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION, et al.	:	Civil Action No. 2-C-04-005[illegible]
	:	
Defendants	:	
	:	

TALBOT COUNTY'S OPPOSITION TO ST. MICHAELS' AND OXFORD'S MOTIONS FOR SUMMARY JUDGMENT

Talbot County, Maryland, by and through ALLEN, KARPINSKI, BRYANT & KARP, DANIEL KARP and VICTORIA M. SHEARER, and MICHAEL L. PULLEN, Talbot County Attorney, its attorneys, submits the instant Opposition to St. Michaels' and Oxford's motions for summary judgment.

INTRODUCTION

Talbot County has already filed its own Motion for Summary Judgment in this case, which sets forth the pertinent background and facts of this case. Talbot County therefore adopts and incorporates herein its Motion for Summary Judgment, as if fully set forth.

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND	:	
Plaintiff	:	
v.	:	
DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION, et al.	:	Civil Action No. 2-C-04-005095 DJ
Defendants	:	

TALBOT COUNTY'S OPPOSITION TO ST. MICHAELS' AND OXFORD'S MOTIONS FOR SUMMARY JUDGMENT

Talbot County, Maryland, by and through ALLEN, KARPINSKI, BRYANT & KARP, DANIEL KARP and VICTORIA M. SHEARER, and MICHAEL L. PULLEN, Talbot County Attorney, its attorneys, submits the instant Opposition to St. Michaels' and Oxford's motions for summary judgment.

INTRODUCTION

Talbot County has already filed its own Motion for Summary Judgment in this case, which sets forth the pertinent background and facts of this case. Talbot County therefore adopts and incorporates herein its Motion for Summary Judgment, as if fully set forth.

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

E. 1922

EXHIBIT

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

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

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

PUBLIC HEARING

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

BY THE COUNCIL

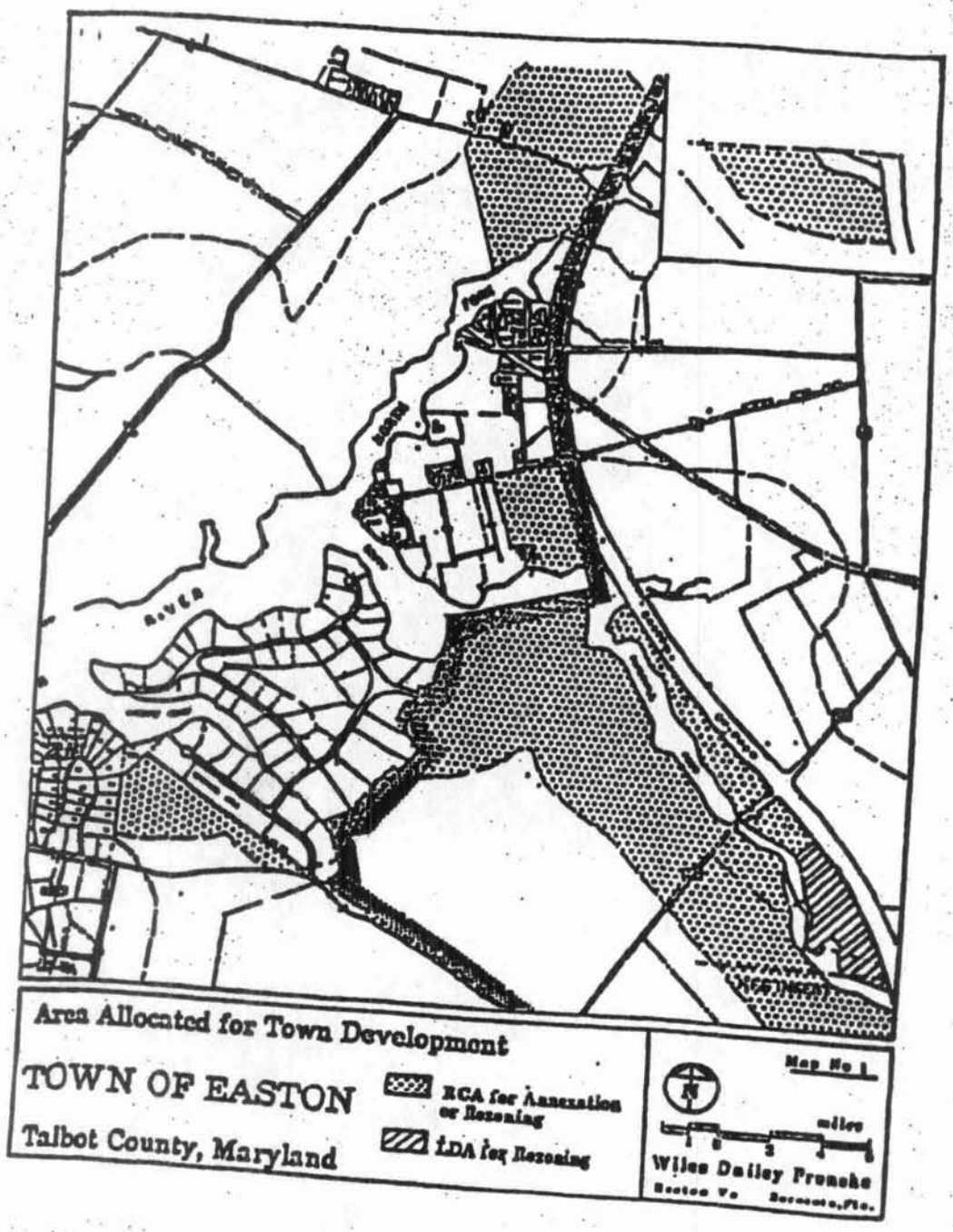
Read the third time.

ENACTED December 23, 2003*
AS AMENDED

By Order _____
Secretary

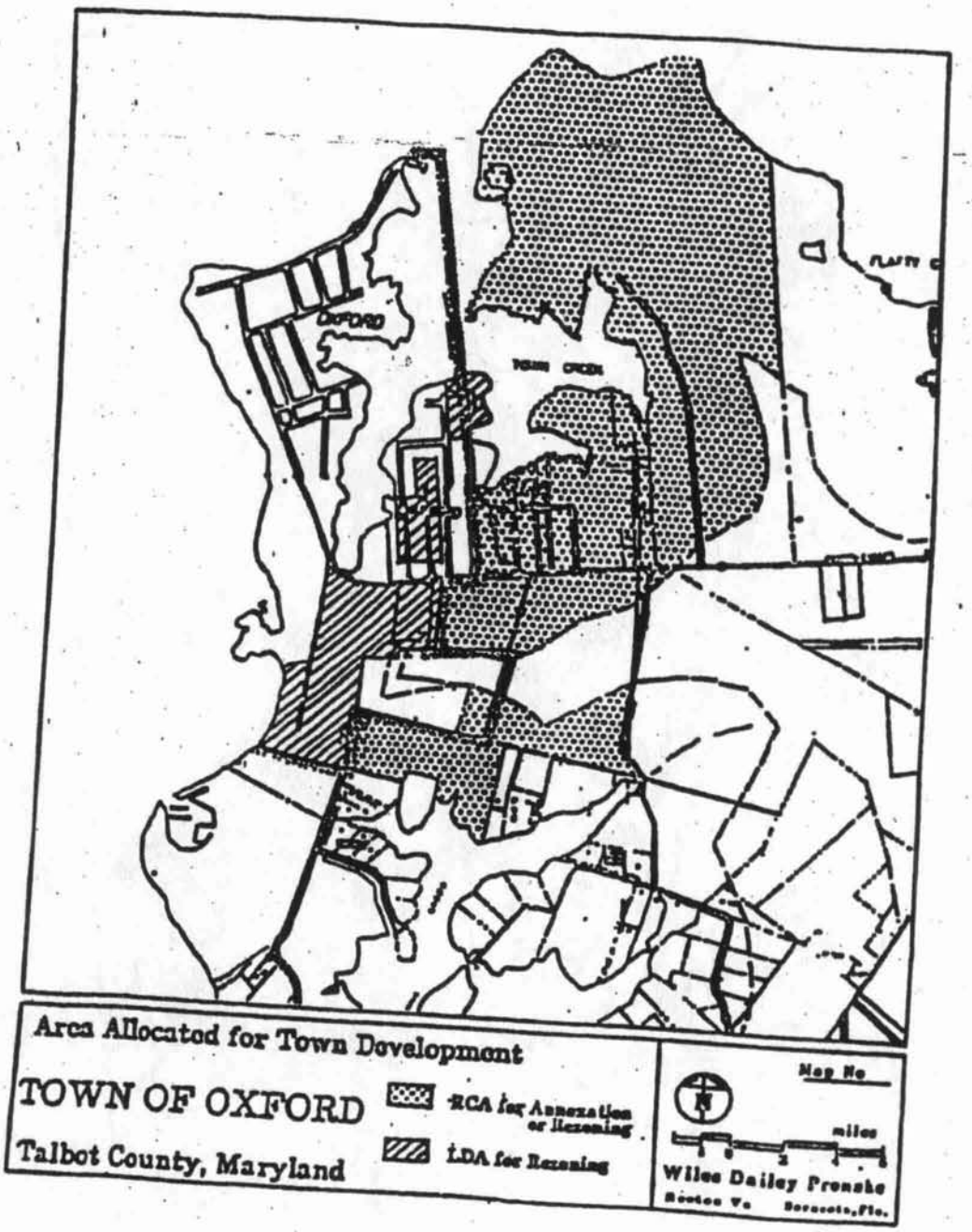
Foster – Nay
Duncan – Aye
Harrington – Aye
Spence – Aye
Carroll - Aye

ZONING



E. 1930

ZONING


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

ZONING

E. 1932

1 CHRIS KEHOE: Thank you, Mr. Foster,
2 ladies and gentlemen. I'm here again as
3 attorney for the Town of Easton to express the
4 Town's support of bill 925. Mr. Stevens is
5 going to address you also. You're well aware
6 of the long history of this project and the
7 repeated hearings, both joint hearings that the
8 Town Council and County Council have had on
9 this, and I would again commend this bill as
10 another example of the Town and County working
11 cooperatively together to try to get things
12 accomplished to benefit the whole. I would be
13 happy to answer any questions, but again, it's
14 been a long afternoon and I think the position
15 of the town on this and the elected officials
16 of the Town is quite clear from the finding of
17 fact which I know you've all received copies
18 of.
19 MR. FOSTER: Thank you. Questions for
20 Mr. Kehoe. Hearing none, Mr. Stevens.
21 JOSEPH STEVENS: You've seen her many

EXHIBIT 2

Judge John C. North, II
Chairman

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
4. Nonconforming Structures

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:

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

E. 1934

EXHIBIT 3

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 shoreline.~~

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

Ehrlich, Jr.
Governor

Sr. 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.

E. 1938

0015

EXHIBIT 4

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

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

EXHIBIT 5

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; <u>underlining</u> 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(i) 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.

MEETING OF A PANEL

OF

THE STATE OF MARYLAND

CRITICAL AREA COMMISSION

FOR THE

CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: May 5, 2004 (Meeting No. 2)

Time: 10:15 a.m.

Location: Department of Housing and

Community Development,

Crownsville, Maryland

Reported by: Linda A. Crockett

EXHIBIT 6

MEMBERS OF THE PANEL:

Gary Setzer, Chair
Judith Evans
Joseph Jackson
Edwin Richards
David Blazer

Marianne Mason, Assistant Attorney General

P R O C E E D I N G S

CHAIRMAN SETZER: We'll convene this discussion by the hearing panel. Sitting on the panel is Judith Evans, Joe Jackson, Ed Richards and Davis Blazer. The three issues that we have before us all relate to the town of St. Michael's, ordinance 304, changes in zoning and critical area map amendment procedures; resolution 2003-06 which deals with the annexation of Miles Point property; and then we have growth allocation request for Miles Point III.

Much like the previous discussion I think two out of three proposals we could probably dispose of quickly. So why don't we move to ordinance Number 304 which deals with the text changes and I'll open it up for discussion. Do you want to summarize your staff report?

MS. HOERGER: There are two basic changes with ordinance 304. One is to amend some procedures in the town's critical area program with respect to eliminating duplication of amendment processes. For example, when an applicant would come before the town for growth allocation, the commissioners would award that and they would come back a second time to change the actual physical town map. So the town has changed that so that it is one process instead of two.

The second change involves the correction of the order that the town commissioners and this Commission review text and map amendments affecting the critical area. This process was corrected for growth allocation reviews in 1999. And now they're correcting the other types of processes so that, again, the order would be town commissioner vote and then it comes to the Commission for review. And that's essentially it.

CHAIRMAN SETZER: Any discussion? Do I have a motion?

MR. BLAZER: I move that we accept 304.

MS. EVANS: I second.

CHAIRMAN SETZER: Any discussion? All those in favor say aye.

(All said aye.)

CHAIRMAN SETZER: No opposition. 304 is approved.

The second issue on the agenda is the resolution 2003-06. Could you please summarize?

MS. HOERGER: We have a map up here which is essentially for the next item of discussion. This will show the annexation piece, the Miles Point Property, LLC was annexed into the town, this area, the upland portion is 17.136 acres. They have annexed a total of 42 acres which includes some lands of the bed of the Miles River, and the reason for that is the town has a board of port ordinance and a water management ordinance, so they have some jurisdiction to annex land under state waters, so that's why you'll see that number in your staff report. It

1 has come into the town as a resource conservation
2 area and will remain as a resource conservation
3 area.
4 CHAIRMAN SETZER: Discussion? A motion?
5 MR. BLAZER: I have a motion that we
6 approve.
7 MR. JACKSON: Second.
8 CHAIRMAN SETZER: All those in favor say
9 aye.
10 (All said aye.)
11 CHAIRMAN SETZER: No opposition.
12 The third issue on the agenda has to do
13 with Miles Point III growth allocation. I'll
14 turn to Lisa to summarize.
15 MS. OWENS: I'm doing this one. This
16 project involves the use and growth allocation by
17 the town of St. Michael's of 70.863 acres to
18 change the critical area designation from RCA to
19 IDA. That's the conceptual plan for the project.
20 Essentially the property is undeveloped. It's
21 been used for agriculture. It's basically a

1 fairly level open field with a few, a little bit
2 of fringe of trees in the buffer. The town is
3 proposing to deduct the entire acreage of the
4 parcel located on the east side of Maryland 33.
5 There is a portion of property located on the --
6 for this project.
7 Just to summarize a little bit. I'm
8 just going to walk you through my staff report.
9 The Commission has several standards of review.
10 They are primarily looking at the goals of the
11 critical area program to minimize adverse impacts
12 on water quality, to conserve fish, wildlife,
13 plant habitat, and establish land use policies
14 for development in the Critical Area but also
15 address the fact that even if pollution is
16 controlled, the number, movement and activities
17 of people in the area can create adverse
18 environmental impacts.
19 To summarize the panel's discussion
20 broken down into several categories. The most
21 time was the discussion about protecting habitat

1 and water quality. And the COMAR provides some
2 guidelines for growth allocation that basically
3 talk about minimizing impacts to habitat
4 protection areas. There are two habitat
5 protection areas on the site. One is the
6 100-foot buffer and the other is the water
7 conservation area. I'm going to turn it over to
8 Claudia to talk about that. The next goal is to
9 minimize the impact of the defined land use of
10 the RCA; and the third is that new IDA and LDA
11 located in RCA should be located at least 300
12 feet beyond the landward edge of tidal wetlands
13 or tidal waters. Again, these are guidelines.
14 I think important points of the
15 discussion had to do with the fact that this is
16 going to be a fairly intense development of this
17 site. There will be 280 new dwelling units, an
18 inn, and also the buffer is proposed to be used
19 by the town as a park. So most of the site is
20 going to be developed. Impervious surface levels
21 are going to increase from 0 percent to roughly

1 35 percent. There are going to be dramatic
2 changes in water quality. And the primary ways
3 that impacts to the water quality are going to be
4 addressed is the agricultural use of the property
5 is going to cease, stormwater management is going
6 to be provided, and forested buffers will be
7 established.
8 There has been a lot of discussion about
9 the forested buffer. The width has been an
10 issue, whether it's going to be 100 or 300 feet,
11 whatever. Also the project involves the creation
12 of a marsh for shore erosion control. Sometimes
13 there can be some conflicts created by trying to
14 establish a forest buffer, there's some balancing
15 that needs to go in there. The town has viewed
16 the fact that they are providing the marsh as
17 being sort of a trade-off, they don't need to
18 provide the 300-foot setback because they're
19 going to be providing this area of marsh.
20 There was also a lot of discussion about
21 the use of the 100-foot buffer that is proposed

1 in the project as a park. The town proposes
2 there will be gathering areas used for concerts
3 and potentially other civic events. We don't
4 have any details for the park yet. We do believe
5 that because there's not a lot of publicly owned
6 land in the town of St. Michael's and not a lot
7 of waterfront that it would be used heavily and
8 quite frequently.
9 The 300-foot setback was talked about
10 quite a bit. I'm on Page 4 now, some of the
11 points sort of summarized and broken down into
12 six points, things that were discussed about the
13 purpose of the 300-foot setback: Providing a
14 buffer between areas of intense human activity.
15 To potentially provide some type of wildlife
16 corridor system on the property. To provide
17 protection to the waterfowl staging and
18 concentration areas located in the Miles River.
19 The 300-foot setback also can have the effect of
20 reducing overall impervious surface area
21 associated with the project and the volume of

1 waterfront be outside the fall and wintering
2 period for these species. He recommends that
3 bulkheading not be done, to keep it as natural as
4 possible, either marsh grass and/or stone. He
5 also recommends that setbacks for building
6 construction, walkways, et cetera be put back as
7 far as possible or screening of plantings to
8 minimize the activities.
9 I did not get to follow up with Barry to
10 see what he felt as far as marsh creation. The
11 forest buffer for waterfowl, although he did say
12 that springing was recommended. I did talk to
13 Stan Causey at the Department of the Environment
14 and he said he has already issued several years
15 ago a permit for riprap along the shoreline and
16 he hasn't seen an application yet for marsh
17 creation, but he didn't feel like it was the best
18 candidate.
19 I also looked at an article that was
20 done by Fish and Wildlife Service as well as the
21 U.S. Forest Service Chesapeake Bay Program. In

1 stormwater, and it also increases the areas
2 available for infiltration -- provides for
3 recharge. If you minimize the effects of
4 shoreline erosion by basically providing a wider
5 area in which to deal with erosion control. And
6 then providing an area of sufficient size and
7 width to accommodate both the resource protection
8 benefits of the buffer and accommodate the
9 recreational needs of the town.
10 With that I was hoping that maybe
11 Claudia could talk a little bit about the
12 waterfowl concentration areas.
13 MS. JONES: We got some comments from
14 Larry Heinman from the Department of Natural
15 Resources. And he says it's used by large
16 numbers of wintering Atlantic Canada geese,
17 canbusbacks (phonetic), tundra swans, golden eye,
18 (inaudible) and mallards. Two of the species,
19 canbusbacks and tundra swans, are in decline in
20 the Maryland portion of the bay. He recommends
21 that any proposed construction along the

1 1995, and they talk about discouraging people
2 from a full scale shift to marsh creation versus
3 a forested shoreline saying that most of the
4 research has been done and it's undisputed how
5 valuable large areas of salt marsh are to aquatic
6 life.
7 However, when they did sampling along
8 fringe marshes versus forested shorelines, they
9 found a lot more use by aquatic species along the
10 forested shorelines versus a forested buffer
11 where you had some debris that provided hiding
12 areas for aquatic species, fish and crabs.
13 MS. MASON: Just to follow up on
14 something Claudia said, the record that the town
15 submitted at the public hearing included a number
16 of boxes which I think are over there on that
17 hand cart. And we have gone through these and in
18 those boxes there were documents referencing the
19 applications for riprap permits, just to follow
20 up. That's somewhere in one of those boxes. The
21 excerpts were provided, anything that was

1 relevant to the Commission's review, excluding
2 traffic, volume of cars, things like that were
3 provided to the panel.
4 MS. OWENS: Page 6, the next thing that
5 was discussed was wildlife habitat and corridors.
6 That site certainly is used by wildlife, even
7 though it may not be the typical thing we
8 envision, since it's basically an open field. It
9 certainly is a goal to provide for the habitat.
10 That's why we've established the buffer and try
11 to provide vegetative corridor wherever possible.
12 There was some discussion about the various areas
13 where stormwater management is proposed. And
14 there are actually four of them. What's proposed
15 is here, here, here, and here. And the idea of
16 possibly working that stormwater quality
17 management and ponding management into some type
18 of habitat areas as well through (inaudible).
19 The next issue that was discussed was
20 shoreline access and buffer management. As I
21 said earlier, the 100-foot buffer on the project

1 as proposed is supposed to be dedicated to the
2 town for use as a town park. We do know they
3 plan to use the area for walkways and gathering
4 areas. We do not know too much else about that.
5 We don't have a detailed plan of the area as of
6 yet.
7 Certainly in the past the Commission has
8 requested -- required that a Buffer Management
9 Plan be submitted for review and approval by the
10 Commission at a later date and that may be
11 something to contemplate on this because we don't
12 know a lot yet about what's going to happen.
13 Stormwater management, just touched on
14 that before, areas that are proposed to be
15 provided. They have performed preliminary
16 calculations based on their conceptual plan and
17 believe that volume and runoff of stormwater can
18 be controlled and they can meet the 10 percent
19 reduction requirement.
20 All of this is subject to them getting
21 more detailed soil information once they know

1 more about impervious surface area. It does look
2 feasible that they would be able to provide all
3 the necessaries for water management on site.
4 Shore erosion control, we talked about
5 that. Their proposal at the moment is implement
6 a marsh creation program and a structural
7 element, which is a sill basically to protect the
8 marsh. There was a lot of discussion about
9 shading of the grasses. Certainly that's
10 something, if they're shaded and don't get
11 sufficiently established, they don't do as good a
12 job at protecting the shore. Most of you were
13 out on the site, you saw how severely it's
14 eroded. Even in the two times Lisa was there she
15 felt there was more erosion.
16 MS. MASON: Can I add something on that
17 too? There was information that was provided to
18 the panel from the town indicating that the
19 erosion was somewhere at the rate of 3 feet per
20 year.
21 MS. OWENS: Which based on our

1 definition is considered significantly eroding.
2 What I think we're not clear on yet is whether if
3 we're trying to establish a forested buffer and
4 also providing a marsh creation, we want to be
5 successful at what distance would forest
6 vegetation need to be set back from the edge of
7 the bank in order to not shade the grass. We
8 haven't quite gotten a definitive answer on that.
9 The last issue that was discussed was
10 wastewater treatment. There were some concerns
11 about wastewater treatment problems in St.
12 Michael's and the limitation of their plan.
13 Based on the information that we were provided at
14 the last panel meeting, it was our understanding
15 that the plan is to be substantially upgraded
16 prior to any of the structures that are proposing
17 to be built on the site to be connected to it.
18 MDE is the kind of watchdog agency ensuring that
19 that is adequate. We believe they have the
20 measures in place and the conditions placed by
21 the town council to do that. That's basically

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it.

CHAIRMAN SETZER: Any questions?

MR. BLAIER: This I guess goes back to the permit for the shoreline, that was not for the wetland creation, that was only to stabilize the shoreline.

MS. JONES: That's my understanding.

MR. BLAIER: We're still looking at basically the same area?

MS. JONES: Yes.

CHAIRMAN SETZER: In terms of my review of the request there are several issues. One has to do with the buffer and the use of a 100-foot buffer in lieu of a 300-foot buffer and the suggestion that that distance may preserve improvement compensated by marsh creation. Based on the review from staff as well as information the -- the success of marsh creation on the shoreline significantly (inaudible).

I don't know that in terms of water quality benefits that we want to sacrifice a lesser buffer for a highly engineered marsh creation, so I think I personally would like to have us discuss implementing a larger buffer. The criteria is looking at a 300-foot buffer.

MR. SEREY: The criteria do not -- the guidelines does not call for a 300-foot buffer. It's a 300-foot setback between the new growth allocation and the tidal waters, and I think the idea behind that is not necessarily to achieve a 300-foot area with the exact same buffer functions that you would get from a 100-foot buffer, but to have that 100-foot buffer and these functions associated with it and then an additional setback. It's not a 100 versus a 300.

CHAIRMAN SETZER: So the 100-foot buffer would be what we would be looking for highly vegetated establishing some habitat value on site and taking this discussion one step further, based on the use by the town of that area for public use, public functions, we need to look at what types of restrictions the Commission wants to look at in terms of the town's use of that area.

MS. MASON: You have a criteria that does encourage public access to the waterfront. You need to keep that in mind as well. Something else on the plan and in the information provided to the panel, and I believe it was pointed out in the public hearing, although I'm not sure. The developer has proposed more than a 100-foot buffer in some places up there, perhaps even substantially more. Some of the line goes into the stormwater management which the Commission has in the past found that's not permitted to be in the buffer. So it really can't be counted as part of the buffer area.

Nonetheless, if you look carefully where the line is there is a provision -- in other words, it's not a static line. So when you're discussing that issue you need to be aware of the fluctuation in the setback, which it could change based on where it's measured from. I don't recall seeing any information as to when the line on the plan -- where it was drawn from and if the shoreline is eroding, that could make a difference.

MR. SEREY: My understanding is that the line from which the buffers and setbacks are measured was taken in November of last year, about seven months old. That's my understanding.

CHAIRMAN SETZER: The other issue that is of concern for me has to do with the treatment of stormwater on site, the proposal at this point is conceptual and certainly takes advantage of surface control techniques in terms of dealing with quantity and quality. Personally, I would like to see at least an attempt to use more of the environmental sensitive techniques, and some other opportunities, at least keep them in reserve until you find out what the soils are on site and whether they're applicable before going to the surface water treatment system. We already touched on the shore erosion.

1 Personally I don't want to discourage
2 the creation of marsh along the shoreline, but
3 then again, the use of that shoreline is more
4 appropriate for a buffer than a marsh creation
5 project. That might be something to consider
6 whether the investment in the structural marsh
7 system is worthwhile. I guess at the exclusion
8 of other --
9 MR. JACKSON: If it's highly engineered
10 that usually means high maintenance. Is that
11 true, Claudia?
12 MS. JONES: Not necessarily. Gary might
13 be better to answer this. If it's engineered
14 properly then they shouldn't have to maintain too
15 much. If they do it right, correctly.
16 CHAIRMAN SETZER: I think it can be
17 done. When MDE was out on site Claudia spoke
18 with them and that's when the project, shore
19 erosion, marsh creation really even looked into
20 that process. His position is that it was part
21 of the department's charge and it's also within a

1 period where -- we looked at no treatment, marsh
2 creation and -- you go out on site, they're
3 looking at the site again. That's not to say I
4 necessarily want to discourage marsh creation.
5 MS. JONES: But it's telling that there
6 was one little patch where it looked like there
7 was some kind of marsh grass growing along the
8 shoreline maybe about this wide and the rest of
9 it was just sand. So it's not happening
10 naturally, although it might be something for
11 them to consider doing marsh creation on one side
12 and riprap on the other. I don't think the marsh
13 creation should be traded for buffer.
14 MR. BLAZER: The permit for the riprap
15 is actually only on the point out front. It
16 stops where the property line exists. So if you
17 look at the map, the point that's furthest east,
18 I guess, right, from there all of the way north
19 and around, to that is all permit for the riprap.
20 That lower section is not part of this permit.
21 There might be a second permit.

1 CHAIRMAN SETZER: What I would like to
2 do, if you all agree, is because there are a lot
3 of issues that kind of are swirling around, to
4 close the meeting and have an opportunity to
5 discuss some of these issues with counsel and
6 determine whether or not --
7 MR. RICHARDS: The legal process.
8 CHAIRMAN SETZER: The legal process. We
9 can close the meeting to consult with counsel and
10 take legal advice. So I would like to close the
11 meeting to consult with counsel to obtain legal
12 advice under the applicable sections of the
13 applicable area of law, to consult with counsel
14 to obtain legal advice in the context of
15 recommending Commission action on the growth
16 allocation, to consult with counsel to obtain
17 legal advice on the interplay between this
18 proposed program and the amendment on the 933,
19 and to consult with counsel to obtain legal
20 advice.
21 MR. BLAZER: I make a motion that we go

1 into closed session.
2 MR. JACKSON: Second.
3 CHAIRMAN SETZER: All those in favor?
4 (All said aye.)
5 CHAIRMAN SETZER: To summarize our
6 discussion, the issues that have jumped out at me
7 in terms of considering the -- open for
8 discussion.
9 MR. BLAZER: I think we were talking
10 before about the 300-foot buffer. I think one of
11 the concerns that the shore erosion issue is kind
12 of a moot point. We see that as something we
13 need to deliberate. A 300-foot buffer in my
14 eyes --
15 MS. MASON: Setback in the criteria,
16 that setback?
17 MR. BLAZER: No. I think my issue with
18 that directly is the amount of impervious surface
19 that you need to have a 300-foot setback because
20 of the habitat and the criteria that's laid out
21 for water quality habitat considerations would be

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1 more in line with the goals of the program.
2 I think my other point was I'm looking
3 at it from that perspective as opposed to the
4 trade-off that's recommended within the proposal.
5 I think our purviews are looking at water quality
6 and habitat issues, the 300-foot buffer would be
7 more adequate. Especially my concerns with
8 impervious surface, going from 0 to 30 or 60
9 percent I think the number was, than the argument
10 laid out in the proposal about marsh creation.
11 That is something to me that is a little bit
12 different.
13 CHAIRMAN SETZER: I think with the marsh
14 creation, MDE went out, to advance that to a
15 vegetated shoreline which certainly is viable to
16 protect the shoreline. I think the concern for
17 us is, and we heard this in some of the
18 discussion previously, is whether or not we can
19 use that as a trade-off to adjust the buffer and
20 setback. That's what we need to focus on.
21 MR. RICHARDS: In addition to the

1 environmental issues, I would like to raise a
2 procedural issue as far as the 300-foot setback
3 is concerned. The attorneys are going to go
4 berserk. As a layman I have my own definitions
5 of what shall or should be. And basically I
6 think in the regulations that we're working from
7 we have a should reinforce by and shall use and
8 shall use as the guideline shall be used and it
9 says there should be a 300-foot setback. My
10 layman's definition says that shall is stronger
11 than should. But when they're used together it
12 says should means that there will be a 300-foot
13 setback unless there are very compelling reasons
14 why they cannot have the 300-foot setback or that
15 a 300-foot setback would work against the intent
16 of the law.
17 And the three reasons the town gave for
18 not requiring a 300-foot setback did not meet my
19 standards. And I do not know of any compelling
20 reason why there cannot be a 300-foot setback.
21 And I do not feel a 300-foot setback would work

1 against the intent of the law. So I think
2 procedurally, I do not think the town met the
3 requirements of the regulations. They did not
4 take appropriate considerations to the guidelines
5 300-foot setback.
6 Now all the lawyers can write me a
7 letter and fax me all the stuff to tell me it's
8 wrong.
9 MR. BLAIER: My issue about impervious
10 surface, I think the design of the development,
11 trying to use cluster development, trying to use
12 new urban techniques, it's been at the expense of
13 open space and at the expense of what should be a
14 better buffer. You know, they have got their
15 density; they have got the site design, but open
16 space requirements really aren't there. And the
17 buffer, looking at water quality and habitat
18 considerations, I think in this case is very
19 appropriate.
20 CHAIRMAN SETZER: A buffer, the statute
21 or regulations will provide that with land use

1 changes from agricultural use to -- that the
2 buffer has to be established. And it's not just
3 a vegetative buffer. It says forest and
4 vegetation needs to be established. So there's a
5 number of opportunities to point to in the
6 statute that directly concentrate on providing an
7 adequate buffer with the habitat and water
8 quality considerations.
9 MR. RICHARDS: I think another argument
10 in addition to the environmental. Basically
11 dealing with growth allocation, the stipulation
12 we're accommodating growth which we're required
13 to do. However, even if pollution is controlled,
14 we have to take into consideration that people
15 create adverse environmental impacts, and
16 essentially the 300-foot setback is to protect
17 the water from us, not just the stormwater, not
18 just the runoff, not just the other problems, but
19 basically us walking there, driving there create
20 problems.
21 One way to mitigate that is to keep the

1 problem 300 feet away from the water. That's why
2 I believe that should is a very strong indication
3 of what we should be doing.
4 CHAIRMAN SETZER: Not to solely
5 concentrate on the environment issues that relate
6 to water quality and habitat and as it relates to
7 both the setback and buffer, one of the other
8 issues that the Commission needs to address is
9 giving the public an opportunity to reach the
10 water and enjoy the water. So while I think we
11 all kind of agree that we need to deal with both
12 the reestablishment of a 100-foot buffer and
13 perhaps a larger setback than what's being
14 proposed by the development, in that same context
15 we also need to provide an opportunity for public
16 access, and somehow there needs to be that
17 balance between buffer setback and public access
18 to the water. We need to be able to accomplish
19 all these objectives.
20 MR. BLAZER: Would that be incorporated
21 into a Buffer Management Plan? I mean, it's not

1 that specific that we'd have to agree to today.
2 But I think making some condition we need a
3 Buffer Management Plan.
4 MS. OWENS: We could acknowledge that
5 the plan would have public access.
6 MR. BLAZER: And it needs to come back
7 to the Commission.
8 CHAIRMAN SETZER: Under that Buffer
9 Management Plan you could address not only the
10 100-foot buffer but an adequate setback.
11 MS. OWENS: Yes, as we could do it in
12 two conditions. It would have one that talks
13 about providing a 300-foot setback and one that
14 talks about establishing a buffer as required by
15 the criteria. I guess if the 300-foot setback
16 exists, we have the public access in the 200 feet
17 that aren't forest.
18 MR. RICHARDS: I think they're two
19 different issues. The 200 feet we're talking
20 about passive recreation, that should be
21 available for passive recreation. I think the

1 problems with this is since there's no provision
2 for a forested buffer, I think 100 feet is what
3 in the management plan talk about what part is
4 going to be forested and how it's going to be
5 forested and what provisions will be there for
6 public access. Part of the issue with
7 accommodating growth is being able to use the
8 bay. I think that's been an issue and I think
9 that has to be addressed.
10 CHAIRMAN SETZER: Any further
11 discussion?
12 MS. OWENS: What about stormwater
13 management?
14 MR. RICHARDS: I'll approach it from
15 another standpoint, Greg. I would defer to you
16 because I've had to deal with water plans, but I
17 don't like them. I think one of the issues that
18 I have is a conflict in looking at this
19 development, I think it is an appropriate site
20 for development. I think the cluster or
21 traditional town approach they have used is very

1 appropriate. However, I think that by using it
2 it requires us to go from a more controlled
3 growth under a limited development area to an
4 IDA. And I have some problems with that because
5 the LDA has some criteria that are weighed
6 because we're going by the IDA. I recognize that
7 if you stay with the LDA, you can't stay with the
8 cluster. But I think there are a lot of
9 advantages to some of the criteria in the LDA,
10 which I don't know whether it's appropriate for
11 us to talk about these.
12 But I think some of the issues have
13 already been raised and I think most of them
14 addressed the stormwater problem. One is the
15 restriction on impervious surfaces and, you know,
16 whether or not that could be applied, I don't
17 know. But I think it should at least be used as
18 the basis for evaluating the proposal and who
19 would evaluate it, would it be the town or us, I
20 don't know.
21 Another one is forestation. I have a

1 problem with the less trees than we had before
2 and there are provisions for that. One of the
3 things that I think the guidelines should be is
4 the cap on the number of units in an LDA which I
5 look at about 212, which I don't think is
6 necessarily hard and fast. But I think as a
7 planning guide that gives us a good instrument to
8 look at. The difference between the impact of an
9 LDA and IDA and I think all of this needs to be
10 looked at by someone and I don't know who that
11 someone is.
12 But anyway, going back to the issue of
13 stormwater. I don't like to deal with stormwater,
14 if you went back to some of these LDA standards,
15 you would reduce the problems for the stormwater
16 management engineering because you'll reduce the
17 runoff and the speed of runoff.
18 I don't know how to approach those, but
19 they're certainly concerns that came up in my
20 mind when I was looking through all of the
21 material. And I just had to throw it out on the

1 of issues and I think the question of LDA versus
2 IDA is one that I would advise that it's not in
3 our ball court.
4 MR. RICHARDS: I think it has to stay
5 IDA.
6 MS. MASON: But even in terms of
7 applying that --
8 MR. RICHARDS: I thought you were going
9 to say that.
10 CHAIRMAN SETZER: As far as Mary's staff
11 report. I think she indicated that at least
12 conceptually a way to treat stormwater would
13 address critical area requirements in terms of --
14 I guess from my perspective the only thing that I
15 would like to see on the stormwater side is that
16 at this early juncture in the design of the
17 project, that we will close the door on other
18 best management practices that may be -- we may
19 have a better opportunity in terms of filtration
20 or other types of best management practices as
21 opposed to dis -- I'd just as soon keep it very

1 table. Sorry.
2 MS. MASON: I think that the decision as
3 to whether the town -- whether to request growth
4 allocation to go from RCA to LDA or RCA to IDA is
5 within the town's purview. The town decided they
6 wanted to and that's how the Commission needs to
7 consider it. I think within that set of facts
8 that you have, that the town has requested IDA, I
9 think the Commission would be straying from its
10 statutoried and regulatory home if it were to
11 say, well, we think this should be LDA instead of
12 IDA. My advice is you need to take it as it is,
13 that is IDA.
14 But that said, the criteria that you all
15 have discussed regarding the conversion of
16 agriculture uses to other uses apply equally.
17 The protection of the habitat, waterfowl staging
18 areas, the number, use and activities of people
19 in the buffer, the wildlife and habitat benefits
20 of a larger setback would apply.
21 So I think you've been discussing lots

1 general and just make that that all opportunities
2 are investigated in terms of using best
3 management practices before jumping to surface
4 water treatment. Discussion?
5 MS. OWENS: Do you want to see that
6 stormwater plan similar to -- you've done that
7 before on other projects?
8 CHAIRMAN SETZER: I think North Bay is
9 an excellent example. We had a very conceptual
10 stormwater proposal and the Commission worked
11 very closely -- at that -- with that particular
12 project because it was a state project, we were
13 able to work with MDE and move forward in terms
14 of stormwater management. The Commission's
15 staff -- I think they have a -- work with staff
16 and the Commission to come up with stormwater
17 treatment.
18 Discussion. Does anyone want to venture
19 on a motion, a discussion here?
20 MR. RICHARDS: I move that we approve
21 Miles Point with those conditions. And you'll

1 have to help me with the wording, 300-foot
2 setback, 100-foot buffer management that allows
3 planting of trees and public access to the water
4 and a condition that -- stormwater, whatever Greg
5 just said.
6 MR. BLAIER: Encourage the use of best
7 management.
8 MR. RICHARDS: And it comes back for
9 review. Any other conditions anybody wants to
10 throw in?
11 CHAIRMAN SETZER: I think we want those
12 to come back not just for review, but also
13 approval.
14 MR. BLAIER: Did the Buffer Management
15 Plan get incorporated or is that a separate
16 condition?
17 MR. RICHARDS: I put it in as one
18 condition. But you can put it in as two separate
19 conditions. Two conditions, one that there be a
20 300-foot setback allowing for passage,
21 recreation -- 200 feet beyond the 100-foot

1 forested buffer, and two, there be a forested
2 buffer with a management plan that would allow
3 for public access. That's three conditions, I
4 think.
5 CHAIRMAN SETZER: In terms of developing
6 the buffer management plan and the stormwater
7 plan, work with both the Commission and the
8 Commission staff to address those issues and to
9 bring that result back to the Commission for
10 approval.
11 MS. OWENS: The plans, the buffer and
12 stormwater.
13 MR. SEREY: Do you want us to verify our
14 understanding that the buffer and any setbacks
15 are being measured from a line set last November,
16 and if so, do you have any further question about
17 that?
18 MS. OWENS: Shouldn't it be whatever the
19 existing shoreline is when they do the project?
20 MR. RICHARDS: 100 feet through the
21 isting shoreline.

1 MR. JACKSON: If we have another Isabel
2 come through you don't know where the shoreline
3 will be.
4 MR. RICHARDS: So moved.
5 MR. BLAIER: I'll second.
6 CHAIRMAN SETZER: As part of the
7 discussion, why don't we ask Rea or Mary who are
8 taking copious notes to read back the motion.
9 MS. OWENS: The conditions are that the
10 project will include a 300-foot setback, that is
11 include a 100-foot forested buffer that includes
12 provisions for public access, that a Buffer
13 Management Plan be developed, and that they work
14 with both the Commission and Commission staff on
15 the development to be submitted for approval by
16 the Commission, that a stormwater management plan
17 be developed that explores all options for
18 infiltration and buyer retention and that that
19 plan, that they work on that with the Commission
20 and Commission's staff and that it be brought
21 back to the Commission for approval.

1 CHAIRMAN SETZER: Discussion?
2 MR. SEREY: There was one other element
3 that Ed had mentioned about passive recreation
4 and the 300-foot setback.
5 MS. MASON: And the measurement?
6 MR. SEREY: I've got that.
7 CHAIRMAN SETZER: Can we take a play off
8 this morning and move it as a conditional
9 approval with final vote coming after staff has
10 had an opportunity to put the final motion
11 together?
12 MS. MASON: Before the 1:00 meeting?
13 CHAIRMAN SETZER: Yes. Further
14 discussion? All those in favor?
15 (All said aye.)
16 CHAIRMAN SETZER: No opposition.
17 Approved.
18 (Proceedings concluded.)
19
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21

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1 STATE OF MARYLAND SS:

2 I, LINDA A. CROCKETT, a Notary Public of the

3 State of Maryland, do hereby certify that these

4 proceedings took place before me at the time and

5 place herein set out, and the proceedings were

6 recorded stenographically by me and this

7 transcript is a true record of the proceedings.

8 I further certify that I am not of counsel to

9 any of the parties nor an employee of counsel nor

10 related to any of the parties nor in any way

11 interested in the outcome of this action.

12

13 As witness my hand and notarial seal this 8th

14 day of June, 2004.

15

16 My commission expires

17 December 1, 2004 Notary Public

18

19

20

21

MEETING OF A PANEL

OF

THE STATE OF MARYLAND

CRITICAL AREA COMMISSION

FOR THE

CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: May 5, 2004 (Meeting No. 3)

Time: 1:00 p.m.

Location: Department of Housing and

Community Development,

Crownsville, Maryland

Reported by: Linda A. Crockett

MEMBERS OF THE PANEL:

Martin G. Madden, Chair

Peggy G. Campbell

Ren Serey

Marianne Mason, Assistant Attorney General

Commission's authority in the context of taking action such as approval or denial on a program amendment for growth allocation. Seven, to consult with counsel to obtain legal advice on the meaning of Commission criteria COMAR 27.01.02.06A and B. This would be available in the minutes for the full meeting are available. Having made that motion, can I have a second?

COMMISSIONER: Second.

CHAIRMAN MADDEN: All in favor say aye.

(All said aye.)

(Recess.)

MS. HOERGER: You have a staff report titled town of St. Michael's ordinance Number 304, and attached to that is the actual bill that the town commissioners passed. It is correcting essentially two items in their existing critical area program. The first change has to do with eliminating a duplicative process for applicants who, for example, may be seeking a growth allocation request before the town commissioners

P R O C E E D I N G S

CHAIRMAN MADDEN: I'm asking us to go into a brief closed session. One, to consult with counsel to obtain legal advice on the applicable sections of the critical area law and criteria governing the Commission's deliberations. Two, consult on the applicability of other state laws, policies and regulations, including but not limited to planning and zoning. Three, to consult with counsel to seek legal advice whether the Commission should consider the effect of a program approved by the Commission; four, to consult with counsel to obtain legal advice on the interplay between Talbot County Bill 762 and Bill 933. Five, to consult with counsel to obtain legal advice on the interplay between the proposed amendments from St. Mary's and St. Michael's Miles Point III growth allocation. Six, to consult with counsel to obtain legal advice on the scope of the

receive that or not. But if they do, then they have to come back again to get the maps amended. The town is simply eliminating that duplication and when someone comes to the town commissioners for that it will only be one time.

The second change involves the correction of order in which things like text changes, map amendments are approved and adopted between the town commissioners and this Commission. The current town program is set up so that those changes come to this Commission first and then they go back to the town commissioners. The town has now changed that so the town commissioners first approve those types of changes and then they come to the Critical Area Commission. A couple of years ago that process was changed for growth allocation processes. That has already happened. This will fix the process for all these changes, including text changes.

That is the substance of Ordinance 304.

1 Chairman Madden appointed a five-member panel
2 which held a hearing in the town of St. Michael's
3 on April 1st. There were no substantive comments
4 on this ordinance. We did have some comments
5 from the town. That's all I have to report.
6 CHAIRMAN MADDEN: Any other comments?
7 Comments from the public?
8 MR. SETZER: The panel, as Lisa said,
9 discussed proposed ordinance and would like to
10 move before the entire Commission in accordance
11 with Lisa's staff report that ordinance 304 as
12 enacted by St. Michael's town commissioners which
13 amend growth allocation, zoning and critical area
14 map amendment procedures used by the town be
15 approved by the Commission.
16 We have a motion for approval. Do we
17 have a second?
18 MR. MASON: Second.
19 CHAIRMAN MADDEN: Any discussion? All
20 those in favor say aye?
21 (All say aye.)

1 CHAIRMAN MADDEN: Next we'll move to St.
2 Michael's annexation resolution 2003-06.
3 MS. HOERGER: The proposal is resolution
4 2003-06. I'm trying to do this so you all can
5 see it. I apologize if some of you can't. The
6 annexation request of the town of St. Michael's
7 is for 42.066 acres of land. 17 of these are
8 upland. The portion of the annexation on this
9 site plan is this area in green. This is the 17
10 acres of upland. The balance of that 46 acres
11 are the land that is under the Miles River. The
12 reason the town also annexed that area is because
13 they have a board of port ordinance and a
14 waterway management ordinance and they do have
15 the authority to annex state waters, in case
16 anyone had questions.
17 The critical area designation of the
18 annexation property as a resource conservation
19 area and as it was brought into the town, it will
20 remain as a resource conservation area. Chairman
21 Madden appointed a five-member panel to hear this

1 request. It was heard at the April 1st hearing.
2 There were no substantive public comments. Does
3 anyone have any questions?
4 CHAIRMAN MADDEN: Any questions for
5 Lisa? If not, I'll turn it over to panel chair.
6 MR. SETZER: Once again the panel
7 discussed the proposed resolution and would like
8 to recommend to the Commission that it approve
9 resolution 2003-06 adopted by St. Michael's town
10 commissioners which annexes the 42.066 acre Miles
11 Point LLC property into the town.
12 Is there a motion to approve resolution
13 2003-06. Is there a second?
14 COMMISSIONER: Second.
15 CHAIRMAN MADDEN: Any additional
16 comment? All those in favor say aye.
17 (All said aye.)
18 CHAIRMAN MADDEN: Motion is approved.
19 Thank you, Lisa.
20 Next we move to St. Michael's growth
21 allocation for Miles Point III in Talbot County.

1 Mary Owens will lead the panel discussion.
2 MS. OWENS: This next item is an
3 application from the town of St. Michael's to
4 award some growth allocation to the Miles Point
5 III project. This is a site map of the project.
6 Then we have a couple pictures of the site. So
7 Lisa is going to go through those and I'll just
8 quickly kind of show you the site while I talk
9 about the project. It involves the award of
10 70.863 acres of the growth allocation to change
11 the critical area designation from RCA to IDA.
12 It's proposed to be a residential development
13 involving 231 single-family units, 20 townhouses,
14 8 live and work units, an inn, and a public
15 waterfront park.
16 As I get into my presentation I'll talk
17 about the erosion on the shoreline. But this
18 shows a shot of the shoreline and some of the
19 erosion that's on the property. This is another
20 view of the property that shows that it currently
21 does not have a vegetated buffer. It was

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1 formerly farmed. So it's basically an open
2 field, fairly level. Shoreline varies. In some
3 places it's a little bit more of a cliff, maybe
4 seven or eight feet. Here it's about 2 or 3
5 feet. That's a view to across the project site
6 to an area of townhouses which is actually here
7 on the site plan. On this particular day the
8 tide was pretty far out so there is somewhat of a
9 sandy beach. But at a normal tide condition
10 there really isn't much of a beach there. It
11 shows a portion of the property that has been
12 protected already with a revetment.
13 Here again you can see the significant
14 erosion there. That's another shot basically of
15 the same view on a cloudier day. There isn't a
16 lot of vegetation on the edge of the shoreline
17 because a lot of it has eroded and fallen into
18 the water. Here's another shot of the shore.
19 This is looking across the project. It's
20 basically a field. There's not a whole lot of
21 vegetation. Again, another shot of the site, an

1 open field. That's basically it. It's fairly
2 straightforward. There's not a lot of vegetation
3 on the site.
4 There are two non-tidal wetland areas.
5 Essentially the project involves the use of the
6 growth allocation to change the critical area
7 designation from RCA to IDA. The property has a
8 long history, has undergone several revisions
9 over the years. It's been involved in extensive
10 litigation. But at this point the town has
11 submitted it to the Commission for approval. The
12 last revision involved this portion of the
13 property which was recently annexed was taken out
14 of the project.
15 The panel held a public hearing on
16 Thursday, April 1. It was well attended. There
17 was a lot of public comment on the issue and the
18 record was held open until Tuesday, April 13th.
19 We received a lot of public comment that was
20 provided to all of the panel members. The panel
21 met once after the public hearing and then met

1 again this morning to discuss this issue. Now
2 I'm going to summarize their discussions, some of
3 which took place at the earlier panel meeting
4 which took place today.
5 In reviewing this application, the
6 Commission was really looking at primarily the
7 goals of the critical area program, which are to
8 minimize adverse impacts on water quality that
9 result from pollutants; to conserve fish, plant
10 and wildlife habitat; and then to establish land
11 use policies that accommodate growth and also the
12 fact that just people in the critical area can
13 have adverse environmental impacts.
14 In analyzing this project and I think
15 making an effort to look at whether it was
16 appropriate to approve it or deny it or approve
17 it with conditions, the panel analyzed several
18 aspects of the project. The first had to do with
19 protection of habitat and water quality. In
20 terms of looking at how the criteria addressed
21 the use of growth allocation, there are really

1 three areas that they focused on, new IDA and LDA
2 areas should be located to minimize impacts to
3 habitat protection areas and optimize benefit to
4 water quality. On this particular site there are
5 two primary habitat protection areas which are
6 the 100-foot buffer and a waterfowl staging and
7 concentration area in the Miles River. New IDA
8 should also be located where they minimize their
9 impacts on defined land use of the RCA.
10 And then something that the panel spent
11 a lot of time discussing was that new IDA and LDA
12 in the RCA should be located at least 300 feet
13 beyond the edge of tidal waters. And that
14 300-feet setback issue was discussed extensively,
15 primarily because the panel believes that this
16 project involves a very intense development.
17 There will be a lot of units and a lot of new
18 residents that will be in the area, and that most
19 of the site is going to be developed. There
20 aren't a lot of open space areas, and the
21 importance of the setback to meet the goals of

1 the critical area program became really the
2 primary way that impacts could be minimized and
3 habitat could be protected.
4 Another issue involved dealing with
5 stormwater on the site and water quality.
6 Impervious area is going from approximately 0
7 percent as the site is currently undeveloped up
8 to approximately 33 percent, which includes
9 roads, rooftop areas, et cetera. The primary
10 ways that water quality will be addressed will be
11 agricultural use of the property is going to stop
12 so they will no longer be applying fertilizer.
13 They also will be proposing to treat all
14 stormwater on the site and they're proposing
15 essentially four areas where stormwater will be
16 addressed, here, here, here, and here.
17 The other way that stormwater quality
18 will be addressed is through the provision of
19 forestation of the 100-foot buffer. One of the
20 issues that the panel also talked about is how
21 the 100-foot buffer is proposed to be dedicated

1 to the town for use as a park. And the panel was
2 concerned about how the use of the park -- the
3 use of the 100-foot buffer as a park could be
4 coordinated with the requirement to forest the
5 buffer and would these uses potentially be
6 conflicted.
7 In looking at the setback and the
8 buffer, the Commission -- and I'm on the middle
9 of Page 4 now -- talked about the ecological
10 benefits of providing a 300-foot setback, and the
11 benefits included providing a buffer between
12 intense human activity and pollution and
13 sensitive aquatic resources; potentially
14 providing a wildlife corridor system, some sort
15 of habitat area for wildlife; providing
16 appropriate protection for the waterfowl staging
17 and concentration area; reducing overall
18 impervious surface on the area, and along with
19 that, reducing the volume of stormwater and
20 associated pollutants as well as increasing the
21 area available for infiltration; minimizing the

1 effects of shoreline erosion on the project by
2 having a wider area to deal with erosion control;
3 and then providing an area of sufficient size and
4 width to accommodate the needs or requirement to
5 provide a buffer and the requirement of the town
6 to provide recreational needs.
7 The panel also talked about wildlife
8 habitat, and their discussions focused on the
9 ability of the 300-foot setback to provide some
10 of those benefits and provide for wildlife to
11 continue to use the site. The panel spent a
12 considerable amount of time today talking about
13 the use of the buffer as a town park and
14 providing for shoreline access and the need to
15 deal with managing the buffer and providing an
16 appropriate plan.
17 As you saw from the pictures, there is
18 not much vegetation in the buffer. So the buffer
19 is going to have to be established. The site is
20 fairly exposed. It has an eroding shoreline.
21 There will need to be a significant investment in

1 getting that buffer established.
2 I think the important thing that the
3 panel really focused on this morning is that the
4 criteria required that the buffer be established
5 when agricultural use of the land ceases. And
6 that it's fairly specific in the criteria that in
7 establishing the buffer, management measures
8 shall be undertaken to provide forest vegetation
9 that assures the buffer functions to protection
10 of habitat and water quality.
11 The panel talked at length about other
12 projects that have involved the review and
13 approval of the Commission of a Buffer Management
14 Plan and felt that might be a way that they could
15 assure that a buffer was appropriately
16 established and that any other recreational uses
17 were appropriately accommodated.
18 The panel also talked about stormwater
19 management and discussed the conceptual design.
20 They were, I think, prudent in acknowledging that
21 at this point the design is conceptual. Although

1 preliminary calculations have been performed and
2 indicate that the applicant will be able to meet
3 the 10 percent pollutant reduction requirement
4 which is required in intensely developed areas.
5 They're proposing four best management practices,
6 three pond wetland systems, and then a fourth
7 multiple pond system.
8 The Commission I think is concerned that
9 when we're providing for stormwater management,
10 that if possible, every effort should be made to
11 deal with conserving and providing habitat if
12 possible, and that environmentally sensitive
13 design in stormwater practices should be a
14 priority. There was a lot of discussion about
15 certain types of practices which require
16 attention and other types of practices and the
17 benefits that those types of practices may
18 provide over a typical surface water treatment
19 system such as a pond.
20 The panel also talked quite a bit about
21 shore erosion control on the project. Currently

1 there is an approved permit approved by MDE and
2 the Army Corps of Engineers for installation of a
3 revetment for shore erosion control. However,
4 what the applicant is currently proposing is to
5 deal with the shore erosion control issue through
6 a marsh creation, which is basically a
7 nonstructural measure that provides some habitat
8 benefits.
9 Some of the information provided in the
10 record indicated that the town believed that
11 providing the marsh creation as a shore erosion
12 control measure was sort of a trade-off in terms
13 of the habitat benefit with the 300-foot setback.
14 That was discussed extensively by the panel.
15 Another concern with providing the marsh
16 creation was a concern about whether there would
17 be conflicts created with shading of the marsh
18 grass which might prevent it from being effective
19 as a shoreline stabilization strategy and whether
20 the providing of a 100-foot buffer as required
21 was going to create conflicts there.

1 The last issue discussed by the panel
2 and not talked about too much today but more at
3 the prior panel meetings was wastewater treatment
4 and concerns about whether the town's wastewater
5 treatment plant was going to be adequate to
6 accommodate all of this new development. The
7 town is proposing to do a major upgrade of their
8 sewage treatment plant which is actually operated
9 by the County. The new or renovated treatment
10 plants will provide nutrient reduction and state
11 of the art technology for wastewater treatment.
12 St. Michael's Town Council approval of the growth
13 allocation actually included conditions that
14 addressed the need to complete the upgrade of the
15 plant before any building permits could be issued
16 for development on this site. So the panel
17 believed that these conditions were adequate to
18 deal with the wastewater issue.
19 That's pretty much my summary of the
20 panel report.
21 CHAIRMAN MADDEN: Any questions? Thank

1 you very much. I'll open it up for public
2 comments. I want to start up with the town of
3 St. Michael's.
4 MR. HICKSON: My name is Michael
5 Hickson, Mr. Chairman, Commission members. I'm
6 the town attorney for St. Michael's. It would be
7 helpful if we had the recommendation from the
8 panel so that I could address that. But I don't
9 know how you feel about that motion.
10 CHAIRMAN MADDEN: The panel has voted on
11 the recommendation. They haven't reported it to
12 the Commission yet at this point. The Commission
13 has not discussed it. So the recommendation is
14 approval with conditions.
15 MR. HICKSON: I understand that. And I
16 wanted to discuss the conditions is why I was
17 hoping that that would be introduced. But I will
18 obviously do whatever you wish me to do.
19 Proceed?
20 CHAIRMAN MADDEN: Proceed.
21 MR. HICKSON: The town of St. Michael's

2 particular site since 1998. There has been, as I
3 said earlier, extensive litigation. It has been
4 represented that the town is beleaguered, that
5 they're tired of this, that they can't afford to
6 continue the battle if that's what it takes, and
7 that sort of thing. That is simply not true. We
8 have received -- in the beginning we received not
9 only my advice, but we sought a second opinion on
10 a number of legal issues from a law firm by the
11 name of Lenes & Blocker that concentrates its
12 practice in land use law, and Lenes & Blocker
13 have been with the town, they have been advising
14 the town with me ever since 1999.
15 We established a strategy in 1999 and we
16 pursued that strategy and the strategy has played
17 out. We litigated with the developer for as long
18 as the developer wanted to litigate. As
19 mentioned earlier, there have been several
20 applications on this property, and each time an
21 application was submitted that we didn't think

1 was adequate, we turned them down flat. But if
2 they wanted to go to court about it, that was
3 fine. We went to court and met them in court and
4 we defeated them.
5 Part of our strategy was that this is
6 our town and judges don't necessarily make good
7 land use planners. And we didn't want the future
8 of our town decided by a judge. We wanted it
9 decided by our own committees and our own town
10 commissioners. When we felt we were at a point
11 where suggestion was appropriate to sit down with
12 a developer and try to get to a better plan. We
13 did that. And we did it in several ways.
14 We invited in Professor Richard Collins,
15 who was previously head of the planning
16 department of the University of Virginia and also
17 a founder of an organization, if I can get it
18 right, the Foundation for Environmental
19 Mediation. He's done a lot of mediation in land
20 use disputes, not only in Virginia, but in other
21 states as well as Maryland. We called him in and

1 he assembled a citizen group that included the
2 developer and representatives from all sides and
3 they mediated what should happen on this project
4 and proposed plans for most of the summer of
5 2002.
6 In addition to that, included with that
7 group, we invited a gentleman by the name of Ed
8 McMahon, vice president of the Conservation Fund.
9 Mr. McMahon has written about conservation and
10 development and he's lectured extensively around
11 the country. And we used him and Professor
12 Collins as a sounding board as to the site, the
13 quality of the proposed plan at that time and
14 what should happen to it. The mediation group
15 was led by Professor Collins and that went
16 throughout the summer of 2002.
17 And at the end of it there were -- the
18 opinion was not uniform. There was a majority
19 opinion and a minority opinion. But many of the
20 points were agreed on and it formed a basis for
21 more dialogue. And after that there was a public

1 workshop that involved the town commissioners and
2 developer and ultimately a plan similar to this
3 was arrived at. All the while, if the developer
4 was not willing to listen to reason, we were
5 prepared to go to court.
6 But as I said before, we didn't want our
7 town planned in court. So this project proceeded
8 from that point and has gone through the Planning
9 Commission, has gone through the town
10 commissioners at both levels, and received
11 unanimous approvals. The records in this case
12 from the town is over there. Most of that stuff
13 came from the town record. We had three full
14 boxes we submitted to this Commission. The
15 Planning Commission's recommendation was, I
16 believe 70-some pages long and the town
17 commissioners' decision adopted most of that
18 recommendation, but was 20-some pages in addition
19 to that.
20 As you will hear from the panel, most of
21 the concern here seems to be the 300-foot area,

1 the buffer and a hundred foot minimum and beyond
2 that as well as the shoreline treatment. I sent
3 to Chairman Madden a few days ago -- actually, I
4 sent it in care of Ms. Mason for her to do as she
5 wishes. Included with the letter was a list that
6 was three pages long that lists issues that the
7 town commissioners and the Planning Commission
8 considered in dealing with the 300-foot buffer
9 and making their decision that in this case
10 300-foot buffer was not appropriate or needed.
11 One of the reasons that they decided
12 that the 300-foot buffer was not appropriate or
13 needed was because the proposal was to do a
14 vegetative shoreline stabilization whereby marsh
15 would be constructed with some low level stone to
16 keep the sand in place by an organization known
17 as Environmental Concern. Gene Sleas from
18 Environmental Concern is here today. He
19 addressed the town commissioners and the Planning
20 Commission. The testimony is on record from him
21 and that testimony is in those boxes over there.

1 But again, among the things that I sent
2 to Commissioner Madden through Ms. Mason were
3 some excerpts from that testimony. The testimony
4 was given after Hurricane Isabel, and Mr. Sleas
5 was asked what has been the effects on similar
6 projects from Hurricane Isabel, and the testimony
7 was that there were no permanent effects at all.
8 There were minor impacts. For instance, the
9 vegetation, that the marsh grass was laid down
10 for a while but in a few days it popped back up
11 on its own accord. We think that is a better way
12 and we think it will enhance the qualities of the
13 Miles River. And based on the testimony that
14 we've got and we've seen, and we did investigate
15 it, we think this method will work and it's
16 better to do it that way.
17 Now, what is the incentive for a
18 developer to spend almost twice as much to do a
19 project like that rather than put in revetment if
20 you don't give him something in return? What we
21 gave him in return was we didn't make him put in

1 the full 300-foot buffer. The buffer is, however
2 -- at every location is more than 100 feet. In
3 many cases it's substantially more than 100 feet.
4 Now, we're concerned here, the
5 recommendation is that a full 100-foot buffer and
6 an additional 200 foot, as I understand it,
7 setback area be established. A uniform distance
8 all along this project. Now, the town has
9 invested six years in the development of this
10 property. In the beginning we were totally
11 opposed to it. But this piece of property is
12 subject to an annexation agreement that was
13 entered into with the land owner in 1981. At
14 that point, when that property came into town
15 through an annexation agreement where certain
16 zoning for residential development was guaranteed
17 to the owner, the die was cast at that time that
18 this property was going to be developed.
19 So the town commissioners ultimately
20 came to the position that they should find -- if
21 there was going to be development, it was in

1 their best interest not to simply deny it, but to
2 work for the best outcome, and they believe this
3 is the best outcome.
4 This decision is here in a situation
5 procedurally where there's not much room for
6 negotiation. In another project, Four Seasons,
7 it came before this Commission when the County
8 commissioners who were the final authority had
9 not made their final decision. There was some
10 negotiation done here, the buffer was extended.
11 It then went back to the County for a final vote.
12 We don't have that situation here.
13 As you heard Ms. Owens say, we were
14 required to change our zoning ordinance in 1999.
15 Before that time the process was it went to the
16 Planning Commission, if it was a favorable
17 recommendation, it would come up here for the
18 Critical Care Commission to review and make its
19 decision and then back to the town commissioners.
20 But that's not the way it is now and that's not
21 the way it has been throughout this project. The

1 town commissioners made its final decision, a
2 site-specific, plan-specific decision. And if
3 you do very much with this decision of the town
4 commissioners it will be tantamount to a denial
5 and we'll have to start all over again.
6 I would suggest that as far as what will
7 be recommended, that instead of setting a uniform
8 300-foot setback, that you give the staff and the
9 town an opportunity to work together and try to
10 find a resolution to what has been the panel's
11 concerns. Thank you very much.
12 CHAIRMAN MADDEN: Thank you.
13 Mr. Nickson. Any members of the public like to
14 comment? We ask you to keep it to the matters
15 germane as outlined by the Attorney General and
16 keep it to no more than two minutes. Yes, sir.
17 MR. SLEAR: Good afternoon. My name is
18 Gene Slear. I'm the vice president with
19 Environmental Concern. We're a public
20 not-for-profit company established to restore
21 wetlands, educate the public regarding the value

1 of wetlands, and to do research in the benefits
2 of wetlands for water quality and habitat
3 enhancement. We've been at the same location in
4 St. Michael's, Maryland since 1972. We were
5 engaged by the Midland Corporation to evaluate
6 the needs for water quality enhancement and
7 habitat enhancement on this site, initially in
8 1997, I believe, and more recently in 2002. Our
9 findings are part of the record.
10 The panel's findings suggest that there
11 is some -- there was some discussion regarding
12 certain aspects of our findings and I'd like to
13 address these. I'm not adding any new
14 information, just summarizing what's already in
15 the record.
16 The area that will receive the -- the
17 shoreline that will be protected by marsh
18 vegetation starts from the southerly property
19 line and proceeds up to this boundary here, a
20 distance of about 800-some-odd feet. It was
21 suggested in the panel's report that it would

1 have to be a highly engineered site in order for
2 that marsh to work properly.
3 I want to submit a couple of additional
4 facts for your consideration. The property owned
5 immediately to the south is the Fogg Cove
6 Condominium Association. We designed a marsh
7 vegetation shoreline protection system for the
8 Fogg Cove Condominium Association seven years
9 ago. It's right in here, functioning
10 beautifully, continues to function beautifully.
11 It is engineered to a lower standard than what
12 we've engineered for this area. The reason
13 simply is it receives less fetch; it's more
14 protected. As we proceed on this roughly
15 north-south access, there is more fetch and
16 therefore more energy interacting with the
17 unprotected shoreline.
18 We have, instead of just a system of
19 groins and sand, planted we have established a
20 sill which protects the vertical edge of the new
21 marsh from the energy. I'd like to bore you with

1 two short details, one is that the energy we have
2 to deal with, there are two components to that,
3 one is the rate at which the water attacks the
4 shoreline, and the mass of that. And the mass is
5 a function of how deep the water is. The water
6 is very shallow along this area. So the
7 engineering, as we come away from that property
8 line and proceed up and around, it's very easy --
9 we have done sites that have the same engineering
10 requirements that's in the record. We've shown
11 pictures of what happened after Isabel to these
12 sites.
13 CHAIRMAN MADDEN: You need to sum up.
14 MR. SLEAR: The shoreline is part of an
15 eco-system which includes best management
16 practices for stormwater management and a
17 forested buffer and the tidal marsh. The tidal
18 marsh in this area runs along the north-south
19 axis. The forested buffer will not shade that
20 marsh to any extent because the sun comes up in
21 the east and goes down in the west. So we're

1 very comfortable to work out something with the
2 Commission to fully forest that. That working
3 with the constructed wetlands that will be part
4 of the stormwater management system provide a
5 superior system as defined by the U.S. Wildlife
6 Service as recently as 2002.
7 CHAIRMAN MADDEN: Thank you very much.
8 MR. SLEAR: Thank you.
9 MR. DICKSON: My name is Sidney Dickson.
10 I've lived in the environs of St. Michael's.
11 I've lived within three miles of it for most of
12 my 63 years. I'm one of those who gave up
13 development rights on my 37 acres adjacent to
14 town in order to prevent such unhealthy
15 developments as we are faced with today.
16 Read between the lines here, please, pay
17 attention. From what you've heard today all is
18 roses. It seems to me that the public input has
19 not been considered. I assure you that the
20 community of Talbot, the Eastern Shore, I know
21 the watermen, the builders, the land owners are

1 you might have heard. They have demonstrated
2 they'll dump enough money into this project to
3 prevail. It seems clear that Midlands will stop
4 at nothing and take the golden egg and leave a
5 devastated goose. This was made clear to me
6 person to person in a very chilling way.
7 Before the Town Commission folded into
8 submissive compliance, before any of these little
9 meetings, I was told by a sitting town
10 commissioner, Rob Nobile, by name, that few
11 supported the Midlands proposition. But he said
12 townspeople had been taxed to the limit to the
13 point they considered Midlands to be unstoppable.
14 Furthermore, get this, this is untenable, could
15 be very easily implied, and I can't prove it, but
16 this town commissioner told me this, and I'd like
17 to see the town commissioners and the lawyers
18 deny it, the town commissioners were informed
19 that if they continue to stand in the way of
20 Midlands, they stood risk of being sued
21 personally and individually for being in the way.

1 dead set against this development. No matter
2 what you hear about how they have gotten together
3 and made these arrangements. These are silly
4 details that you're being confused with. The
5 point is once this land is ruined, it's going to
6 stay ruined until the next ice age. These
7 buildings aren't going away if you let them be
8 put there. I implore you, do not let this go
9 through.
10 They say, oh, you've got to compromise.
11 You don't have to compromise. Right is right and
12 wrong is wrong. This is wrong. This is good
13 habitat. On normal storms in the summer of St.
14 Michael's contaminated wastewater and sewage
15 actually runs in and out of one of the food
16 stores. I've seen it happen. It's Lady's
17 Market. They're prepared with sand bags. This
18 is not unusual.
19 There's something worse. It's not so
20 much what they're doing, it's how they're doing
21 it. Through incessant lawsuits, contrary to what

1 Rob Nobile told me this. I testified under oath
2 that he told me this and that they had caved
3 because they thought Midland was unstoppable and
4 they were -- could not raise taxes further and
5 they certainly couldn't have their families
6 ruined by this money.
7 This is a matter of money. The
8 community does not want this. Who wants this?
9 Midlands. And one or two contractors in the area
10 who have been paid to agree with them. The
11 builders don't want it. You see no builders
12 saying we want to build these houses. Our
13 builders are busy. We have plenty of growth.
14 CHAIRMAN MADDEN: I need you to sum up,
15 please. Your time is up. I need you to sum up.
16 MR. DICKSON: Turn it down flat. Thank
17 you.
18 CHAIRMAN MADDEN: Thank you, sir.
19 MR. DEMING: Chairman Madden, members of
20 the Commission. I'm Thomas Deming, I'm an
21 attorney for the St. Michael's Bay Hundred

[illegible] charge under Natural
2 Resources Article Section 8-1809 is to determine
3 whether the program amendment as proposed meets
4 the goals of the statute and the criteria. You
5 will hear in the panel's recommendation that was
6 forecast in the staff report several specific
7 instances in which the panel members express
8 grave concern whether this project meets the
9 criteria. Most specifically the 300-foot
10 setback. The criteria say that the town shall
11 use the guideline that proposed new IDA should be
12 located at least 300 feet from the tidal waters
13 and tidal wetlands.
14 As a member of this morning's panel
15 said, that's a strong should and it's backed up
16 by a shall. But the record in this case shows
17 that rather than using the 300-feet setback, the
18 town accepted rationales from the developer as to
19 why there should be no 300-feet setback. This is
20 but one instance of several that are reflected in
21 the panel's comments that indicate that this

1 proposal as submitted does not meet the criteria.
2 And I would submit to you that rather than
3 approving this proposal with conditions, that the
4 more straightforward action for this Commission
5 to take under the terms of the statute is to vote
6 it up or down and I would urge that your vote
7 should be to disapprove the proposed program
8 amendment. Thank you.
9 CHAIRMAN MADDEN: Thank you.
10 MR. ALSPACH: Thank you, Mr. Chairman.
11 Ladies and gentlemen, good afternoon. My name is
12 Tom Alspach. I represent Talbot Preservation
13 Alliance, Inc. We are a volunteer citizens
14 organization with a large number of members in
15 Talbot County and in St. Michael's.
16 We are opposed to this project
17 specifically for the reasons that it does not
18 comport with the criteria that this Commission
19 must apply under the Critical Area law. You'll
20 hear the staff report about problems with
21 compliance with the 300-feet setback. We

1 certainly agree with that.
2 I'd like to draw your attention to the
3 additional criterion, mandatory criterion with
4 which this project does not apply. That is the
5 criterion relative to development in intensely
6 developed areas which recites that to the extent
7 practicable, future development shall use cluster
8 development as a means to reduce impervious
9 surface and maximize areas of natural vegetation.
10 COMAR defines cluster development as a means of
11 residential development where dwelling units are
12 concentrated in selected areas or in a selected
13 area or selected areas of a development tract so
14 as to provide natural habitat or other open space
15 uses on remainder.
16 Ladies and gentlemen, the developer here
17 has done the clustering of the houses. But they
18 forgot about the open space. There is none. The
19 rationale is you have this 100-foot buffer. If
20 you look at the rest of this development plat,
21 all we have is houses. There is some open space,

1 but it's impervious surface; it's tennis courts.
2 The requirement under the COMAR statute is to
3 reduce impervious areas through cluster housing.
4 This does not reduce impervious areas, as you
5 heard, it increases impervious areas from 0
6 percent to 33 percent of the site. There is no
7 dedicated open space on this plat.
8 Now, I think you will hear that the idea
9 of extending the 300-foot setback to 300 feet is
10 some sort of substitute for the creation of open
11 space. I submit to you that it's not. The
12 rationale of the 300-foot setback is to protect
13 the shoreline against human impact. That's right
14 in the Critical Area law. That's a separate and
15 distinct criterion from the clustering criterion
16 which requires open space as a means to reduce
17 impervious areas and maximize areas of natural
18 vegetation. There are no areas of natural
19 vegetation that are being provided for on this
20 project. This project does not comply with the
21 criteria. I thank you for my time.

CHAIRMAN MADDEN: Thank you very much.

DR. McCARTHY: Chairman Madden and members of the Critical Area Commission. Thank you for allowing me to speak. I'm Dr. John McCarthy, and I represent the Talbot River Protection Association, of which I serve as executive director.

TRPA, as we're best known, was created about eight years ago in an attempt to protect the rivers and creeks in Talbot County from the constant degradation that they were experiencing, and one of these of which is, of course, the Miles River. Eight years later it would appear that we're not succeeding.

In the past two weeks our Talbot County newspaper, The Star Democrat, has featured news articles telling us that the oyster harvest this year is the lowest ever and Chesapeake oysters have fallen to 1 percent of their normal population. The seafood industry on the Chesapeake has fallen from its predominant place

of just a few years ago and the watermen who survived on it are now searching for other means of livelihood. A sport fisherman is suffering from a serious systemic infection caused by an infected rockfish, and this is not an isolated incident. What do all these three things have in common? They're all related to the condition of the water of the Chesapeake Bay and the rivers flowing into it.

This should not be news to anyone. I'm sure you all realize that just recently Governor Ehrlich and the Maryland legislature passed landmark legislation funding over a number of years upgrading of the larger wastewater treatment plants in the estuary. One of these plants is hoped to be the Talbot County-owned plant serving St. Michael's into which the proposed 300 Miles Point III homes would send their sewage. A year ago TRPA, with the assistance and coordination of the Horn Point Laboratories of the University of Maryland, completed a three-year study of the discharge from the St. Michael's wastewater treatment plant into the Miles River.

That study concluded that the nutrient-generated loss of dissolved oxygen at that site in the river was lethal to all marine life. The State of Maryland, in part as a result of this study, declared the Miles River to be impaired. Unfortunately, this is not an isolated situation. TRPA and the creek watchers have been collecting water samples from all the rivers and creeks in Talbot County, including the Miles River, and it found that in many cases the results are comparable and that marine life and plant life is not compatible with what is there.

This is the same wastewater treatment plant that exists today. Nothing has changed. It's the same overburdened and malfunctioning sewage removal system that routinely, as you've already heard, allows partially treated or even untreated sewage to flow in the streets of St. Michael's during heavy weather situations.

We cannot allow the wastewater and stormwater from 300 more homes to be added to it. Even if the wastewater treatment plant is improved it will cost millions to Talbot County and Maryland, and the Miles River will not be capable of handling the discharge.

CHAIRMAN MADDEN: I need you to sum up.

DR. McCARTHY: The significance of this involves the welfare of a major Maryland industry, the well-being of all of our citizens and their ability to enjoy their surroundings, and most importantly the public health of all those who live and travel. We urge not that the proposed Miles Point III growth allocation be sent back to the town for improvement, but it be rejected without conditions. Thank you.

CHAIRMAN MADDEN: Thank you. Please try to adhere to the time limit in fairness to everybody else.

SPEAKER: I'm afraid that there's no way

1 to hold it up. This is a portrayal of the area
2 of St. Michael's showing the river. I just
3 wanted to point out this was used recently. This
4 is a DNR product. It indicates the oyster bars
5 here at St. Michael's, the oyster bars that exist
6 in this region where the present consideration is
7 underway for the impact on the oyster stocks in
8 the Miles River.
9 I would like to say to the Commission
10 this: It seems to me that in history -- and I
11 personally was involved years ago with the
12 efforts that were made to put the critical area
13 law into place and design it for its purpose. I
14 understood, and people still today do, understood
15 its objective was to guarantee that we would
16 protect the water, the fishery, and the seafood
17 stock, the capability of the water being what it
18 was at one time.
19 It seems to me that we're off that mark
20 with many of the decisions we're making today,
21 and this one in particular. The Miles River

1 cannot assimilate what's being proposed here.
2 The commissioners paid $40,000 for three years of
3 study to find out what the nutrients were in the
4 river right in the vicinity of St. Michael's
5 where this project is proposed. And the results
6 were very clear. The nutrients were out of
7 control and because the nutrients were whatever
8 they are, the dissolved oxygen was lethal to all
9 marine life.
10 I have to ask all of you, what did we
11 start out to do? This isn't what we're doing.
12 It was to protect these resources, these
13 fisheries. We're not doing it. How can we allow
14 more impact to the already threatened and
15 seriously declined capabilities of the Miles
16 River? Thank you.
CHAIRMAN MADDEN: Thank you, sir.
MR. DETAR: Thank you, Mr. Chairman,
members of the Commission. My name is Richard
DeTar from Miles & Stockbridge. I represent the
applicants. The comments that I would like to

1 focus on exclusively go to one of the conditions
2 the panel has proposed, which is a uniform
3 300-foot setback. And the first thing that I
4 want you to understand is that in the entire
5 history of the Critical Area Commission, you have
6 never imposed a 300-foot setback contrary to the
7 local governing body's approval and contrary to
8 the application, never in the history of any
9 application that has ever been before you. You
10 are asked today to do something extraordinary in
11 your path.
12 The second thing I want you to know is
13 one of the reasons for that is for the last 11
14 years, the Critical Area Commission has had a
15 written policy that says the 300 feet should
16 guideline is one for the locality to consider.
17 The locality must have a 100-foot buffer and it
18 is to consider the 300-foot setback, combining a
19 200-foot setback with the 100-foot buffer. And
20 if it isn't going to increase the setback, it
21 needs to explain why.

1 But the point is your written policy
2 says that discretion is with the locality. The
3 exhibit is Exhibit 25 in the record. Don't take
4 my word for it. Ask your lawyer -- if you've
5 ever done it before -- ask your lawyer if that's
6 what the policy says.
7 Now, having said that, the Critical Area
8 Commission has influenced setbacks before, and
9 the way that you've done it is you've negotiated
10 with the municipality and the applicant, and
11 you've reached mutual agreement. That's what
12 happened in Novanian. It wasn't forced, it was
13 through agreement because of particularly
14 sensitive features.
15 When you vote on this I'd like you to
16 consider a couple of things. If you force for
17 the first time in your history a 300-foot
18 setback, you force a legal decision on whether or
19 not you have that authority. And if you do that,
20 it's not just about whether or not you erode your
21 ability to have influence on this project, if a

1 court says you don't have that authority, it
2 influences your ability to have that influence on
3 other projects, like Novamian.
4 The second thing I want you to know is
5 nobody ever asked us to push back the setback.
6 It never came up despite meetings with the staff.
7 The applicant is willing to consider that. So
8 I'm not here to tell you more is alone. I'm
9 here to say consider approving it with the
10 condition that the applicant and the town worked
11 with your staff based on the site conditions to
12 arrive at what makes sense for a setback.
13 CHAIRMAN MADDEN: I need you to sum up.
14 MR. CETAR: Not an arbitrary and uniform
15 300 feet. Look at the environmental features of
16 the site. Use your staff who are experts and
17 allow the process to work through communication
18 the way it should. I believe everybody will be
19 better served if that process, which is how it
20 has historically worked, takes effect in this
21 case.

1 CHAIRMAN MADDEN: Thank you.
2 MR. REDMAN: My name is Tony Redman.
3 I'm a planner with a company called Redman-
4 Johnson Associates. I'm speaking on behalf of
5 the town of St. Michael's, where I work as a
6 consultant and have been very engaged in this
7 project. I have just a few comments.
8 There was concern that wetlands creation
9 on this edge might not be viable. I had
10 submitted only last week a copy of the wetlands
11 boundary map done by the State of Maryland back
12 in 1971 that shows much core grass marsh in this
13 area, which I think is a great indicator that it
14 is viable, that together with a reputation of
15 environmental concern and their history and track
16 record of building these things gives me great
17 reassurance of the work.
18 However, because we can't always be
19 certain, I want you to know that the town has
20 already secured a ten-year agreement with the
21 developer for maintenance of that wetland, so the

1 town is not left dangling. In fact, that
2 agreement has already been recorded in the land
3 records of Talbot County, so it now will extend
4 not only to the current developer owner but to
5 any subsequent owner.
6 I heard something about cluster not
7 being a good idea here. I think people are
8 missing a lot of small pockets of open space that
9 do add up on this site. I know the mission of
10 this Commission is environmental protection, but
11 the mission of planning for communities and place
12 making in communities is to think about a lot of
13 other things. This development, designed by
14 Andre Skelarni, who is a world renowned designer
15 of traditional neighborhood developments,
16 Seaside, Florida, you guys have heard the litany,
17 I think it's an opportunity for the town to have
18 quality development and environmental protection.
19 There are much more open space than has been
20 given credit, and if we clustered this on 30,
21 percent of the site and left the rest open space,

1 I would submit to you it would look nothing like
2 the existing town of St. Michael's. It would be
3 totally inconsistent with character and scale.
4 And in fact, in Talbot County and surrounding
5 areas that's what we've already got, lots of
6 cluster developments on two-acre lots. Using
7 land inefficiently, not housing people on less
8 land, it's very land wasteful.
9 Also there's a reference to this being
10 as high as 50 and 60 percent impervious surface.
11 It's not. The latest calculation from the
12 developer is 49. You look at me and say so what,
13 that's pretty high. Yes, it is high. But in the
14 IDA there is no limit on impervious surface. If
15 you wish to have a limit on impervious surface
16 through IDA, do the same thing you do in the LDA,
17 legislate an impervious surface limit. Until you
18 do, we don't have an option. Thank you.
19 CHAIRMAN MADDEN: Thank you very much.
20 Yes, sir.
21 DR. BAINES: Chairman Madden, ladies and

1 gentlemen. I'm Callan Baines, I'm a physician
2 practicing in Easton since 1968. I listened at
3 the initial presentation by the tall blond lady
4 who did a nice job pointing out all the good
5 features. And then I said when is she going to
6 address the question of sewage disposal? Right
7 at the end I thought she let the cat out of the
8 bag because she said the sewage plant will be
9 rebuilt by Talbot County.
10 So I ask you are you going to permit
11 approximately 60,000 gallons per day of sewage
12 going into a plant which is already failing which
13 in turn goes into a river which is heavily
14 polluted? Let me remind you, sewage is dangerous
15 stuff. I don't want to tax our transcriptionist,
16 but you've got salmonella and shigella, E. coli,
17 crypto-sporidium, mycobacterium marinum, and
18 hepatitis virus. If she gets that right I'll
19 congratulate her. Pfisteria causes loss of
20 intellect which sometimes is permanent. We've
21 had it on the Pocomoke River. The Miles River is

1 frequently closed because of E. coli
2 contamination in the oysters.
3 The wastewater treatment plant there,
4 quite regularly fails, puts raw sewage straight
5 out because it doesn't have the holding capacity
6 for a town of 600 people. Now, this developer
7 wants to add 231 houses at his last count, 231
8 houses each putting out 250 gallons a day comes
9 out to about an extra load of 60,000 gallons
10 going into a plant which is already failing.
11 This development, if it goes through in
12 its present form, abruptly doubles the population
13 of St. Michael's. For those of you who don't
14 live in that county, St. Michael's in places is
15 only about a thousand feet wide. There's an
16 impact on the sewage, impact on the highways and
17 the rights of citizens that live there to travel
18 freely upon the highway.
19 CHAIRMAN MADDEN: Doctor, I'm going to
20 ask you to sum up, please.
1 DR. BAINES: Right. Bill 933 was an

1 attempt to provide adequate sewage disposal and
2 to enforce better cooperation between the town
3 and county. This plant is a county
4 responsibility. The counties are responsible for
5 public health. Therefore, 933 is essential if
6 they are to protect the health and welfare of the
7 people that live there. I ask that this project
8 not be allowed until the wastewater treatment
9 plant have been improved. Thank you.
10 CHAIRMAN MADDEN: Thank you, Doctor.
11 Yes, ma'am.
12 MS. JONES: Good afternoon. My name is
13 Beth Jones. I'm president of the Bay Hundred
14 Foundation, an all-volunteer organization devoted
15 to preserving and enhancing the historic,
16 cultural and environmental qualities that make
17 our region so special.
18 This project is located in the Bay
19 Hundred area. As you probably know, Talbot
20 County has 660 miles of shoreline, more than any
21 other county in the United States. Bay Hundred

1 has the lion's share of that shoreline.
2 Dr. Baines was talking about the fact it's only a
3 thousand feet across. I have to say I'm so
4 delighted to live in a state that had the
5 leadership and the foresight to create the
6 Critical Area Commission 20-some years ago. And
7 I guess my question to you is if not here, then
8 where? This is the heart of what critical area
9 is all about.
10 The second question I have is about what
11 I heard the attorney for Midlands to say. If I
12 heard him correctly, it sounds like he was
13 implying that there might be a lawsuit against
14 you if you didn't give them what they wanted.
15 And if that's the case, unfortunately we've been
16 down this pike before. That has been the modus
17 operandi.
18 CHAIRMAN MADDEN: Thank you, Ms. Jones.
19 MR. DIES: My name is Russell Dies. I'm
20 vice president of the Maryland Watermen
21 Association. I live at Tilghman, Maryland.

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1 Harvested seafood, shellfish out of Miles River
2 all my life until here recently. And last summer
3 Miles River was shut down for two weeks and we
4 couldn't harvest shellfish in Miles River because
5 of the overflow of the sewage treatment plant in
6 St. Michael's.
7 If you add, double the amount of
8 effluent going out of there, I see real danger
9 for the watermen in that area. Take a good look
10 at me. You might not want to, but you won't see
11 us much longer. As commissions okay these plans,
12 they're writing my death certificate. Because as
13 a waterman in Miles River and other rivers in
14 Talbot County, we soon no longer would be able to
15 make a living. We're right at that point now.
16 But I hail them for making new
17 marshland. But what's going to come from the
18 houses, the development, the overflow into the
19 Miles River is going to wipe away any benefits.
20 It can be the best plan and the best laid out
21 community, but if it puts people out of work. My

1 family has been working on the water since 1670.
2 We all have been watermen captains. I own a
3 30-foot skipjack. I can no longer make a living
4 because -- this is one reason, the oysters are
5 dead. If you have any feeling for the watermen,
6 turn this down.
7 CHAIRMAN MADDEN: Thank you.
8 MR. MARTIN: Good afternoon. For the
9 record, my name is Warren Martin. I'm a resident
10 of St. Michael's, Talbot County, Maryland. I'm
11 also co-chairman of SOS, Save Our St. Michael's.
12 Perhaps you've seen some of our bumper stickers
13 in the last seven years. We are an organization
14 of approximately 300 residents who have followed
15 and monitored this issue for seven years. I have
16 probably attended close to 100 of these meetings
17 in that period of time.
18 This Midland project is simply too dense
19 for our fragile Bay Hundred peninsula. To the
20 south of this project we have two units per acre.
21 Immediately to the north we have two acres per

1 unit. On Monday the third of this week the
2 voters of St. Michael's went to the polls and
3 elected two of the three slow growth limited
4 control growth candidates, and each of these
5 gentlemen are here today.
6 Without further redundancy, SOS would
7 like to endorse the testimony of our attorneys
8 Deming and Asplach and other opponents who have
9 spoken before me. Thank you for hearing our
10 plea. Please help us preserve our way of life,
11 our environment, and our Chesapeake Bay
12 tributaries. Please vote no on this growth
13 allocation.
14 CHAIRMAN SETZER: Thank you, Mr. Martin.
15 Commissioner Carroll.
16 MR. CARROLL: I'm Peter Carroll, Talbot
17 County Council. I'd like to talk a little bit
18 about that waste treatment plant. St. Michael's
19 plant is actually a regional plant. It deals
20 with St. Michael's, Royal Oaks, and a number of
21 houses and developments that are along that

1 route, that state road that comes in. The County
2 took that over a number of years ago because the
3 town was operating it and was not able to keep it
4 up to an acceptable standard. There has been
5 significant deterioration of the stirring paddles
6 and the processing equipment. So we have
7 ownership of that facility now.
8 A couple years ago a plan was to put in
9 place to increase the size of that plant to
10 800,000 gallons. It's a 300,000 gallon plant
11 today. Last year we took a look at that because,
12 as the governor has said to all of us, we need to
13 do a better job about environmental controls.
14 The processes that we have in place today simply
15 aren't getting the job done, and local
16 governments need to do more.
17 So we went back and revisited that
18 800,000 gallon plant and sized it to 660,000
19 gallons. That's the size of the plant that MDE
20 had originally recommended be put in place. That
21 downsizing brought to the surface another

1 [illegible] St. Michael's is an old [illegible]
2 town, and the sewer collection lines, the lines
3 from the houses, the regional collectors that
4 lead into the main collection lines, are leaking,
5 and we have enormous infusion and of course
6 rainwater flowing into those lines so that the
7 plant on a nominal average runs around 300 to
8 350,000 gallons a day.
9 But when we have storm events it can go
10 to a million, a million and a half or a million
11 eight in some cases. Those are the cases that
12 cause raw sewage to flow out of manhole covers,
13 pops the lids off and sends that out into the
14 streets and into the town. We think that this
15 project is not right yet. It should not go
16 forward. And we sent a letter to you asking you
17 to delay this project because we are very
18 concerned about getting a new wastewater
19 treatment plant in place and being able to cope
20 with it.
21 The plant alone will not fix the

1 problem. We need to do something about the I&I.
2 We are spending money on that. That's a part of
3 our upgrade program. But unless we can bring
4 that flow down to I'm going to say in storm
5 events to something like 700,000 or 800,000
6 gallons per day, a new plant isn't going to solve
7 the problem. All these new homes are going to
8 exacerbate that.
9 We're here to ask you not to do this
10 now. Let us get our house in order. Let's get
11 the waste treatment plant back on line, and let's
12 go into St. Michael's and fix all these
13 connections and leaders and then we're ready to
14 move on with it. Thank you very much.
15 CHAIRMAN MADDEN: Thank you, Council
16 Member Carroll.
17 MR. VALANOS: Good afternoon. My name
18 is George Valanos. I'm the developer of the
19 Miles Point project. I'd like to pick up on
20 something that Mr. Carroll said. Our engineers
21 are working with the County director of

1 [illegible] the I&I problem.
2 We recognize that that's an issue, and certainly
3 before we go forward we're going to have to
4 address it and see to it that the I&I issue is
5 taken care of, as well as working with them with
6 respect to the capacity of the existing
7 wastewater treatment plant.
8 Also I'd like to make a comment about
9 what our firm stands for is about smart growth,
10 pedestrian-friendly development. I know that
11 density has been an issue. But I also -- my
12 feeling of the critical area legislation, and
13 maybe some of you agree and some of you don't, is
14 to really identify through your planning process,
15 through smart growth issues, where development is
16 to take place and to identify those areas that
17 are priority places and also to look at them in
18 compact planning. Because what you're doing by
19 developing compactly is creating a pedestrian
20 environment where people can walk or bike, and if
21 it's close into town, which this project is, then

1 they will actually reduce car trips. And also
2 you can centralize your stormwater management and
3 provide best practices for that.
4 Outside of the town of St. Michael's
5 there is in the Bay Hundred region on average
6 over the last two decades roughly 30 units per
7 year, 300 every decade that are being developed
8 on large lots. And what a development like this
9 will do, in my opinion, is will redirect that
10 development to areas where development should
11 take place.
12 With that I want to thank you for your
13 time.
14 CHAIRMAN MADDEN: Thank you,
15 Mr. Valanos.
16 MR. DUNCAN: Mr. Chairman, members of
17 the Commission, let me introduce myself. My name
18 is Thomas Duncan. I'm a member of the Talbot
19 County Council. I was on that council, as a
20 matter of fact, I was president of Talbot County
21 Council when the Critical Areas legislation was

1 enacted, and the towns were given a certain
2 amount of growth allocation, along with the fact
3 that we did a new comprehensive plan and a voting
4 ordinance at that time. So as you can see it was
5 quite hectic at the time that I was on that
6 council.
7 I would like to speak to you not on the
8 issues of engineering or chemicals, or whatever.
9 I'd like to speak to you on the emotional issue
10 of this bill and it's this: My great-grandmother
11 was a Native American. My grandfather made a
12 living on the water. My father made a living on
13 the water. I grew up on the water. I would
14 suggest that the representatives of the town here
15 were not residents of the Talbot County. I've
16 been in Talbot County 67 years and I've seen the
17 progression or I should say regression of the
18 waters of Talbot County.
19 You ask why am I here and why am I so
20 emotional about this subject matter. The fact of
21 the matter is it's not going to make any

1 difference to me. At my age, I'll be gone. It
2 doesn't matter. But I have 12 grandchildren that
3 are going to accept what I leave for my
4 grandchildren. We're not asking for no growth in
5 Talbot County. All we're asking for is the
6 opportunity to get it right, to get it right.
7 That's all we're asking. And the fact of the
8 matter is we're at a crossroads right now. If we
9 can't get it right now, you can forget about
10 Talbot County. Why do people like to come to
11 Talbot County? It's pristine; it's beautiful.
12 Because Talbot County was the first county on the
13 Eastern Shore that had zoning. And that, in
14 fact, is what made Talbot County what it is, plus
15 we had some very wise people in government and
16 some very wise people in the civilian sector that
17 came forward and helped us guide our county.
18 So please give Talbot County the
19 opportunity to plan for the future. Thank you
20 for your time, Mr. Chairman.
21 CHAIRMAN MADDEN: Thank you, Council

1 Member Duncan. Anybody else? Judge North.
2 JUDGE NORTH: Good afternoon,
3 Mr. Chairman, ladies and gentlemen. I commend
4 you upon your patience and your attentiveness.
5 You've heard a great deal this afternoon and I
6 have just a few more words. This property is
7 near mine. So I'm very familiar with it. But I
8 assure you that if it were miles and miles away I
9 would have the same concern. St. Michael's is on
10 a very delicate area of land. It is an isthmus
11 connecting two bodies of land with water on each
12 side of it.
13 The waters of the Miles River have been
14 terribly, terribly damaged over the years. There
15 are no oysters in the Miles River any longer.
16 There are very few crabs and fish, and very
17 little bottom grasses. The Miles is in terrible
18 condition, due very largely to what happens in
19 St. Michael's and at the St. Michael's wastewater
20 treatment plant. I would urge you to give every
21 consideration not to compromise this matter

1 because we are, as has been said, at a
2 crossroads. The Miles and the bay have never
3 ever been in as terrible a condition as they are
4 today.
5 And recognizing this, I must point out
6 to you that a great number of people, the great
7 majority of people familiar with this situation
8 have voiced opposition to it. I took the liberty
9 of sending out a memo to all of you together with
10 supporting letters of people who had written in
11 concern, and in summary I would point out to you
12 that in favor of this proposition there is the
13 Midlands Corporation, the St. Michael's Town
14 Council, or part of them now, and a handful of
15 real estate brokers and other individuals.
16 Against this proposal, totally against it, are
17 Governor Harry Hughes who would be here today
18 save for a preexisting medical appointment;
19 Russell Trans, the first head of the
20 Environmental Protection Agency; Chuck Fox,
21 former secretary of DNR; several former St.

1 Michael's town commissioners who have written:
2 all four former Critical Area Commission members
3 from Talbot County, the Bay Hundred Foundation,
4 Fogg Cove Homeowners Association, Historic St.
5 Michael's, Maryland Watermen's Association, Save
6 Our St. Michael's, St. Michael's Preservation
7 Coalition, Talbot County Historical Trust, Talbot
8 County Oystermen's Association, Talbot
9 Preservation Alliance, Talbot River Protection
10 Association, and hundreds of citizens throughout
11 Talbot County.
12 In closing let me say that I thought
13 Mr. DeTar was very candid in his comments and he
14 has followed the path that his client has
15 followed previously. He says to you, in effect,
16 if you go along with this requirement at 300-foot
17 setback you're going to go to court. You're
18 going to be hamstrung in the future. That's his
19 threat. There is an easy way of resolving that
20 matter. Very easy. Turn it down flat, no
21 conditions. Turn it down flat. Thank you.

1 CHAIRMAN MADDEN: Thank you, Judge
2 North. Would anybody else from the public like
3 to make a brief comment? We thank you. I would
4 like to turn to the chair of the panel for
5 additional information and recommendations.
6 MR. SETZER: Over the past 45 minutes to
7 an hour you all had a small taste of what we
8 experienced for three to four hours when we had
9 the public hearing for this particular growth
10 allocation. And you add these comments along
11 with the cart of backup material that's been
12 supplied to the Commission in support and
13 opposition to the project, and you can see the
14 type of issues that we as a panel have been
15 wrestling with over the past several weeks.
16 As a result of what was offered this
17 afternoon, I guess I'd just like to address a
18 couple points so at least you all have some idea
19 of the discussion that the panel had in moving
20 forward with this recommendation. First off,
21 there was a lot of discussion about the 300-foot

1 setback and how that relates to the design of the
2 development, the fact that it's very intense
3 development, and the fact that it is going to
4 increase the impervious surface on the site.
5 According to Mr. Redman the new figure is 49
6 percent. But obviously the increase in
7 impervious surface is going to be significant.
8 And those were the things that we looked at when
9 we were discussing the 300-foot setback.
10 We recognized, and again, Mr. Redman
11 pointed it out in the plan, that there are a
12 number of open space areas distributed throughout
13 the development. But we also thought that it was
14 important, because of the intensity of the
15 development and because of the impervious
16 surfaces, that we provide a more significant
17 setback to help the Commission deal with its
18 regulatory issues in terms of water quality and
19 habitat protection and those types of issues.
20 We talked at considerable length about
21 the use of the 100-foot buffer and we looked at

1 it from both a plant and wildlife habitat issue
2 as well as public access. And we recognized that
3 in terms of the Critical Area criteria these are
4 both important issues. But I think all the panel
5 members came down on the side of a more heavily
6 vegetated 100-foot buffer, again, to promote the
7 water quality and habitat protection requirements
8 of the Critical Area Commission.
9 We talked about stormwater management
10 and appropriate best management practices for the
11 site. There's a number, I think three or four
12 surface treatment ponds on the site which
13 obviously you can vegetate and provide some
14 wetland vegetation. But we thought that as the
15 design for the project moved forward, that there
16 should be additional consideration for
17 environmentally sensitive design for the
18 buildings in terms of rooftop disconnects, what
19 other opportunities may exist based on the
20 geology of the site, and opportunity for
21 infiltration and those types of issues so that we

1 had an opportunity to kind of look for some
2 expertise and guidance in the stormwater
3 management area, and we asked Ken Pensill from
4 MDE to sit in on panel discussions and provide
5 some background in terms of the type of treatment
6 options that are available to deal with
7 stormwater management.
8 The panel also discussed, and discussed
9 it quite heavily this morning, shoreline
10 treatment. We talked about marsh creation versus
11 revetment. There's an existing permit issued by
12 MDE for revetment on part of the property. We
13 talked a lot about whether or not marsh creation
14 would be successful. And all of that discussion
15 was fine, but when it came down to a
16 recommendation, what the panel really looked at
17 was whether or not providing a vegetated
18 shoreline treatment was an appropriate trade-off
19 for a forested, vegetated 100-foot buffer.
20 We also heard, both during the hearing
21 as well as over the past hour, a lot of concerns

1 construction on this property contingent upon
2 appropriate availability of sewage treatment.
3 So we've looked at the issue; we've
4 talked about the issue, and the agencies that are
5 responsible for dealing with the issue have all
6 been engaged and are working toward a resolution.
7 So we've heard the issue; we've tried to
8 understand the issue, and the agencies
9 responsible for dealing with the issue have all
10 been engaged, and from that point we've moved on.
11 From my notes that's all I have.
12 If you don't mind, if there's anyone
13 else on the panel that would like to provide
14 other observations before we move forward with
15 the recommendation.
16 CHAIRMAN HADDEN: I'd be happy to take
17 those. I want to compliment the panel. They
18 have put a lot of time and debate into this. I
19 want to commend the members. Any other panel
20 members?
21 MR. SETZER: I call for the chairman to

1 about wastewater treatment. And again, the panel
2 was interested in making sure that we understood
3 the situation as it exists today as well as what
4 was on the horizon for wastewater treatment for
5 Talbot County in the St. Michael's area.
6 We asked again MDE from the MPDS program
7 to come in and talk to the panel and discuss the
8 issues related to this treatment plant,
9 infiltration, the overflows, and what was being
10 done now and in the future to address the sewage
11 treatment issues.
12 And I think the panel report that Mary
13 put together kind of puts it in context. MDE has
14 issued a new permit allowing for the increase of
15 the treatment plant to 660,000 gallons per day.
16 They're required to put in biological nutrient
17 reduction. They're required to put together a
18 plan to address the infiltration into the system,
19 which is a big concern and a big part of the
20 overflows that are being experienced. And it's
21 our understanding that the town has qualified the

1 make a recommendation.
2 What's being distributed now is a
3 supplement to the panel report which is basically
4 the recommendation for a vote. The panel
5 discussed Miles Point III growth allocation
6 request in regard to the consistency of the
7 request with the goals of the Criteria Area Act
8 and the Commission's Criteria required by Natural
9 Resources Article 8-1809(j). As a result of the
10 panel discussions the panel would move for the
11 approval of the growth allocation request with
12 the following conditions; one, that the
13 development shall be set back from the landward
14 edge of tidal waters at least 300 feet. Passive
15 recreation activities may be allowed outside of
16 the 100-foot buffer; two, the 100-foot buffer
17 shall be established. And in establishing the
18 buffer, management measures shall be undertaken
19 to provide forest vegetation that assures the
20 buffer functions set forth in Critical Area
21 Criteria.

1 Before final recordation of any
2 subdivision plats or grading of the site, a
3 Buffer Management Plan shall be developed
4 cooperatively with the town and the Commission
5 and the respective staffs. The Buffer Management
6 Plan shall be approved and reviewed by the
7 Commission and may provide for public access;
8 three, in measuring the 300-foot setback and
9 100-foot buffer, the measurement shall be based
10 on the existing shoreline at the time the Buffer
11 Management Plan is submitted to the Commission;
12 four, a stormwater management plan shall be
13 developed that promotes environmentally sensitive
14 design and explores all opportunities for
15 infiltration and bioretention before utilizing
16 surface water treatment measures. The stormwater
17 management plan shall be developed cooperatively
18 with the town, the Commission, and their staff.
19 The Stormwater Management Plan shall be reviewed
20 and approved by the Commission.
21 CHAIRMAN MADDEN: Do we have a second?

1 COMMISSIONER: Second. Meg Andrews.
2 MS. ANDREWS: Can you clarify for me, is
3 it the panel's understanding that this
4 enhancement to the wastewater treatment system
5 would have to be in place before the development
6 went forward or there would just have to be a
7 plan for it?
8 MR. SETZER: It's our understanding that
9 the authorization has been made to increase the
10 capacity of the treatment plant. That also
11 requires the County to develop a plan that
12 addresses the infiltration problems that are
13 resulting in some of the overflows that have been
14 described. We don't have, I guess, an exact
15 timetable for when that plan is going to be
16 constructed or when that plan is going to be in
17 effect.
18 However, the conditions placed on the
19 development by the town requires that there's
20 adequate capacity for whatever component of the
21 project moves forward. So basically they're not

1 going to be able to build on the site. And I
2 think that construction isn't just the new
3 housing units, but also I believe to the
4 infrastructure, unless there's the appropriate
5 capacity not only available, but granted to the
6 town to move the construction forward. That's
7 the panel's understanding.
8 CHAIRMAN MADDEN: Any other discussion
9 or comments?
10 MR. RICHARDS: Edwin Richards. My
11 understanding in reading the material is that
12 there is a condition that limits the construction
13 to a capacity of the -- very specific, and I
14 can't remember the exact wording, but it
15 basically says they cannot use any septic tanks,
16 no other intermediate system, and they have to
17 have approval, not only capacity, but they have
18 to have approval before they can actually start
19 construction. We looked at it -- or I looked at
20 it and I thought that was very restrictive and I
21 felt dealt with the issue of capacity.

1 CHAIRMAN MADDEN: Any other discussion?
2 MS. SAMORAJCIYK: Who makes that
3 decision?
4 MR. RICHARDS: It's between the County
5 and the Department of Environment. Anything that
6 the County does has to agree with the regulations
7 being administered by the Department of
8 Environment. And I'm sure after what's gone on
9 in Centreville that that will be tightened up.
10 So I think both County and Department of
11 Environment will be involved.
12 CHAIRMAN MADDEN: Any other questions or
13 comments?
14 MS. ENNIS: Is the current capacity of
15 the sewage treatment plant such that on an
16 ordinary day there would be allocation available
17 for this development, or must it be enlarged in
18 order to meet the basic statement that there's
19 allocation available?
20 MR. SETZER: I don't recall.
21 MR. RICHARDS: As I recall, the

1 statement made by the representative of the
2 Department of Environment was that there is
3 existing capacity that could allow it to move
4 forward. However, the INI issue is one that has
5 been raised in testimony here and I think it's
6 one that's going to be closely investigated
7 before -- there was a statement that there may be
8 a re-evaluation of the capacity of the facility.
9 So at least at this point theoretically there is
10 capacity to move ahead.
11 But I think that's going to be placed
12 under investigation.
13 MS. ENNIS: So it could go forward
14 without any of it?
15 MS. MASON: There wasn't enough for the
16 whole development.
17 MR. RICHARDS: No. This is a staged
18 development over a number of years. I think
19 there's going to be a lot of work done before any
20 approvals are given.
21 MR. SETZER: I guess from a panel

1 there are major problems here, there's no
2 requirement on the County or the town to make
3 those improvements prior to this, or at least the
4 first phase.
5 MR. RICHARDS: I'll quote two things,
6 one is the statement from the representative of
7 the Department of Environment that said that that
8 was under investigation. And secondly, there was
9 testimony today that there has been money
10 committed at the County level. I believe it was
11 Councilman Carroll who said they are
12 investigating it and it is underway right now as
13 far as the County is concerned.
14 Also there was some written testimony
15 submitted indicating something like $400,000 had
16 been committed already to begin the process to
17 correct these problems.
18 MS. MASON: Also in the panel report,
19 going along with what Gary said --
20 MR. SETZER: Page 7 of the staff report.
21 MS. MASON: -- which summarizes the

1 perspective the issue was laid on the table. We
2 asked the agency that was responsible for sewage
3 treatment and discharge permits to come to speak
4 to the panel to at least make sure that we
5 understood the existing condition and prospects
6 for the future, and you have to kind of tread
7 lightly here because of certain jurisdictional
8 areas that it's important for whether or not this
9 project moves forward from an MDE and County
10 perspective in terms of sewage treatment.
11 We felt, as far as the Commission was
12 concerned, the fact that this issue was being
13 examined, that Ed recalls there was capacity
14 available for portions of the development to go
15 forward. There were controls placed on the
16 development for -- to have capacity available for
17 the further build-out of the development of that
18 sewage treatment plant was being addressed.
19 MS. ENNIS: I'm very new to this so
20 maybe I don't understand. It sounds like if
21 there's available capacity right now, even though

1 information that the panel received from the MDE
2 representative. That's the information that the
3 panel received.
4 MS. ENNIS: I guess my concern is that
5 the permits have been issued. Then you get to
6 the point can the town and the County afford to
7 make the improvements and will those improvements
8 have to be in place before the first part of the
9 development moves forward? And I mean, my
10 concern is that our first charge is to protect
11 the water and the fish and wildlife, and even if
12 we try to be objective and discount emotional
13 appeals of what is said here today and what I'm
14 sure the panel has heard, from a practical
15 standpoint of being involved with government, can
16 we be sure that this sewage treatment plant
17 improvement and expansion is going to take place?
18 MR. SETZER: I guess that raises the
19 question, do we have the authority to petition --
20 MS. MASON: That's a very good question,
21 and that's one that the panel discussed with me,

1 actually, early on in the process. And the
2 Critical Area Commission has always worked
3 cooperatively with the permitting agencies. And
4 in this case the Department of the Environment
5 would be the agency that issues the permits for
6 upgrading or for making sure that the sewage
7 treatment plant is functioning in accordance with
8 the state regulations.
9 This Commission has no direct authority
10 to require MDE or the town to do anything with
11 regard to its sewage treatment plant, in my
12 opinion. The panel took the initiative and asked
13 for information from the appropriate people at
14 MDE, which I believe is well within their
15 authority to get as much information as they can.
16 The MDE representative informed them
17 that MDE was in charge and taking care of the
18 sewage treatment plant matters. So I believe
19 that the panel report, as far as it went, really
20 I think states that the panel discharged their
21 duty because they did get information presented

1 at the public hearing similar to what you heard
2 today, only a lot more of it, that addressed
3 concerns and questions about the current
4 situation in St. Michael's and I think that the
5 panel was right to get additional information.
6 Beyond that, the panel did not discuss
7 recommending any kind of condition. So I didn't
8 give them advice on that. But my advice would
9 probably be that they should defer to the
10 Department of the Environment on the sewage
11 treatment issue.
12 MR. SETZER: If it's okay with you I
13 found a fax sheet that MDE provided us.
14 Fax sheet update, Talbot County region 2
15 astewater treatment plant ENR upgrade and
16 xpansion. The proposed project involves the
17 ngrade of the existing region 2 St. Michael's
18 stewater treatment plant with enhanced nutrient
19 moval facilities to achieve total nitrogen
20 emoval for a yearly average of 3 milligrams per
21 er with expansion from .5 to .66 million

1 gallons per day. Originally the County requested
2 to expand the plant to one million gallons per
3 day and MDE rejected that request as unreasonable
4 growth. The County agreed to go down to .8
5 million gallons per day. After design was
6 completed at this capacity the County Council
7 changed the expansion to .66 million gallons per
8 day.
9 The County is initiating the redesign
10 with the new capacity. The schedule design start
11 was February of 2002. Design completion was
12 October of 2003. The design start was January of
13 2004. Redesign completion is June 2004, with
14 construction start of September 2004 and
15 construction completion by December of 2005. It
16 says the service area is experiencing excessive
17 infiltration and inflow with 1,000 percent
18 variation of flows in some locations that
19 occasionally result in overflow. Maryland
20 Environmental Service has completed a study and
21 identified the areas with excessive infiltration

1 and inflow. During their July 22, 2003 meeting
2 the County Council decided to proceed with I&I
3 corrections immediately. The corrections are
4 estimated to cost $600,000.
5 MDE advised the County to apply for MDE
6 and USDA world grants and loans. Also MES's
7 study discovered that some I&I was due to house
8 connections, and the County has been advised that
9 some homeowners might be eligible for CPPC
10 funding.
11 As far as the ENR agreement, the County
12 signed the ENR agreement, which is enhanced
13 nutrient removal. With MDE, the County's meeting
14 with MDE on October 29th, 2003 was to discuss how
15 to proceed with the ENR project at the new
16 capacity of .66 million gallons per day.
17 CHAIRMAN MADDEN: Do you want to
18 summarize that for us? Any other discussion?
19 MS. PRETTIMAN: I would like to add on
20 that it's to any entity's benefit that owns a
21 water treatment plant or a septic plant to

1 upgrade so that -- when they have overflows the
2 MDE comes down very hard on them and fines them.
3 So it would be to their benefit. My question,
4 though, is on the EMR, and I didn't quite hear
5 you. They agreed to go down to 3 with the
6 enhancement?
7 MR. SETZER: Right.
8 MS. PRETTIMAN: Will their capacity go
9 up because they will be running more efficiently
10 than with going down to 3?
11 MR. SETZER: The impression that I got
12 was that EMR was a function of the .66.
13 MS. PRETTIMAN: And you don't know what
14 capacity they are right now?
15 MR. SETZER: I think they're authorized
16 for .5.
17 CHAIRMAN MADDEN: Commissioner McKay.
18 MR. McKAY: Thank you. I'm a bit
19 concerned about the area, the 300-foot setback.
20 While I recognize that I think it should be part
21 of this project, and that might be my personal

1 feeling, I'm concerned that from the 100-foot out
2 to the 300-foot, that that should maintain -- we
3 should maintain a local government or local
4 jurisdiction, kind of working together with the
5 Critical Areas Commission as well as the
6 developer to try to make that work as best as it
7 can for that particular project.
8 I am very concerned that we're
9 establishing a precedent that would really --
10 probably is something that's best left to the
11 local jurisdictions to do it as they should, as
12 the legislation says they should. And I just
13 think it's something that should be the locals
14 working with the Critical Area Commission to try
15 to accomplish that. I certainly support the
16 300-foot setback. I just feel like you're taking
17 away some flexibility with the local
18 jurisdictions in trying to accomplish other
19 benefits as they deal with that area of setbacks.
20 And I would like to see us revise it to
21 have this -- this particular project to have the

1 team of St. Michael's work with the Critical
2 Areas Commission to accomplish that setback as
3 best as possible.
4 CHAIRMAN MADDEN: I would defer over to
5 the panel chairperson because I know they gave a
6 lot of thought to the proposal. I also will ask
7 the counsel to give a historical perspective on
8 whether we've applied 300-foot buffers before.
9 Do you want to give us some thought behind the
10 recommendation?
11 MR. SETZER: I guess as I mentioned
12 earlier that looking at the intensity of the
13 development and the increase in the
14 imperviousness, we just thought it was important
15 to provide the maximum available setback that the
16 Commission authorized. We didn't discuss really
17 straying from the 300-foot setback, that I can
18 recall. I think right out of the gate the panel
19 started to talk about establishing a 300-foot
20 setback on the development, on the parcel. If
21 anybody on the panel has a different

1 recollection. That's my recollection.
2 MR. GILLISS: If the growth allocation
3 request requires this Commission to consider the
4 standards set out in 8-1809(J), and 8-1809(J)
5 directs us to the goals of the program in 8-1808,
6 one of which is to minimize impacts on water
7 quality, then we don't need to foundationally be
8 based upon the regulations which talk about
9 development from RCA to intense development, and
10 the shoulds and the shalls, but instead can rely
11 upon the fact that 8-1808(B)(1) directs us to
12 look at water quality, and one way to protect
13 water quality is to have a 300-foot buffer.
14 MS. MASON: Following up on what you
15 said, (B)(3), which directs the Commission to
16 look at the number of movement and activity and
17 persons in an area which is also something that
18 the panel discussed very very in-depth with the
19 proposed use of the 100-foot buffer proposed to
20 be a fairly intensive public recreation and
21 access area. The panel's discussions that I

1 recall were centered on how much protection for
2 habitat and water quality would that 100-foot
3 buffer actually achieve if it's going to be used
4 for a public park and the need for some
5 additional area to achieve those goals of the
6 program.
7 CHAIRMAN MADDEN: Any further
8 discussion?
9 MR. RICHARDS: The commissioner raised a
10 point about the local government participation.
11 That's one of the initiatives that's been very
12 much a concern to me throughout this.
13 My issue with the 300-foot is it was
14 more procedurally at this point than it is an
15 environmental concern. Although I think
16 ultimately that would be a top concern. But the
17 regulations, to try and paraphrase them,
18 basically says that the local jurisdictions shall
19 use guidelines, and one of the guidelines is it
20 should have a 300-foot setback.
21 In the submittals that they have they

1 claim to have addressed them, which they're also
2 required to do elsewhere, as I recall. And they
3 gave three reasons. We couldn't buy into any of
4 those reasons as to reasons why they should not
5 have a 300-foot. So basically we said they
6 really did not give the full merit to the
7 "should." And my feeling is that the "should" is
8 a very strong thing that says that they will do
9 it unless there's a compelling reason why they
10 don't or it runs counter to the intent of the
11 program.
12 And so right off the bat my feeling was
13 and the reason why I didn't address the issue
14 whether there should be something less than 300
15 feet, it says it should be 300 feet. So it's
16 time to drop it back in their lap.
17 I agree with you, if they want to come
18 back and say there is a compelling reason why we
19 cannot do it at 300 feet and then I, as an
20 individual, not speaking for the Commission,
21 would be glad to consider it. On a procedural

1 standpoint.
2 On the environmental I think there are
3 some arguments against it. I think that the town
4 was given an opportunity and they didn't do it
5 appropriately. And I have to address some of the
6 testimony because it really bothers me. There
7 was a conflict between the two attorneys,
8 Mr. Hickson and the gentleman from Miles &
9 Stockbridge, which I did not get his name, about
10 the 100-foot buffer and the 300 feet. The
11 gentleman from Miles & Stockbridge says that the
12 developer, or his client, the issue of 300 feet
13 never came up. Which to me undermines anything
14 the town says if that is true, undermines
15 anything the town says about whether or not they
16 dealt with that issue. They got the opportunity.
17 And if that's true, that even goes further in
18 undermining the three points that they gave us.
19 The other conflict that I have is
20 because in addition to the 300-foot, there's the
21 question of the 100-foot forested buffer. I

1 heard the attorney for the town of St. Michael's
2 saying we had to give him something in exchange
3 for putting in the marsh. And what he gave in
4 exchange was the 300 feet plus 100 feet of
5 forested buffer. And why did he give up the 100
6 feet of forested buffer? Because it would create
7 shade which would make the marsh impractical.
8 So basically in addressing the issue of
9 how the local government dealt with it, I think
10 that point, to me, was the most critical element
11 in this thing as to why it should be returned
12 with conditions, because that issue was not
13 appropriately addressed by the town. It should
14 be returned to make sure they address it.
15 And if they want to negotiate something
16 with the developer, then well and good.
17 Personally I have a feeling that if they can come
18 up with a compelling reason, I will listen, but I
19 will listen very critically.
20 MR. McKAY: I appreciate those comments
21 and I concur with you as long as the feeling here

1 is that we're requiring the 300-foot setback
2 because the local jurisdiction did not, in our
3 opinion, fully explore that -- doing that, then
4 that's fine. But I feel very uncomfortable if we
5 are doing it simply because we feel this
6 project -- and I do feel that 300-foot is
7 required here, but simply because we feel it's
8 required and the local jurisdiction has made
9 every effort possible to meet the 300. I want to
10 make sure we don't feel like we're establishing a
11 precedent.
12 CHAIRMAN MADDEN: This is the conclusion
13 the panel has reached.
14 MR. SANDRE: I would just like to raise
15 the point that the criteria established, the 300
16 feet, that it's the minimum, not the maximum,
17 that should be located at least. So it's the
18 minimum requirement in order to meet the goals of
19 the program which is to minimize adverse impacts
20 on water quality. So I think that's a very
21 important point.

1 correct certain mistakes, conflicts or omissions
2 in their local program. And there were about
3 four of those, three of which have all been
4 corrected either prior to today, will be
5 corrected through the bills today, or in the
6 future. So essentially those items have or will
7 be addressed.
8 The other primary thrust behind those
9 bills that are in your staff report is part of
10 the County's comprehensive update that's required
11 every six years by each county. Last month we
12 did Anne Arundel County. We just updated them
13 for the third time. This is Talbot County's
14 first comprehensive review. I'll direct you to
15 your staff report. There are six bills that were
16 sent to us by the County. And I'm going to go
17 through each one of them bill by bill.
18 The first one is Bill 922, and this bill
19 includes specific provisions for the notification
20 of property owners for certain types of
21 development applications before the Office of

1 CHAIRMAN MADDEN: Thank you. Are we
2 ready to vote? We have a motion in front of us
3 to approve the Miles Point Growth Allocation
4 Request with four conditions. All those in favor
5 say aye.
6 (All say aye.)
7 CHAIRMAN SETZER: Opposed?
8 MR. ENNIS: Only because of the sewage
9 treatment.
10 CHAIRMAN MADDEN: The motion is
11 approved.
12 Next on the agenda is the Talbot County
13 Comprehensive Review Amendments. I'll ask Lisa
14 to come up and give that presentation.
15 (Recess.)
16 MR. MOERGER: This has been a long
17 process for us, and the County Commissioners have
18 finally enacted a series of several bills that
19 are doing primarily two things. One is, for
20 those of you that were here in September of 2002,
21 this Commission sent the County a directive to

1 Planning and Zoning. The panel has no changes to
2 this bill. The way that you received it and read
3 it is the way that we propose to accept it.
4 The second bill is 926, and this is a
5 section in the County's current zoning ordinance
6 where all the definitions are laid out. And they
7 are adding some definitions. A definition for a
8 champion tree forest, preservation plan is a new
9 definition for the County, marsh vegetation,
10 mitigation, and disturbance.
11 There are two definitions in this bill
12 that the panel, which you will hear later from
13 the panel chair, are proposing to amend. One is
14 the definition of a dwelling unit, and the second
15 is their definition of shoreline development
16 buffer which is their definition of the 100-foot
17 buffer. And there will be one minor change to
18 their definition of development activities.
19 The next bill is Bill 927. This is the
20 section of the County Zoning Ordinance which
21 lists those uses that are permissible in the

1 County's resource conservation areas. If you
2 have a copy of your bill you can see these uses.
3 They're all acceptable to the Commission.
4 However, the panel has recommended a few
5 changes to these. One is for parks and
6 playgrounds. You may recall last month Anne
7 Arundel County had a similar provision in their
8 RCA use list and this Commission recommended and
9 approved an amendment to their comprehensive
10 review that it specifically be limited to passive
11 recreation, and that's the same type of
12 limitation that we're going to be asking for on
13 this bill.
14 The other issues in this bill with
15 regard to resource conservation area uses have to
16 do with the County's limit on treated septage
17 land application, community sewage treatment
18 plants, and sludge application for agricultural
19 and horticultural purposes. The County has
20 restrictions on where these uses can occur. They
21 restrict them to within 200 feet of mean high

1 water and tributary streams and we're going to
2 put in an addition to that to ensure that it's
3 also restricted from the buffer and the edge of
4 tidal wetlands because that wasn't clear in the
5 initial bill.
6 The next bill, Bill 929 amends the
7 agricultural and forestry management section of
8 the County zoning ordinance. In here the County
9 has done several things. They have reworked this
10 section of their ordinance quite a bit, inserting
11 the words 100 feet where appropriate, including
12 provisions for forest preservation plans.
13 This is something new for Talbot County.
14 This will require property owners in the critical
15 area to submit forest preservation plans when
16 they are undertaking clearing or development
17 activities within a 100-foot buffer or outside
18 the buffer.
19 They're also adding certain habitat
20 protection areas which didn't appear in the
21 County's original program, and they're adding a

1 buffer exemption area program for the first time.
2 We do not have the maps yet, but the County
3 Council is working on those maps and once we
4 receive them, you will get a chance to see those
5 maps and approve them.
6 What you'll be approving today is the
7 supporting language in the County's ordinance
8 that instructs how development will occur in
9 buffer exemption areas.
10 We will be making a suggested change to
11 the County's forest preservation plan language.
12 With regard to the buffer exemption area language
13 that's proposed, it is essentially consistent
14 with your policy on buffer exemption areas. In
15 fact, there are several places in the new bill
16 where it is stricter.
17 However, there's one section with regard
18 to mitigation. As you know, in buffer exemption
19 areas, the prescribed mitigation ratio is at a 2
20 to 1 ratio, but that's for all development
21 activities in the buffer. The County's bill

1 reads for new impervious in the buffer. So the
2 suggested change will be all development change.
3 So we can capture what will eventually be in the
4 buffer when the development takes place.
5 Bill 931, another section of the
6 County's zoning ordinance that pertains to the
7 general site plan requirements. Again, in this
8 section of the County Code there was
9 significant -- well, not significant changes, but
10 a lot of changes that the County made over the
11 years, and it adds waivers and certain
12 applications for site plans, talks about
13 extensions, and they have updated their language
14 with regard to when they refer to the appropriate
15 state agencies which have changed over the years.
16 There are a couple of changes to Bill
17 931 that the panel discussed today in the earlier
18 panel discussion. One of the issues is that in
19 the criteria there is a requirement that lots or
20 parcels must be at least 15 percent forested. So
21 if you have a lot or parcel that is not, you have

1 to bring it up to that minimum threshold.

2 The way this bill is currently written

3 it exempts grandfathered lots or parcels that are

4 less than seven acres. Because that is

5 inconsistent with the criteria and other county

6 programs in the Critical Area, the panel is going

7 to recommend that these references be deleted

8 from the bill.

9 The other change to this section is with

10 regard to the mitigation ratios prescribed when

11 you're clearing in the Critical Area. When

12 you're clearing between 20 and 30 percent of a

13 lot or parcel, you're required to do one and a

14 half to one mitigation. The way the bill

15 currently reads, you'd only be required to do one

16 and a half to one for the portion of the clearing

17 that would be between 20 and 30 percent range.

18 So we're asking for that to be corrected.

19 The final bill is Bill 932. This bill

20 talks about the process for obtaining growth

21 allocations for applicants in Talbot County, and

1 on March 24th. There weren't a whole lot of

2 substantive public comments. We did receive a

3 few. County staff gave us a formal presentation.

4 And that concludes my presentation

5 unless you have any comments or questions.

6 CHAIRMAN MADDEN: I'll turn it over to

7 the chair.

8 MR. BLAZER: The panel discussed the

9 County Council bills that Lisa has gone over,

10 those are Talbot County Bills 922, 926, 927, 929,

11 931 and 932 as part of their comprehensive review

12 of their local program. We reviewed them with

13 regard to the consistency of the goals of the

14 Critical Care Act and the Commission's criteria

15 required in Natural Resources Article 8-1809(G).

16 Again, just briefly, these are the bills as part

17 of the comprehensive review.

18 On behalf of the panel I move the

19 approval of the County Council bills with the

20 following conditions, and I'll read through. Lisa

21 has given you a summary of them and they're in

1 the panel had no suggested changes to that bill.

2 The comprehensive review also includes

3 that the County provide us with updated habitat

4 protection area maps. This is in an effort to

5 keep their maps current so we know which HPAs are

6 occurring within the County and we know what has

7 changed. We are working with the Department of

8 Nature Resources on finalizing these maps and

9 having them available to County staff and

10 Commission staff.

11 The critical area acreage and growth

12 allocation was provided to the Critical Area

13 Commission staff by the County. I believe your

14 package has attached to it a chart that lists out

15 all the growth allocations that have taken place

16 since the inception of the Talbot program. It

17 also includes the three local municipalities, St.

18 Michael's, Oxford and Easton's growth allocation

19 deductions.

20 Chairman Madden appointed a five-member

21 panel. The panel held a public hearing in Easton

1 your Handout that's been circulated here. In

2 Bill 926, Chapter 190 Article 2 definitions and

3 word usage, Section 190-14, Section 3, dwelling

4 unit. Change the definition of a dwelling unit

5 to state dwelling unit means a single unit

6 providing complete independent living facilities

7 for at least one person, including permanent

8 provisions for sanitation, cooking, eating,

9 sleeping, and other activities routinely

10 associated with daily life. A dwelling unit

11 includes a living quarters for domestic and other

12 employee or tenant, an in-law or accessory

13 apartment, a guest house, or a caretaker

14 residency.

15 The other section of Bill 926, Section

16 9, where we made a recommendation of shoreline

17 development buffer, amend the definition of a

18 shoreline development buffer to state that there

19 are at least 100 feet wide measured landward from

20 the mean high water line of tidal waters,

21 tributary streams, and tidal wetlands.

1 The other section with Bill 926, Section
2 1, development activities. They request that at
3 least two sentences in item B be deleted. This
4 is where the substantial alteration is defined.
5 In Bill 927, Chapter 190, article 4,
6 land use regulations by zoning districts, Section
7 190-19. Section 4 of that bill, parks and
8 playgrounds, add another bullet that states
9 limited to passive recreation. Sections 18, 20
10 and 21, we talked about treated septage land
11 application, community sewage treatment plant,
12 sludge application for agricultural and
13 horticultural purposes. The panel recommended
14 adding tidal wetlands to the bullet that
15 restricts these uses to within 200 feet of mean
16 high water or tributary streams. At a minimum
17 this bullet should include the language that says
18 or insure that it is otherwise restricted within
19 the 100-foot buffer of tidal wetlands.
20 In Bill 929, Chapter 190, Article 11,
21 Critical Area Special Provisions Section 190-88,

1 190-88(B)(3)(H). In place of H insert the
2 following language: The forest preservation plan
3 shall include either of the following: A, a time
4 period for implementing the plan and provisions
5 for a final inspection by the County after which
6 the plan will be certified complete, or B,
7 provisions for removal of invasive exotic species
8 and/or maintenance of native vegetation for a
9 period up to five years including provisions for
10 annual inspections by the County.
1 The other recommendation was
2 190-88.1(B)(6)(B), replace the language
3 mitigation equal to an area two times the square
4 footage of the proposed impervious surface in the
5 buffer area. Change that to the language that
6 states mitigation equal to an area two times the
7 square footage of the development activity in the
8 buffer area.
9 Bill 931, which is Chapter 190, article
10 12, site plan review, section 190-92 and
11 190-93(E)(9)(A), and 190-93(E)(9)(D)(1), delete

1 the references to parcels up to 7 acres. It must
2 provide 15 percent aforestation. This language
3 excludes grandfathered parcels under 7 acres for
4 the aforestation requirement. If it's the
5 County's intent to allow certain allowances for
6 grandfathered parcels under 7 acres, then the
7 County may propose an exemption for certain
8 classes of activities such as new dwellings.
9 And then the last recommendation for
10 Bill 931 is 190-93(E)(9)(D)(c), delete the phrase
11 "additional ten percent." These were the
12 recommendations of the panel.
13 CHAIRMAN MADDEN: We have a motion for
14 approval with conditions. Is there a second?
15 COMMISSIONER: Second.
16 CHAIRMAN MADDEN: Is there any
17 discussion? Hearing none, all those in favor say
18 aye.
19 (All said aye.)
20 CHAIRMAN MADDEN: Opposed nay. Ayes
21 have it.

1 We have another very important issue
2 coming up in front of the Commission right now,
3 Talbot County Bill Number 933, growth allocation
4 procedures. We had a panel that looked into this
5 extensively. Ren is going to give the panel
6 report. And then I will again ask for public
7 comment if anybody wishes to have it.
8 MR. SERRY: This amendment to the Talbot
9 County Critical Area Program is County Bill 933.
10 As the chairman explained, the panel conducted a
11 public hearing, met on the bill and discussed it
12 several times, and met again this morning. The
13 staff report that went out and the panel report
14 that went out also included a copy of the bill.
15 In 1989 the Talbot County Council
16 approved the County's Critical Area Program and
17 submitted that to the Commission. The Commission
18 approved that program. The program included what
19 the County called preservation of growth
20 allocation to the towns of St. Michael's, Easton
21 and Oxford. The County used the method of

1 providing the growth allocation acres to the
2 towns. There were no conditions placed on the
3 use of these acres. That was in the 1989
4 Critical Areas Program. The County gave the town
5 of Easton 133 acres, town of St. Michael's 245
6 acres, and the town of Oxford 193 acres. There
7 were maps attached to the Critical Area Program,
8 three maps that showed the potential areas for
9 annexation outside of the towns.
10 The understanding was that the growth
11 allocation would be used by the towns both within
12 their current boundaries, and the understanding
13 was in annexed areas. As Lisa explained on one
14 of the other previous items -- I was going to say
15 this morning, it seems like this morning, the
16 town of Easton used all of its growth allocation
17 and in 2000 the County instituted a new process
18 which they called their supplemental growth
19 allocation process, and that is a process that
20 involved joint hearings by the County Council and
21 town of Easton and joint approval of growth

1 allocations.
2 That process has been used recently for
3 the Easton Village and Ratcliffe growth
4 allocations that you may remember from a couple
5 months ago, I think that was January that the
6 Commission approved those. It's also been used
7 for the Cooke's Hope growth allocation in Easton.
8 Easton used their growth allocation.
9 Oxford has only used about 18 acres of its growth
10 allocation. And St. Michael's has used
11 approximately 21 acres for the Strausburg growth
12 allocation. And that is, as Lisa explained
13 earlier, a refinement that this Commission
14 approved in October of 2000.
15 Council Bill 933 prefaces the action
16 that the County took with a lot of explanation
17 about the use of growth allocation. What the
18 bill does is it removes that growth allocation
19 that has been unused by the town and has it
20 revert back to the County. And what the County
21 intends is that the process that they used when

1 Easton ran out of growth allocation, that is the
2 joint process, the supplemental process, the
3 County informs us that that would be the process
4 now after the growth allocation unused by the
5 towns is removed and reverted back to the County.
6 There are a lot of planning, growth
7 management clauses that are in the preface to the
8 bill, in the whereas clauses, and you have all
9 that information. It discusses the fact that it
10 was done in 1989 and things have changed. Growth
11 management has changed, that the original county
12 program required a four-year review of the County
13 program in addition to a review of the growth
14 allocation maps and the growth needs of the
15 towns. That review was not done. It has been
16 done now in the form of Bill 933, removing the
17 growth allocation.
18 The original county total of growth
19 allocation was 2,554 acres. And the County has a
20 process for using a portion of that in the RCA as
21 is set out in the Critical Area law and is

1 concerned, among other things, that its process
2 for using the growth allocation in the RCA will
3 be compromised unless it regains control of all
4 of the growth allocation that has since been
5 unused.
6 If you look in your staff report or
7 panel report, on page 2 in the middle, you'll see
8 some of those reasons that the County set out in
9 addition to the ones that I've just described.
10 As I said, this action, Bill 933, will
11 remove the growth allocation and revert back to
12 the County. In addition, and I think Lisa also
13 described this earlier, it will undo a previously
14 approved growth allocation, and that's the
15 Strausburg growth allocation that this Commission
16 approved as a refinement in October of last year.
17 The reason it would remove that growth allocation
18 is because the bill contains a clause that says
19 if any growth allocation is unutilized, and the
20 County goes on to define unutilized, then by the
21 effective date of the bill, which was I think

1 February of this year, then that growth
2 allocation also reverts back to the County.
3 And included in the definition of
4 unutilized is the provision that any growth
5 allocation awarded for which substantial
6 construction has not started based on a valid
7 building permit, that is also affected by the
8 bill and reverts back to the County.
9 There could be other growth allocations
10 in addition to the Strausburg. We have talked to
11 the towns of Easton and Oxford regarding their
12 previously approved growth allocations, and our
13 understanding is that there are a few lots that
14 are still undeveloped for which there are no
15 building permits yet that could also be affected
16 by this bill. But the Strausburg growth
17 allocation approved in October is obviously
18 affected.
19 At the panel's request the staff looked
20 into growth allocations and growth allocation
21 systems in use by the other counties, and we

1 summarized for the panel that generally those
2 growth allocation procedures of the counties fall
3 into three categories. And I'm on Page 4 of your
4 panel report. One category is where the County
5 simply gave the growth allocation to the towns
6 for their use, and that was the process that
7 Talbot County used.
8 Another selection of programs, another
9 category of growth allocation used is where a
10 county simply identifies a number of acres for a
11 town's use, growth allocation, but then awards
12 that growth allocation on an individual project
13 basis when the town requests it.
14 And the third category is a coordinated
15 process where both entities make the decisions
16 together. If you look at the bottom of Page 4
17 you'll see some information that we've been
18 talking about quite a bit today in regard to the
19 other amendments. Here you'll find about three
20 quarters of the way down a quote from the
21 Critical Area law that provides you the standards

1 for review of a proposed amendment. Those
2 standards are that the Commission must determine
3 or that the program amendments must meet the
4 goals of the Critical Area law, and they are set
5 out at the bottom of page 4, as well as the
6 provisions of the criteria. That is what the
7 panel discussed at length in its meetings and
8 again today.
9 That's all I have in summary of the
10 bill. Are there any questions regarding the
11 process or what the bill does?
12 CHAIRMAN MADDEN: Thank you very much.
13 Now we'll allow brief public comment, if anybody
14 chooses to do so. We're allocating a time to the
15 County to come up and address us, and then we'll
16 allow members of the public to address us briefly
17 also.
18 MR. POLLEN: Thank you, my name is
19 Michael Pollen. I am the Talbot County attorney
20 and I would like to read to you a letter that was
21 addressed to Senator Madden on April 22nd which

1 contained the County's comments on the
2 subcommittee's review of Bill 933 that had
3 occurred on April 19th.
4 Dear Senator Madden: During the
5 Critical Area Commission Subcommittee Review on
6 April 19, 2004 of Talbot County's proposed
7 changes to its local program, several members
8 commented on the need for more information to
9 fully understand the various bills' language. I
10 am respectfully submitting this letter to respond
11 to those questions and I will address my comments
12 in the order in which the discussion occurred.
13 Consistency. The subcommittee initially
14 posed the question whether Bill 933 was
15 consistent with existing Critical Area Commission
16 policies and other approved programs. The first
17 part of the discussion articulated the correct
18 standard by which to judge consistency. The
19 discussion involved approvals of the program for
20 Caroline County, Saint Mary's County, Wicomico
21 County, Queen Anne's County, which all

1 demonstrate that the Critical Area Commission has
2 approved as a matter of policy different
3 approaches to county municipal growth allocation.
4 Bill 933 falls within the parameters of the
5 previously approved programs and policies of the
6 Critical Area Commission. This is the correct
7 standard and the correct conclusion.
8 Comparison of Bill 933 to inconsistent
9 provisions of existing municipal programs based
10 on the 1989 ordinance that is being repealed by
11 933 is not the correct approach to determine
12 consistency. By definition, a program amendment
13 is a change to a program and it will necessarily
14 be different than existing elements of the
15 current program.
16 In the case of Bill 933, Talbot County
17 municipality has adopted their own local programs
18 based on the 1989 ordinance that gave them
19 specific amounts of growth allocation. Bill 933
20 changes that. And any existing elements of
21 approved local programs inconsistent with Bill

1 933 are irrelevant to whether Bill 933 should be
2 approved.
3 If proposed amendments are compared with
4 inconsistent existing program elements for
5 consistency, no amendment would ever be
6 consistent, and therefore, no amendment would be
7 approved.
8 I'm sure the subcommittee's intention,
9 based on Ms. Mason's legal advice in considering
10 consistency, does not include consideration of
11 existing elements of the municipal Critical Area
12 programs that were premised on the 1989 ordinance
13 that are being changed by Bill 933.
14 Municipal reliance. Some of the
15 discussion centered upon expectations of various
16 municipalities premised on the 1989 award of the
17 growth allocation acreage. This is not an
18 appropriate consideration in evaluating Bill 933.
19 Maryland law is quite clear that absent vested
20 rights, which Bill 933 specifically does not
21 impair, zoning laws may be changed by local

1 government and a property owner, or in this case,
2 a municipality, has no legal right to rely on a
3 preexisting law or any assumption that
4 preexisting law would continue as originally
5 enacted.
6 There was some discussion about various
7 projects that were pending, and one in
8 particular, Cooke's Hope, was the subject of the
9 next paragraph.
10 Cooke's Hope. One topic of discussion
11 was the effect of Bill 933 on the Critical Area
12 Commission's previous approval of the Cooke's
13 Hope project. Talbot County Council has already
14 approved its Cooke's Hope project utilizing the
15 procedures adopted under Bill 762. Bill 762 is
16 the bill that was approved by this Commission in
17 2000 that established a joint review process with
18 the municipalities and the County in which the
19 applicant submits the application to the
20 municipality; it's forwarded to the County;
21 there's a joint review at the Planning Commission

1 level; there is a joint meeting of the town and
2 the county planning commissions. They separately
3 confer and form separate recommendations to their
4 respective bodies. That is followed by a joint
5 meeting between the town council and the County
6 Council to review the application. They then
7 separately confer among themselves and come up
8 with individual recommendations for approval or
9 not. Both, under Bill 762, both the town and the
10 County must approve the project.
11 Now, that procedure has been
12 successfully used with the town of Easton on
13 several occasions. The town of Easton has no
14 longer any growth allocation, as Ren Serey
15 indicated.
16 Back to the letter. One topic of
17 discussion was the effect of Bill 933 on the
18 Critical Area Commission's previous approval of
19 the Cooke's Hope project. The Talbot County
20 Council has already approved the Cooke's Hope
21 project utilizing the procedures adopted under

1 Bill 762. Bill 933 does not affect that
2 approval. This is readily apparent from the
3 language of the bill itself on page 6, line 216,
4 which states, growth allocation awarded by any
5 town that remains unutilized by the effective
6 date of the ordinance shall revert to the County.
7 Growth allocation awarded by the County prior to
8 or after the effective date of the ordinance
9 shall be deducted from the total growth
10 allocation allocated to the County under section
11 8-1808(1)(B).
12 So that project has been through the
13 joint review process and approved, and Bill 933
14 would have no effect on that project.
15 I want to skip ahead in the letter to
16 discussion of Bill 762. Other parts of the
17 discussion noted that Bill 762 was premised on
18 the assumption that it pertained to supplemental
19 awards of growth allocation after the use of
20 allocated acreage under the 1981 maps. When Bill
21 762 was enacted, and that was in 2002 -- or

1 excuse me, 2000, there was no intention to repeal
2 the 1980 maps. That does not forever enshrine
3 those maps and place them beyond the police power
4 of a future council. The premises or assumptions
5 upon which Bill 762 was enacted do not bear on
6 whether Bill 933 is consistent with the standards
7 and the criteria the Critical Area Commission is
8 required to consider under Natural Resources
9 Article Section 8-1809(J).
10 Bill 762 is the County-created procedure
11 required by COMAR to accommodate the growth needs
12 of municipalities. COMAR has a specific criteria
13 that says when planning future expansion of
14 limited development and intensely developed area,
15 counties, in coordination with affected
16 municipalities, shall establish procedures to
17 accommodate the growth needs of municipalities.
18 So COMAR requires the specifically --
19 that the counties establish this procedure
20 specifically, and that's what Bill 762 did.
21 That's already been approved by the Commission

1 and utilized with the town of Easton.
2 Bill 933 simply takes that existing
3 procedure and applies it uniformly throughout the
4 County to all of the towns, including St.
5 Michael's, including the town of Oxford.
6 Bill 762 is the County-created procedure
7 required by COMAR to accommodate needs of
8 municipalities. Bill 762 was drafted by the town
9 attorneys for the town of Easton and circulated
10 for comment to the town attorneys and town
11 commissioners for the town of Oxford and St.
12 Michael's prior to introduction by the County
13 Council.
14 The comments offered by the town
15 attorney for the town of St. Michael's, the only
16 comments received were incorporated into the
17 bill. Enactment of Bill 762 was in coordination
18 with affected municipalities, as required by
19 COMAR.
20 They then go on to discuss other
21 coordination between the County and the

1 municipalities because that was one of the
2 criteria, one of the elements in the criteria.
3 On the planning level Talbot County has
4 coordinated directly with each municipality to
5 establish growth boundaries around each of the
6 affected municipalities. This effort has
7 resulted in coordinated maps showing common plans
8 between the County and each municipality for
9 growth areas around the town. Examination of
10 those maps shows quite clearly the coordinated
11 result of that county municipal effort to
12 accommodate the growth needs of municipalities.
13 These maps are the definitive reference
14 point from which to evaluate county municipal
15 cooperation regarding growth boundaries of
16 municipalities and county accommodation of growth
17 needs. The matching plans between the County and
18 each of the effective municipalities shows a
19 level of cooperative effort that speaks for
20 itself. Any claim that there was not adequate
21 political coordination between the town and

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1 county elected officials in connection with
2 enactment of Bill 933 --
3 CHAIRMAN MADDEN: I'm going to ask you
4 to summarize because your time is expiring.
5 Mr. POLLEN: Mr. Chairman, it's the
6 County's position that this -- and as Mr. Serey
7 explained in his comments, many counties
8 throughout the state have adopted Critical Area
9 policies that do not give specific acreage growth
10 allocations to municipalities. Those county-wide
11 programs have been previously approved by this
12 Commission.
13 Bill 933 is within the state-delegated
14 power of the County Council to enact. We're a
15 charter county. We have the obligation to
16 develop our own program, delegate it not only
17 under our charter, but under the Critical Area
18 law. This policy has been previously promoted by
19 other counties and approved by the Critical Area
20 Commission. And we believe that it represents
21 not only good environmental policy, but it's well

1 is attempting to yank back reserved acreage that
2 was originally given to the town and that the
3 town's programs were based on. They have been
4 functioning all these years, and the towns did
5 not receive any complaint from the County that
6 anything wasn't working well until we received
7 notice of this bill.
8 I testified at the local panel hearing.
9 We found evidence in the record here that the
10 County manager contacted Mr. Serey of this office
11 on October the 29th, 2003 to inform him that the
12 bill was in process and that he could expect it
13 to be up here for processing at the Critical Area
14 Commission in January of 2004. This bill was not
15 introduced to the public until some time in
16 November of 2003, and the towns were not
17 contacted about it and the problem was not raised
18 with the towns before the bill was introduced to
19 the public.
20 So there has been no coordination.
21 There's been no cooperation, and the effect of

1 within the prerogative of the County Council to
2 adopt that policy being consistent with the goals
3 and criteria of the Critical Area Commission.
4 It's really designed to enhance and
5 protect the environment of the Chesapeake Bay and
6 protect its future. So we would urge that the
7 Critical Area Commission adopt this as a program
8 amendment to Talbot County's local program.
9 CHAIRMAN MADDEN: Thank you for your
10 comments? Any member of the public that would
11 like to speak to us briefly on Talbot County Bill
12 933?
13 MR. NICKSON: My name is Michael
14 Nickson, I'm the attorney for the town of St.
15 Michael's. The town opposes 933. The towns of
16 Easton and Oxford appeared at the local county
17 hearing and also opposed this bill.
18 We opposed it for several reasons.
19 First, we think it's different than other
20 situations that you have addressed because in
21 this situation you're yanking back or the County

1 the bill will, as I said, yank back reserved
2 acreage and in my view run contrary to the way
3 that the state Critical Area laws and policies
4 are supposed to work, and that is they're
5 supposed to work in an organized and coordinated
6 fashion. Not to say that every county has to
7 work the same way, but by suddenly yanking back
8 these bills you have towns that in fact don't
9 have them; they can't function at all in terms of
10 Critical Area.
11 CHAIRMAN MADDEN: Your time is expiring.
12 Please summarize.
13 MR. NICKSON: We agree with what the
14 panel discussed this morning, that in effect it
15 will undo some decisions that the Critical Area
16 Commission had made, that it's inconsistent with
17 the existing town programs that exist in three
18 municipalities in the town and there's been no
19 cooperation or coordination in bringing this bill
20 forward. So we oppose it.
21 CHAIRMAN MADDEN: Thank you. Does

1 anybody else want to make any public comment?
2 MR. ALSPACH: Thank you again. My name
3 is Tom Alspach. I'm speaking on behalf of the
4 Public Preservation Alliance. I would not agree
5 with Mr. Nickson that the towns cannot function
6 with Bill 933. The purpose of Bill 933 is to
7 ensure that both the County and town and their
8 respective populaces equally have a stake in the
9 Critical Area, have their views taken into
10 account in the grand growth allocation.
11 The grand growth allocation in a town
12 like St. Michael's or Oxford affects all the
13 residents of the County who utilize the Miles
14 River, the Tred Avon River, Choptank River, et
15 cetera. What this process is intended to do is
16 to establish a joint review procedure whereby
17 both jurisdictions participate in that review.
18 Nothing is being taken away. The only two
19 instances that this process has already been used
20 with regard to the town of Easton, and in both
21 instances the growth allocation requests were

1 approved.
2 If you look at a map, some of you who
3 were at the public hearing for the panel,
4 remember I showed you what St. Michael's looks
5 like now. It looks like a big bar bell, a chunk
6 of lead here and a chunk of lead here and a
7 skinny bar that joins the two together. That's
8 what St. Michael's looks like now because they
9 annexed a piece of property three-quarters of a
10 mile out to the country by way of annexing a
11 roadbed. That piece of annexed property is out
12 in the middle of the county on a county river
13 surrounded by county residents, yet the residents
14 of the County had no say whatsoever when growth
15 allocation for this annexation was considered.
16 Given the fact that they will be
17 directly impacted by it, by annexations like in
18 the future, this procedure would ensure that
19 their concerns are taken into account as well as
20 those of people living in the town. By the way,
21 in response to a question that was asked, I think

1 by Mr. Jackson at the panel hearing, the question
2 was raised doesn't this give the County a veto
3 and it can prevent any growth allocation
4 whatsoever. No, it doesn't. The law requires
5 the counties to accommodate the growth needs of
6 the town. If the County were arbitrarily denying
7 growth allocation pursuant to this procedure, the
8 town would have relief available to it because
9 the County would not be accommodating its need
10 for growth. So that fear or concern is
11 misplaced. I would urge you to approve this
12 proposed program amendment. It does nothing but
13 assure that all parties affected by growth
14 allocation will be heard in the process.
15 CHAIRMAN MADDEN: Anything else? I'll
16 turn it over to panel chair for additional
17 comments and recommendations.
18 MR. BLAZER: I guess a couple things
19 while we're passing out the panel recommendations
20 and report. We only had three people I think
21 speak here. But the night of our panel we were

1 there for a good two and a half, three hours, had
2 quite a few people talk similar to the other St.
3 Michael's hearing. And a lot was presented and a
4 lot was discussed, and basically some of the
5 issues that we had to deal with and that we
6 focused on were basically -- we wanted to apply
7 the specific sections in the critical areas law.
8 We heard all kinds of things about planning and
9 smart growth and wastewater treatment and some of
10 the problems with the Miles River, you know, we
11 needed to focus on the Critical Area provisions
12 in the criteria and the law that we had. So
13 that's what we tried to focus on in our panel
14 discussions.
15 So, you know, with that, we also looked
16 at the effect of Bill 933 on other Critical Area
17 programs, program amendments, program
18 refinements, what the Critical Area COMAR section
19 said, so we had several meetings, a lot of
20 discussion, a lot of debate as we went through,
21 and I also want to thank the panel members,

1 because I think the debate and the discussion was
2 very healthy and I appreciate all of your input
3 on these.
4 A couple other introductory remarks. In
5 its review of Bill 933, the panel wanted to
6 encourage the County and towns to work together
7 on specific changes on the growth allocation
8 procedures that are going to affect all of them.
9 You heard a couple people talk about process
10 things and I think that's one of the things that
11 we'd like to see as this develops over time.
12 The panel believed that the time was
13 particularly appropriate for this kind of
14 cooperative effort and the analysis given that
15 the County has engaged in its comprehensive
16 review of its program.
17 The panel also believes that the
18 supplemental growth allocation process of Bill
19 762 that I believe Mr. Pollen talked a little bit
20 about which is incorporated in the County code
21 may be a desirable growth allocation process,

1 however, as presently drafted, Bill 933 really
2 doesn't harmonize or come in line with the
3 supplemental growth allocation process of the
4 County code. There were some inconsistencies
5 that the panel was uncomfortable with in our
6 determination of our recommendation.
7 I'd like to move on behalf of the panel
8 to deny approval of Talbot County Bill 933 as an
9 amendment to the County's Critical Area program
10 and to invite the County to work with the
11 Commission and its staff to develop new growth
12 allocation provisions that will be compatible
13 with the state Critical Area Act and its
14 criteria.
15 There are two major bases for the
16 motion. They are: If we accept Bill 933, we
17 would negate at least one previous Commission
18 action of approving a local program change, and
19 that's the refinement to the St. Michael's
20 program for the Strausburg growth allocation we
21 approved back in October 2003. And the second

1 basis was accepted Bill 933 would create
2 conflicts between the County program and several
3 of the approved municipal programs that the
4 Commission has agreed to. The municipal programs
5 have their own approved growth allocation
6 procedures premised on the growth allocation
7 reserves provided by the County. The conflict
8 that Bill 933 would create was contrary to the
9 Commission's oversight responsibility to ensure
10 that local programs are implemented in a
11 consistent and uniform manner. So that's our
12 recommendation.
13 CHAIRMAN MADDEN: Do we have a motion
14 for denial of Talbot County Bill 933? Is there
15 a second?
16 COMMISSIONER: Second.
17 CHAIRMAN MADDEN: Any discussion? Yes,
18 Barbara?
19 SPEAKER: I would like to clarify
20 something. It's my understanding that the goals
21 of Bill 933 are consistent with the state

1 delegation to the County, but the draftmanship is
2 creating some inconsistency, so with appropriate
3 draftmanship the goals could be realized; is that
4 correct?
5 MS. MASON: The process that the County
6 has said that they intend to use, that is the
7 joint process through Bill 762, the panel
8 believed was definitely in line with or
9 appropriate under the state law and criteria, but
10 the actual wording of the bill which is what the
11 panel had to look at created the problem for this
12 Commission of negating the Commission action.
13 SPEAKER: So it's basically an inartful
14 drafting as opposed to a noncompliance -- the
15 goals are not noncompliant, the draftmanship --
16 CHAIRMAN MADDEN: Denial is articulated
17 in the motion. If we stick to the motion rather
18 than try to read something else into it. Any
19 other discussion?
20 MS. ENNIS: It seems to me when we look
21 at this issue, the thing that's most inconsistent

[illegible] action that the
2 Commission has already approved, both the town
3 and the County approved and that the Commission
4 approved.
5 CHAIRMAN MADDEN: The town approved.
6 The Commission --
7 MS. ENNIS: It didn't have to go through
8 the County?
9 CHAIRMAN MADDEN: Correct.
10 MS. ENNIS: If that were corrected,
11 would we still be opposed to this?
12 CHAIRMAN MADDEN: I think again, we have
13 to look at the motion. The motion cites two
14 issues. The basis for the motion is the first
15 paragraph, accepting 933 would negate at least
16 one previous Commission action and, number two,
17 would create conflicts between the County program
18 and several approved municipal programs. That's
19 what we're basing this motion on. Any other
20 discussion? If not, we have a motion in front of
21 us for denial. All those in favor say aye.

1 (All said aye.)
2 CHAIRMAN MADDEN: Opposed nay?
3 Motion for denial is approved. Thank
4 you again, all panel members and Commission
5 members.
6 (Proceedings concluded at 3:00 p.m.)
7
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1

1 STATE OF MARYLAND SS:
2 I, LINDA A. CROCKETT, a Notary Public of the
3 State of Maryland, do hereby certify that these
4 proceedings took place before me at the time and
5 place herein set out, and the proceedings were
6 recorded stenographically by me and this
7 transcript is a true record of the proceedings.
8 I further certify that I am not of counsel to
9 any of the parties nor an employee of counsel nor
10 related to any of the parties nor in any way
11 interested in the outcome of this action.
12
13 As witness my hand and notarial seal this 8th
14 day of June, 2004.
15
16 My commission expires
17 December 1, 2004 Notary Public
18
19
20
21

CRC-Salomon
(410) 821-4888 fax (410) 821-4990

E. 1993

GROWTH ALLOCATION COORDINATION BETWEEN COUNTIES AND MUNICIPALITIES
April 6, 2004

Anne Arundel County
(Currently undergoing comprehensive review, to be completed in April 2004)

The County allocated 11 acres of growth allocation to the City of Annapolis which represents five percent of the RCA lands within the City. The City controls the use of this growth allocation and may use it without County review or action. To date, the Commission has not reviewed any growth allocation applications within the City.

Baltimore County

Baltimore County does not have any municipalities with Critical Area Programs.

Calvert County
(Last comprehensive review completed February 1997, currently undergoing third round)

Calvert County allocated 100 acres of growth allocation to Chesapeake Beach and 20 acres to North Beach. The respective Towns control the use of this growth allocation and may use it without County review or action. To date, the Commission has not reviewed any growth allocation applications within the Towns.

Caroline County
(Comprehensive review initiated)

Caroline County did not allocate any growth allocation to the towns of Denton, Federalsburg, Greensboro or Hillsboro. The County did adopt procedures for the consideration and award of growth allocation, which are applicable to the Towns. The County would have to approve the use of growth allocation within any of the Towns. To date, no growth allocation has been used within the Towns.

Cecil County
(Last comprehensive review completed in July, 1994)

Cecil County did not allocate any growth allocation to the towns of Charlestown, Chesapeake City, Elkton, Northeast, Perryville, and Port Deposit. The County did adopt procedures for the consideration and award of growth allocation, which are applicable to the Towns. The County would have to approve the use of growth allocation within any of the Towns. When Towns approve growth allocation applications, they submit a request for growth allocation to the County with information about the project. To date, Charlestown, Northeast, and Port Deposit have not used any growth allocation, Chesapeake City has used 23.87 acres, Elkton has used 76.50 acres, and Perryville has used 58.66 acres.

Charles County
(Last comprehensive review completed in July 2001)

E. 1994

Charles County includes provisions in the County's Program stating that Indian H
the County divide growth allocation acreage on the basis of population, i.e. if Indian He

EXHIBIT 7

3.5% of the population, then the Town is entitled to 3.5% of the growth allocation. The calculations must be updated regularly, especially when a growth allocation application is submitted. To date, Indian Head has used 9.00 acres of growth allocation.

Dorchester

(Last comprehensive review completed in February 2001)

Dorchester has allocated 240 acres of growth allocation to the City of Cambridge, 30 acres to Vienna, 20 acres to Secretary, and 20 acres to be used jointly by Church Creek, Eldoardo, Brookview, and Galestown. The respective Towns control the use of this growth allocation and may use it without County review or action. These allocations reflected coordination between the municipalities and the County to identify the growth allocation needs of the municipalities an amendment to the County's Critical Area Program which was approved by the Commission in July 2001.

Harford County

(Last comprehensive review completed in August 2001)

Harford County did not allocate any growth allocation to the Town of Havre de Grace; however, the County's zoning ordinance includes provisions for using growth allocation for land proposed to be annexed by a municipality. These provisions require the review of applications through the County's procedures.

Kent County

(Last comprehensive review completed in March 2003)

Kent County has allocated 82.78 acres of growth allocation to the Town of Betterton, 84.00 acres to Chestertown, no acreage to the Town of Millington, and 66.73 acres to the Town of Rock Hall. The respective Towns control the use of this growth allocation and may use it without County review or action. Once this acreage is used, the Kent County Growth Allocation Policy would apply. It states, "It is policy to grant growth allocation to the incorporated towns of Betterton, Chestertown, Millington, and Rock Hall." The County would be involved in the review of projects requiring growth allocation in excess of the initial allotment.

Prince George's County

Prince George's County does not have any municipalities with Critical Area Programs.

Queen Anne's County

(Last comprehensive review completed in April, 1996)

The County has set aside 189 acres of growth allocation for Centreville, and 160 acres for Queenstown. The respective Towns control the use of this growth allocation and may use it without County review or action. To date, Centreville has not used any growth allocation and Queenstown has used 15.06 acres. The County's Program states that, "The Queen Annes' County Critical Area Program may be amended to provide that the remaining acres of municipal set aside may be reallocated to the County if any municipal set aside is not assigned within five years." At this time, the County has not reallocated any growth allocation set aside for the municipalities. Additional growth allocation may be used by these Towns, as well as Church Hill and Queen Anne, on a project-by-project basis, subject to review and approval by the County.

St. Mary's County

(Last comprehensive review completed in July 2002)

The County allocated 4 acres of growth allocation to the Town of Leonardtown, which represents five percent of the RCA lands within the Town. The Town controlled the use of this growth allocation and used it in 1998 for the Tudor Hall Village Project. The Town has requested additional growth allocation from the County for another part of the Tudor Hall Project and the Leonardtown Landing Project. In the Tudor Hall Project, the Town become an applicant to the County and went through the same formal review and approval process as a private landowner. Since that time, the County has completed their comprehensive review and amended their growth allocation process. Now the Town requests growth allocation from the County Commissioners, and the Commissioners may approve the request if it is consistent with the County's comprehensive plan. The Town is not required to submit the request with a specific project; however, the most recent growth allocation request was made specifically to accommodate the Leonardtown Landing Project, and specific plans were provided to the County with the Town's request.

2 sets heavi

Since 20 no doc review

Somerset County

(Last comprehensive review completed in December 1995)

Somerset County allocated 100 acres of growth allocation to Princess Anne and 100 acres to Crisfield. The respective Towns control the use of this growth allocation and may use it without County review or action. To date, the Commission has reviewed and approved the use of 17.12 acres of growth allocation within the Town of Crisfield.

Talbot County

(Currently undergoing a comprehensive review to be completed in 2004)

Talbot County allocated 155 acres of growth allocation to the Town of Easton, 195 acres to the Town of Oxford, and 245 acres to the Town of St. Michaels. The County's Critical Area provisions state that this reserved acreage shall be reviewed by June 1, 1993 for possible reallocation, and at least every four years thereafter. The respective Towns control the use of this growth allocation and may use it without County review or action. In May 2000, the County amended their Critical Area Program to provide for the award of supplemental growth allocation through a joint review process in which both the Town and County would participate. Easton has used 147.34 acres of its original allocation, plus an additional 156.0 acres through the "supplemental growth allocation" process. Oxford has used 15.22 acres of growth allocation, and St. Michaels has not used any growth allocation acreage.

Wicomico County

(Last comprehensive review completed in November 2001)

Wicomico County originally allocated half of its growth allocation to the City of Salisbury and the towns of Mardela Springs and Sharptown. The County's Program specified that after four years, any of this growth allocation that had not been used would become part of the countywide growth allocation pool. No growth allocation was used by Salisbury, Mardela Springs, or Sharptown during the four years, so all growth allocation has been consolidated in the countywide pool. At this time, the municipalities would have to request approval of the use of growth allocation by the County.

Worcester County – Chesapeake Bay
(Last comprehensive review completed in November 2003)

Worcester County did not allocate any growth allocation to the Town of Snow Hill. The Town must apply to the County to use growth allocation after the request is approved by the Town Council. The County reviews the application and holds a public hearing on the application. To date 1.63 acres of growth allocation have been used by Snow Hill.

Worcester County – Coastal Bays
(Program adopted in November 2002)

The only incorporated municipality in the Coastal Bays Critical Area of Worcester County is Ocean City. All of Ocean City is designated IDA, so no growth allocation would be needed unless additional land was annexed.

NOTICE: This document constitutes a compilation of Ordinance No. 109, As Amended, through Ordinance No. 306 which became effective May 18, 2004. In the event of a discrepancy between the language contained in this document and an Ordinance, the language in the Ordinance shall take precedence.

ZONING ORDINANCE

ST. MICHAELS

MARYLAND

Approved: December 9, 1975

Amended:

June 14, 1977 (Ord. #115)
February 14, 1978 (Ord. #118)
June 27, 1980 (Ord. #124)
October 11, 1983 (Ord. #137)
May 22, 1984 (Ord. #139)
July 10, 1984 (Ord. #141)
September 18, 1984 (Ord. 152)
January 8, 1985 (Ord. #157)
May 14, 1985 (Ord. 162)
October 8, 1985 (Ord. #171)
July 8, 1986 (Ord. #172)
September 9, 1986 (Ord. #173)
February 17, 1987 (Ord. #177)
September 8, 1987 (Ord. #181)
May 10, 1988 (Ord. #183)
June 14, 1988 (Ord. #185)
October 10, 1988 (Ord. #186)
August 9, 1988 (Ord. #187)
February 14, 1989 (Ord. #189)
March 14, 1989 (Ord. #191)
April 14, 1989 (Ord. #192)
July 11, 1989 (Ord. #193)
November 14, 1989 (Ord. #198)
December 14, 1990 (Ord. #200)
April 9, 1991 (Ord. #201)
September 10, 1991 (Ord. #202)
March 10, 1992 (Ord. #206)
March 18, 1992 (Ord. #208)
July 12, 1994 (Ord. #213)
December 14, 1993 (Ord.#214)
February 14, 1995 (Ord. #220)
April 11, 1995 (Ord. #221)
February 13, 1996 (Ord. #222)
November 14, 1995 (Ord. #224)
February 13, 1996 (Ord. #225)
March 12, 1996 (Ord. #227)
March 12, 1996 (Ord. #228)
September 8, 1997 (Ord. #237)
February 10, 1998 (Ord. #238)
September 14, 1999 (Ord. #241)
September 14, 1999 (Ord. #242)
June 8, 1999 (Ord. #244)
July 13, 1999 (Ord. #245)
January 11, 2000 (Ord. #246)
December 14, 1999 (Ord. #248)
March 28, 2000 (Ord. #249)
July 11, 2000 (Ord. #250)
July 12, 2001 (Ord. #253)
June 20, 2000 (Ord. #254)
July 11, 2000 (Ord. #255)
May 8, 2001 (Ord. #259)
October 9, 2001 (Ord. #266)
January 8, 2002 (Ord. #264)
January 8, 2002 (Ord. #267)
January 8, 2002 (Ord. #270)
July 3, 2002 (Ord. #258)
December 31, 2002 (Ord. #275)

EXHIBIT 8

February 3, 2003 (Ordinance #279)
February 17, 2003 (Ordinance #282)
September 1, 2003 (Ordinance #291)
September 1, 2003 (Ordinance #293)
November 4, 2003 (Ordinance #295)
December 2, 2003 (Ordinance #290)
December 2, 2003 (Ordinance #297)
December 30, 2003 (Ordinance #298)
February 10, 2004 (Ordinance #304)
March 16, 2004 (Ordinance #299)
May 18, 2004 (Ordinance #305)
May 18, 2004 (Ordinance #306)

The preparation of this document was financed in part through a comprehensive planning grant from the Department of Housing and Urban Development, as administered by the Maryland Department of State Planning.

3 16 04

E. 1999

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

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

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

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

11. Growth Allocation District - GA

a. Purpose

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

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

b. Intent

Growth Allocation is a finite resource, created by the State and delegated to the counties of Maryland. Talbot County has delegated a part of its Growth Allocation to the Town and the surrounding area. Because it is limited in amount, and that amount is intended to serve the needs of the Town forever, Growth Allocation must be managed to address the most meritorious current needs of the Town, and conserved to meet the future needs of the Town. Despite the fact that the Town may currently have more acres of unawarded

Growth Allocation assigned to it than the number of undeveloped acres currently located within the RCA and/or LDA overlay zones in the Town, there are hundreds of additional acres of land located within the Chesapeake Bay Critical Area and within close proximity to the Town, such that substantial additional acres classified as RCA and/or LDA could be annexed to the Town in the future. Consistent with the "smart Growth" policy of the State, encouraging expansion of development in and around established population centers, it is anticipated that pressure on the Town for such annexations will increase in the future. Therefore, Growth allocation is a precious resource which must be conserved and managed wisely by the Town in accordance with the goals and objectives of the Town's comprehensive plan.

c. Procedures. The following procedures specified by this part c shall apply exclusively to all applications for the award of growth allocation, pursuant to this subsection 11 (Growth Allocation District),

1) Submission Requirements. An application to the Town for the award of growth allocation shall be accompanied by the following:

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

b) Concept plans shall be prepared as per the applicable requirements of the Zoning Ordinance.

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

2) Processing GA District Applications. Where the purpose or effect of an application to the Town is the award of growth allocation for the purposes of this subsection 11 (Growth Allocation District), the following procedures shall be followed:

a) Public notice shall be given in accordance with subsection 4 (Notice of Public Hearings) of section 15 (Amendments).

b) The processing and/or granting of an application for the award of growth allocation does not constitute or replace any other required land-use process, approval or permit.

c) Multiple applications:

i) An applicant may withdraw an application for the award of Growth Allocation at any time; however, such withdrawal

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December 29, 2003

David R. Thompson, Esquire
Cowdrey, Thompson, & Karsten, P. A.
P. O. Box 1747
Easton, Maryland 21601

Re: Strausburg Annexation to St. Michaels

Dear David:

As you may know, Talbot County voted to retain zoning control over the Hunteman property, as the County is permitted to do according to Maryland Code, Art. 23A, § 9 (c). As the result, the Town is without the authority, for a period of up to five years after the effective date of the annexation of the Hunteman property, to grant the land-use classifications that have been requested for that land. Since the annexation agreement makes the granting of those certain land-use classifications for that land conditions of the annexation, in my opinion the annexation of the Hunteman property will never become effective because the five-year period, provided for by Maryland Code, Art. 23A, § 9 (c), will not begin to run until the requested zoning is granted by the Town. According to my reading of Maryland Code, Art. 23A, § 9 (c), the Town lacks the authority to grant the requested zoning until after the five-year period is exhausted. Therefore, the Town lacks the authority to adopt a resolution today that would reclassify the Hunteman property five years hence.

As the result, the Town of St. Michaels and Midland are considering amendments to the annexation agreement for the Hunteman property, whereby the conditions for zoning are removed, so that the annexation would become effective immediately. By the terms of the amendment the owner is granted the right to de-annex the Hunteman property from the Town: (1) if the Town is presented with request from the owner for a certain rezoning of the Hunteman property within a year after the County loses its zoning control over the Hunteman property; (2) if the Town a fails to reclassify the Hunteman property as described in the Amendment; and (3) if Town infrastructure has not been extended to the Hunteman property at the request of the owner.

It is my opinion that the award of growth allocation may well be included within the ambit of the reclassifications that are the subject of Maryland Code, Art. 23A, § 9 (c).

I have no idea of how committed the Strausburgs are to the annexation of their land to the Town of St. Michaels. While the Strausburgs do not share the sewer issues with Midland, they do share concerns about the validity of County Bill No. 933. This is a question that Midland may help to resolve for the Strausburgs without any expense to the Strausburgs.

If the Strausburgs continue to be committed to that annexation I have a couple of suggestions. I don't recall that the County has yet voted to retain zoning control over the Strausburg land, but I assume that the County will eventually do so. Therefore, my first suggestion is to amend the annexation agreement to remove all contingencies so that the five-year period for the Strausburg land will start to run. I feel certain that the Town would understand and agree that the conservation easement would not be required until the Strausburgs are assured that they will actually be receiving the growth allocation that they were awarded by the Town and the Critical Area Commission.

If the county retains zoning control, then we may want to take the position that the rezoning of the Strausburg land was not compatible with current County plans, so that the current County zoning remains in place. When you consider the number of units that the Strausburgs could have under current County zoning (including the units permitted on the land located outside of the Critical Area based on the current County zoning), I am hoping that the number of permitted units would influence the neighboring property owners and the County Council to support the requested zoning and growth allocation for the Strausburg property. By annexing the land it appears to me that the Town could classify that land the same as it is now zoned by the County, and thereby preserve that zoning despite what the County may do in the future regarding its own zoning and planning maps.

My second suggestion is, despite our previous discussion to the contrary, a development rights and responsibilities agreement ("DRRA") may be of value in this situation since the State has sanctioned such agreements for the purpose of vesting development rights. Although one may argue that a DRRA may carry no more weight than an annexation agreement, the annexation agreement did not go through the formal requirements of a DRRA and was not created expressly for the purpose of vesting development rights. The DRRA could preserve the current County zoning unless and until the requested zoning, growth allocation and subdivision approvals, consistent with the plan that was present to the Town for annexation and growth allocation approval, are granted by the Town and consented to by the County. The amendment to the annexation agreement could provide that if the upon the approval of all such land-use approvals the Strausburgs will relinquish their rights to the present zoning of their land and will grant the perpetual easement.

Based on my exposure to the Strausburgs, it appears that they have the time to wait and see how this power struggle plays out. Through the mechanism of an amendment to the annexation agreement it appears to me that we might improve their position so that the County is

more inclined to step aside and allow the award of growth allocation.

I will await your consideration and response.

Very Truly Yours,

H. Michael Hickson

HMH/

cc: Cheril S. Thomas, Town Manager

F:\A\HMH\StMic\CHARTER\Annex 2003 Strausburg\Annexation Agreement Amendment\Ltr01 Thompson - hmh re Strausburg amendment to annexation agreement.doc

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

* * * * * * * *

THE COMMISSIONERS OF ST. MICHAELS et al.	*	FOR
Counter-Plaintiffs,	*	
Vs.	*	TALBOT COUNTY
TALBOT COUNTY, MARYLAND,	*	
Counter-Defendant.	*	STATE OF MARYLAND

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

ST. MICHAELS' OPPOSITION TO
TALBOT COUNTY'S MOTION FOR SUMMARY JUDGMENT

The Commissioners Of St. Michaels ("St. Michaels"), Defendant and Counter-Plaintiff herein, by its attorney, H. Michael Hickson, pursuant to Maryland Rule 2-501, in response and opposition to the Plaintiff and Counter-Defendant, Talbot County's Motion for Summary Judgment (the County's Motion), says:

1. Plaintiff and Counter-Defendant, Talbot County (the "County") requests summary judgment on three grounds:

   a. The County alleges that The Critical Area Commission For The Chesapeake and Atlantic Coast Bays (the "Commission") failed to take timely action on the County's submission of Talbot County Bill 933 ("Bill 933") pursuant to Md. Code, Nat. Res. Art. §§ 8-1809(m)(2) and 8-1809(o);

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& HICKSON
ssional Assoc.
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Green area is Strausburg property

Designated Critical Area Growth Allocation Areas

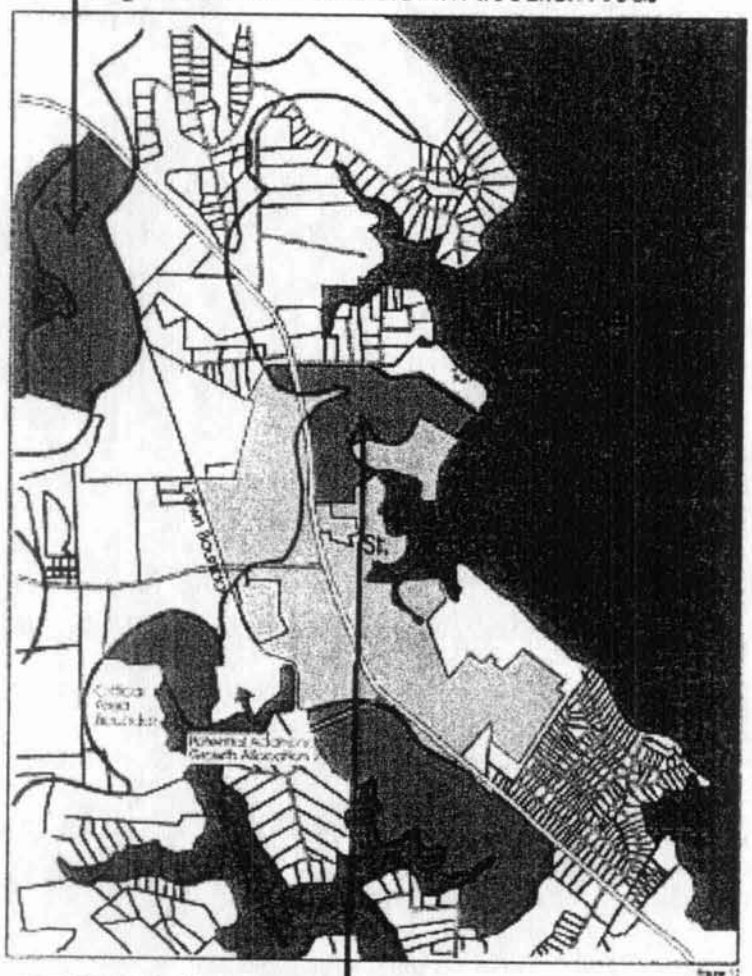


Figure 11

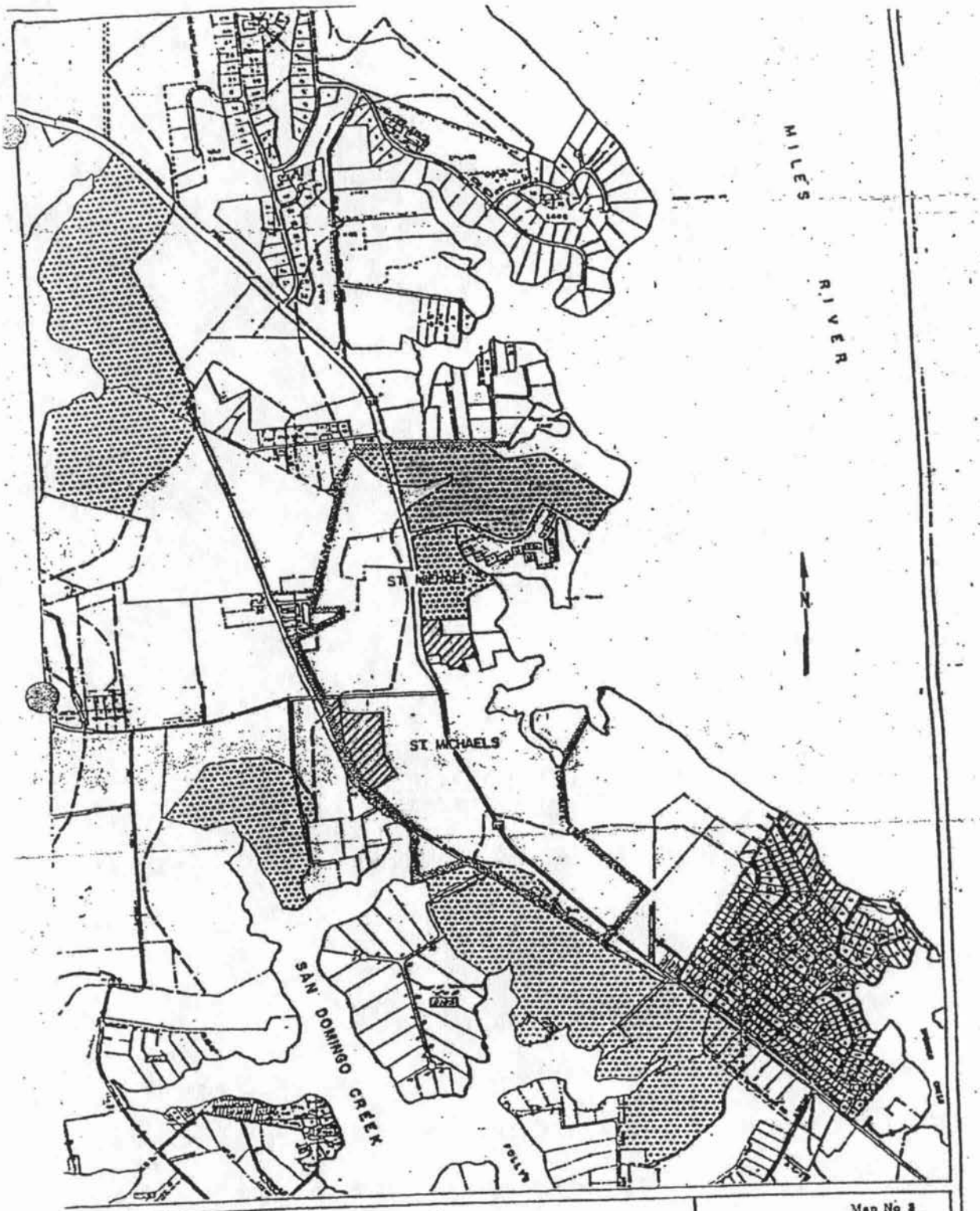
Areas identified for future growth allocation and suitable for development in both the Talbot County Critical Area Program and the St. Michaels Critical Area Program.

RCA for annexation or rezoning LDA for rezoning

This green area is Perry Cabin Farm

Ex. 38

E. 2006



Area Allocated for Town Development

TOWN OF ST MICHAELS

Talbot County, Maryland

Ex. 39

E. 2007

324-231

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

* * * * * * *

THE TOWN OF OXFORD, et al.

*

Counter-Plaintiffs.

*

v.

*

TALBOT COUNTY, MARYLAND,

*

Counter-Defendant

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

TOWN OF OXFORD'S OPPOSITION TO TALBOT COUNTY'S MOTION FOR SUMMARY JUDGMENT

The Town of Oxford ("Oxford"), Defendant/Counter-Plaintiff, by its attorneys, David R. Thompson, Brynja M. Booth and Cowdrey, Thompson & Karsten, files this Response to Talbot County's Motion for Summary Judgment, stating the following in support thereof.

I. PROCEDURAL STATUS

Talbot County (sometimes referred to herein as the "County" or "Talbot County") commenced this action with a three count Complaint against the Department of Natural Resources Critical Area Commission (sometimes hereinafter referred to as the "Critical Area Commission" or "CAC") seeking a declaratory judgment (Count I), mandamus (Count II), and an "administrative appeal" (Count III). Having failed to verify its Complaint as required in a mandamus action, Talbot County filed an Amended Complaint to which it appended an affidavit

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

* * * * * * *

THE TOWN OF OXFORD, et al.

*

Counter-Plaintiffs.

*

v.

*

TALBOT COUNTY, MARYLAND,

*

Counter-Defendant

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

Affidavit of Brynja M. Booth

1. I am over the age of 18 years, have personal knowledge of the matters contained herein, and I am competent to be a witness.

2. I hereby certify that the records attached hereto are true and accurate copies of handwritten notes of the Critical Area Commission staff, Lisa Hoerger, Ren Serey and Mary Owens, reflecting conversations and meetings between the Critical Area Commission staff and the Talbot County Manager, Andy Hollis, the County Attorney, Michael Pullen, the County Planning Officer, George Kinney, and County Council member Peter Carroll.

3. I reviewed the attached records, pursuant to a public information act request, at the offices of the Critical Area Commission, in Annapolis, Maryland. The attached records were provided to me as those records are kept in the ordinary course of the business by the Critical Area Commission.

I hereby certify under the penalties of perjury that the foregoing is true and correct.

Brynja M. Booth 12/13/05

Brynja M. Booth Date

Lisa Haerger

3/3 Tom Deming (410) 757-0100 - wanted panel members assigned to the Talbot & St. Michaels panels.

3/4 Steve Gilbert (301) 952-5261

RE: County Council Bill CB-1
revised & reform the Z.O. as to notice requirements
making everything 30 days
used to be 10's, 15's, 30's, 60's

For C.A. including 215.107 variance section
Notice of Public Hearing

60 days - recordings to 30 days.

3/4 Scott Averspacker [redacted] (?) Dorcester Co. Rec. & Parks
(410) 228-5578 RE: Vienna Boardwalk Project
wanted to know if it was his respon. to
alert Mayor to Comm. review I told him no, it is the Circuit Riders

3/4 Eli - (410) 222-7441
RE: Program Document - set up a meeting

3/9 Bob Winchester
RE: Sumps Pt. Road - Costello property
Scott Miller was hired to do shoreline work.
↳ permit service (not a contractor)

Office of Law - Dave Plymen &
Chris Westergaard - MDE

Katie & Dave are in touch w/ State

E. 2010

[illegible] KS, MU, LH

∴ Peter Carroll George Kinney 11/25/03

PC - may be reviewing then entire ord.

AH? Council considering a bill - g.a. process
~ 1989 - 3 maps w/ acreage figures extrapolated -
MP? in Ordinance

- 128 - LDAs
- Put restric. on the ability of the Co. to redef. those areas
- 4-yr. reviews of those maps
- Distrib. to 3 towns

→ 4 year review process never occurred so no reallocation
Comp. Plan has been reviewed
→ Growth boundaries are differ.
↳ so Council is contempl. elim. those maps & g.a. allotted to the towns on those maps.

2 interpretations of the existing lang

① No town can rec. more than 128 ac. as an IDA

② Generated in 1989 based on actual devel. density on the ground at that time - 128 LDA at the time could be changed to IDA

Total divided in half - 1,213 acres

E. 2011

NOW 2003 → trying to interpret the 128 acre prov. either as 128 is finite for Co. or limit can be changed from LDA to IDA

Andy Hollis Mike Pullen RS, MO, LH
Peter Carroll George Kinney

11/25/03

PC - may be reviewing then entire ord.

AH? Council considering a bill - g.a. process
or 1989 - 3 maps w/ acreage figures extrapolated -
MP? in Ordinance

- 128 - LDAs
- Put restric. on the ability of the Co. to redef. those areas
- 4-yr. reviews of those maps
- Distrib. to 3 towns

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Total divided in half - 1,213 acres

E. 2012

NOW 2003 → trying to interpret the 128 acre prov.
either as 128 is [illegible]

1989 - LDA was limited to, 11/25/03

RS - 128 - B exist LDA to IDA
1,213 - elig. from RCA to LDA or IDA
→ whether you can go RCA to LDA then later to IDA are you caught? Prob. not because it came from the g.a. pot.

PL - option - not limit to 128 acres
do we want to put IDA & LDA areas on maps & cannot exceed 1,213 acres

RS - Co. can decide if they want to put a number on and map those acres ahead of time - not req. by law

PL - put potential g.a. but not put a label on them (LDA IDA)
→ Elm St. - IDA & LDA - what type of schedule

RS - It sent a bill that changed the acres. Comm. would want to know the status of other bills
If Co. was changing the whole process then Chairman would decide - if amendment 60-90 days.

PL - Can send copies of ones that were introduced
Discussion on December 9th
Vote on December 16th or 23rd.

AH? or MP? Joe Stevens plans to request a joint hearing with the Co. Comm.

E. 2013

RS - Yes, spoke to Karen McTrenkin. Chairman said will not be able to hold that hearing

AH ?
MP ? - Oxford has 195 acres - 1,092 = 90% of 1,213 ..
in the current ann. never will get to 90% figure

.11/25/03

RS - law says if a juris. cannot limit itself to half then add'l acreage could be used but must be clustered.
law - "have to be unable" - 1,213 then g.a. used in Pct would have to be acc. by a finding by Co. Council
① unable to use in RCA ② would be clustered
Comm. would not see those findings as diff. to make.

PC - Oxford - new maps w/ comprehensive review - could be used for reallocation.
Oxford does not want to grow
do alloc. more freq. w/ probable growth plan

CP - If Co. wanted to play a part in the g.a. request with an annexation. Town got 5% of RCA area

RS - corrected all RCA to Co. the in coordination w/ the municipalities. Talbot about Leonardtown

AH ?
MP ? - Could Talbot do it SM's way?

RS. yes

AH ?
MP ? - Do towns have to sign off on that process?

AM - No. - Co. decides when g.a. goes includes the towns

RP - statue talks about awarding g.a. based on 5% of g.a. to include municipalities

11/25/03

A.L. - Always minimize that germ. g.a. that g.a. went to the County - then in Coord. . .

MP - If Co. gave each munic. 5% of RCA, would be ok

PC - get a draft and have Comm. look at it.

RS. to Mr. Carroll. RE: Easton Village - was there a conflict in Ord. - Does not seem to be.
↳ told Charley Thomas - a lot of people are calling

Lisa Hoerger

Hamoyki

1/28 Michele ? - Heccadon C.H. Hill (703) 471-6405 ext 4514
RE: WSSC MOU
Returned call - referred her to Dawnn

1/28 Ren - Told St. Michaels that we would send them copies of cores to the county

1/30 Roy Little (410) 266-1160
RE: Carolstown (Osprey Landing - 12/23/03)
① plat note to acc. table
② plat note - no clearing is permitted & Hort can't clear
③ signs - no sample ④ FIDO

1/30 Mike Pullen (410) ~~770~~ 822-1100
Bill #933 & historical issues.

1/30 Roy Little
went over the comment letter
- he is putting the notes on the plat and will forward his updates to me at which point I can send a final letter back to Lori Allen

Mike is preparing a response to the Town of St. Michaels letter sent to Senator Madden.

The Town orig. had some areas mapped RCA/LDA/IDA under their own program

1808.1 Growth Alloc. calc on 5% of RCA in a local jurisd. when it is approved by

E. 2016

1,213 — ½ of Talbot RCA
- 155 Easton
1,058
- 195 Oxford
863
- 245 St. Michaels
618 Talbot
- 301.771 - G.A. used by Talbot
316.229 Talbot Remaining
- 156 Supplemental G.A. to Easton
160.229 Talbot Remaining

St. Michaels remaining 224.9 acres
Oxford remaining 179.777 acres
404.677 acres to get the total

E. 2017

Talbot bills
933-6A
930
931
929

Ken Serey

George Kenney
- Talbot Co.

1-6-04

re bill 933 - do we need anything?

4-770-8030

1 Cover letter
2 attached bills as approved
3 bill & strike out.
4 other bills not passed?

Cindy Hallett 10-29-03

- Council meets 11/18, 11/25
- Then off for pub. hearing
  pub. hearing 12/16 or 12/23
  probably vote end of Dec / Jan
- we could get it sometime in Jan.

Peter Carroll 11-19-03

(1) Council voted "up" on all CA amd. 4-1 on some, 5-0 on others.

- hearing - 3 wks.
- vote next session after that

(2) Growth Allocation
- Midlands + Easton
- He initiated

need to give LDA + IDA to Easton Village

- restriction on total ac. can be given to Towns.

- 8 ac. is separate fr.
He thinks Co has lost itself in for giving GA to Easton Village

Mike Pullen doesn't agree w/ him.

E. 2020

156 ac would be needed
for Easton V. – (E Lee St.)
~~Co~~ Council introduced
bill for giving 156 to Easton.

96 IDA
61 CDA.

400± left for orig. 618

~~maybe can't give~~
~~me~~

– get together on phone
w/ Mike Pullen
– If Co wants to give
E. 156 ac. & E.

E. 2021

look IDA + LDA, the
grant p. the Co is p. Co's LDA
fool [illegible] orig. [illegible] 12,3 GA.

- so, p. Co's 618.

Is E. [illegible] re what
it can do [illegible] - [illegible]
i.e. - give some LDA +
some IDA.

- Call 410-476-5219
or leave message

May 11-21-03

(T.W) Peter Carroll 11-24-03
set up time for Tues.
10 or 11 - w/ Mike Pulle.
Andy's off will call
George & Andy

Andy Hollis 11-24-03
- ~~10:00~~ - Conf call
11:00
Call Lund.

E. 2023

Andy will send new bills
- discussion
vote 12/16 or 23

(1) 90%

(2) bind for
Easton Village

VM Roley 11-25-03
Talk to Cheril Thomas.
Cheril 410-745-9535

Cheril Thomas
- St. Michaels & Easton
both want to come 12/3

Talbot Plng. Com. ~~12/13~~ 12/3
Council - hearing 12/16 &
could vote 12/16

* Jan 7
or Feb

E. 2024

Peter Carroll 11-25-03
Andy Hollis
Mike Pullen
George Kinney
Tico Hoerger
Marianne Mason

re Talbot Co. Council GA

- County bill -
1989 - Co. adopted 3 maps
for growth areas - extrapolated
acreages from maps

Andy - ~~Proposed~~ 1989: n128 new LDA ac & restricted
Co. - 1/yr. reviews for GA

1989 maps outdated - new
Comp. Plan adopted - maps no longer
~~new bill~~ significant

- Council contemplating new GA
process

E. 2025

VM George Kinney 12/8/03
770-8030

George Kinney 12/8/03
- G. Cav vote tomorrow. 2nd reading
- may vote on 12/16/03

- George will email Andy's office re room at 6:00 on Jan 5th

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

* * * * * * *

THE TOWN OF OXFORD, et al.

*

Counter-Plaintiffs.

*

v.

*

TALBOT COUNTY, MARYLAND,

*

Counter-Defendant

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

Affidavit of Anthony D. Redman

1. I am over the age of 18 years, have personal knowledge of the matters contained herein, and I am competent to be a witness.

2. From 1977 to 1984, I served as the Talbot County Planning Officer.

3. From 1984 through 1985, I served as a consultant to the Critical Area Commission of the State of Maryland.

4. In 1987, 1988, and 1989, I served as a consultant to the Town of St. Michaels and the Town of Oxford for the development of their local critical area programs, and the coordination of their programs with the Talbot County Critical Area Program.

5. During the development of the programs of all three jurisdictions, it was understood and agreed that the plans of all three jurisdictions would include growth areas adjacent to the Towns, where future annexation would be reasonably anticipated, and where growth allocation conversions were likely to occur over the course of time.

6. The areas allocated for town development were mapped and approved by agreement with the Talbot County Planning Commission and the representatives

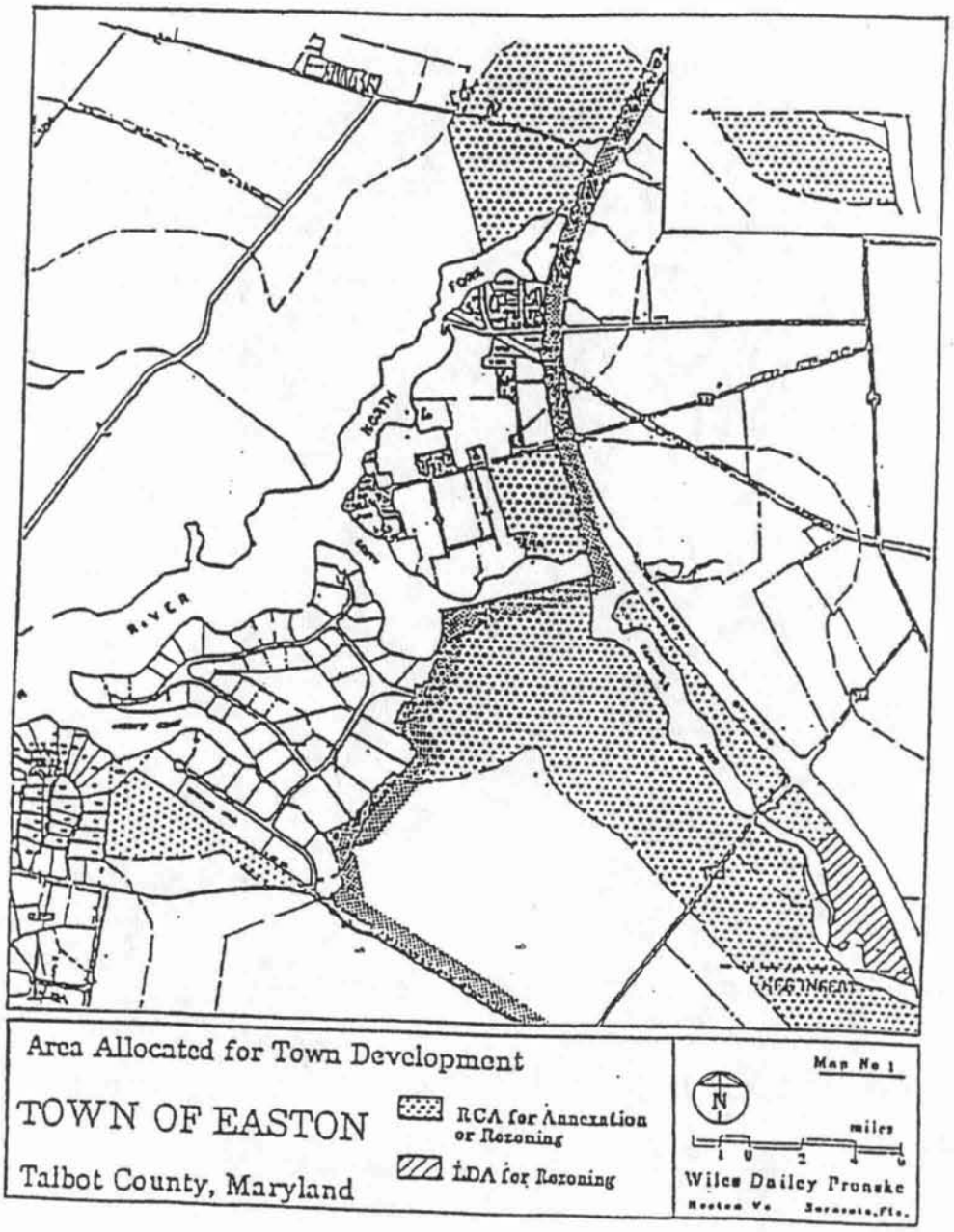
of the Town of Oxford and the Town of St. Michaels, after a series of planning meetings attended by Town and County representatives. Copies of those maps are attached.

7. These maps were adopted by the Talbot County Council as part of the Talbot County Zoning Ordinance.

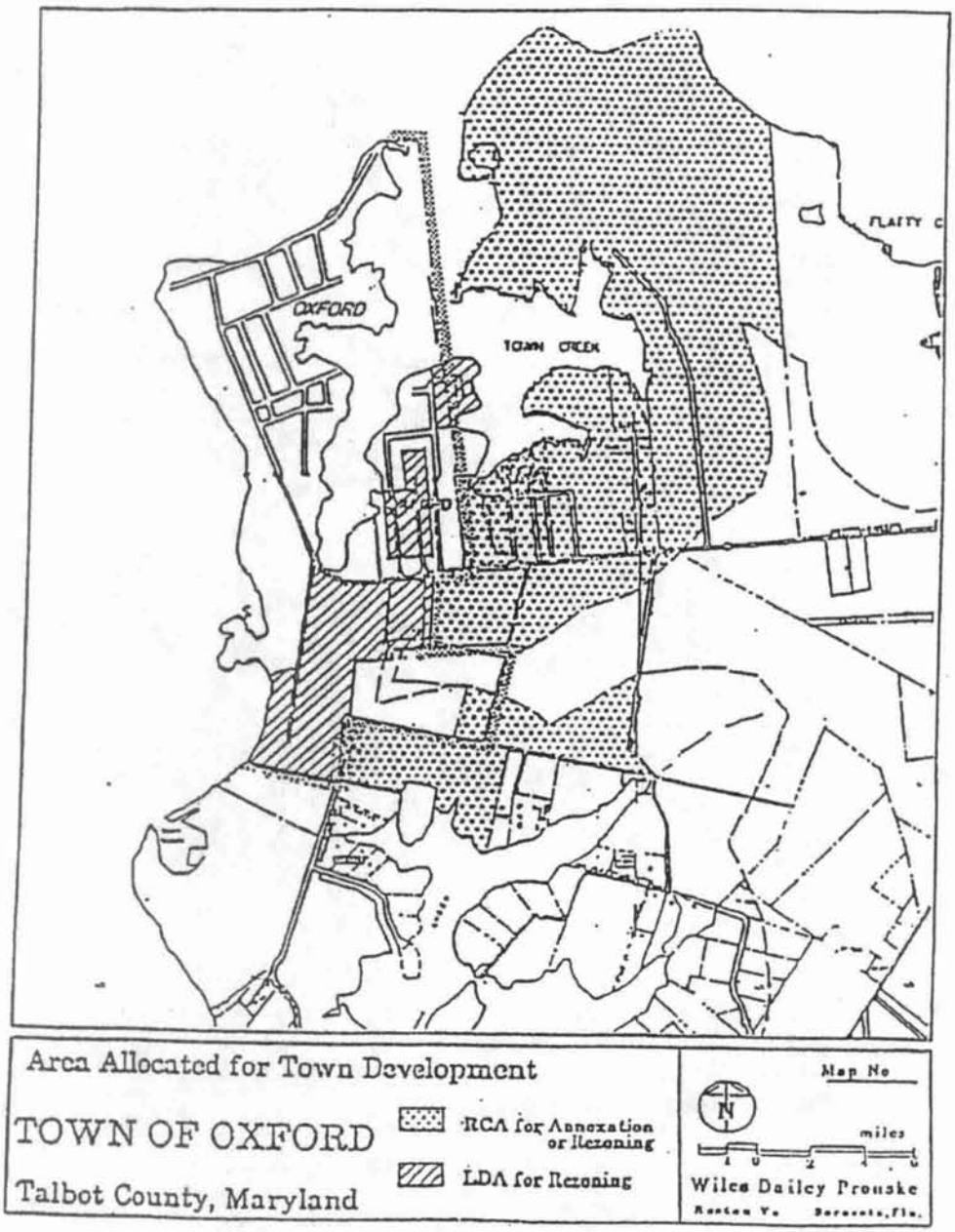
I hereby certify under the penalties of perjury that the foregoing is true and correct, to the best of my information, knowledge and belief.

12-14-2005

Anthony D. Redman Date

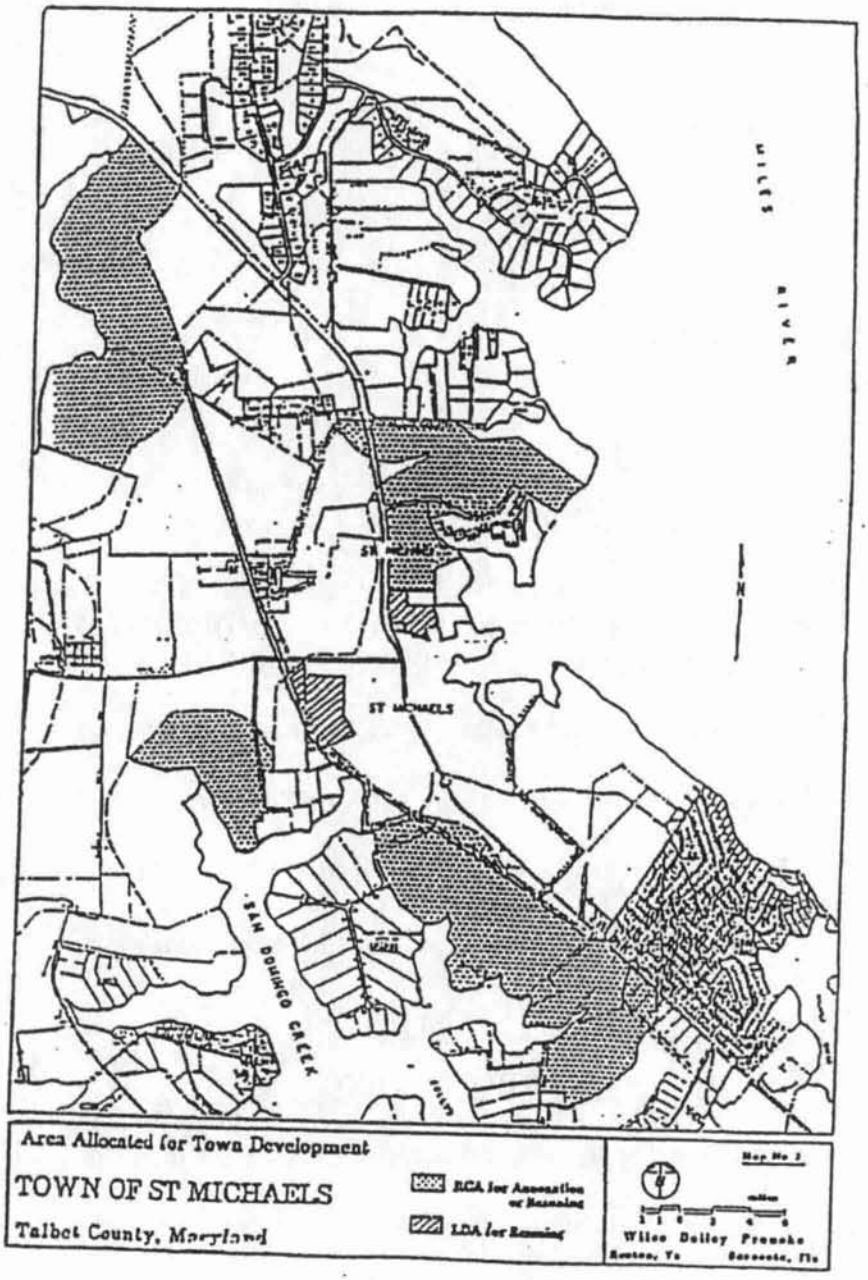

Area Allocated for Town Development
TOWN OF EASTON
Talbot County, Maryland
RCA for Annexation or Rezoning
LDA for Rezoning
Map No 1
N
miles
Wiles Dailey Pronske

ZONING



E. 2030

ZONING



E. 2031

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'
MEMORANDUM IN OPPOSITION TO TALBOT COUNTY'S
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" or "Commission"), by its attorneys, J. Joseph Curran, Jr., Attorney General, and Joseph P. Gill, Marianne D. Mason, and Paul J. Cucuzzella, Assistant Attorneys General, file this Memorandum in opposition to Talbot County's Motion for Summary Judgment ("County Motion").

INTRODUCTION

Talbot County does not dispute (although at times it does misstate) the material facts in this matter, which are set forth succinctly in the Critical Area Commission's Memorandum in Support of Motion for Summary Judgment ("Commission Memorandum") at 1-10. The Commission will not repeat those facts here but, as necessary, will discuss them in the context of its opposition to the County's Motion. In its Motion, the County argues that the Commission exceeded its statutory authority, and acted arbitrarily and capriciously, in denying approval of its proposed Critical Area

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.	*	

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

AFFIDAVIT OF LISA HOERGER

I, Lisa Hoerger, am over the age of eighteen (18) and am competent to testify to the matters set forth herein.

1. I am currently employed as a Natural Resources Planner with the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "Critical Area Commission"), a position that I have held for at least 10 years.

2. On December 31, 2003, the Critical Area Commission received a correspondence from the Talbot County Office of Planning & Zoning concerning Talbot County Bill 933. The correspondence, in substance, inquired as to when the Critical Area Commission might hold a public hearing on Bill 933 and when the Commission might "discuss" Bill 933.

3. Some time after receiving the December 31, 2004 correspondence, but before January 15, 2004, I received a phone call from May Kay Verdery with the Talbot County Office of Planning & Zoning. Ms. Verdery inquired as to when the Critical Area Commission might considered Bill

E. 2033

EXHIBIT

tabbies

A

933. During the conversation, and upon reviewing the correspondence received from Talbot County on December 31, 2003, I informed Ms. Verdery that additional information was needed from Talbot County before the Critical Area Commission could accept Bill 933 for processing. The additional information that I requested during this telephone conversation was ultimately received by the Critical Area Commission by correspondence from Talbot County dated January 19, 2004.

I declare under penalties of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.

Lisa Hoerger

Lisa Hoerger

State of Maryland)
) ss
County of Anne Arundel)

Sworn and subscribed to before me, this 12th day of December, 2005.

K. Christine Ward

Notary Public

My commission expires: 3-1-06

:rt 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/

January 15, 2004

Mr. George Kinney, AICP
Talbot County Office of Planning and Zoning
Court House
11 N. Washington Street
Easton, Maryland 21601

RE: Reallocation of Reserved Acres of Growth Allocation
Talbot County Bill 933

Dear Mr. Kinney:

Thank you for providing information on the referenced change to the Talbot County Critical Area Program. As we discussed, it is my understanding that the County will be submitting this Bill and several others resulting from the comprehensive review of the County's Critical Area Program with a formal request for approval by the Commission in the next few weeks. Please include the dates that the County Council approved the Bills in the request. It is anticipated that receiving all of the Bills together will allow the Commission to process and review the Program changes most effectively.

If you have any questions, please feel free to contact me at (410) 260-3462.

Sincerely,

Ren Serey

Ren Serey
Executive Director

cc: Ms. Mary Kay Verdery

E. 2035

EXHIBIT
B

1 IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

2

3 TALBOT COUNTY MARYLAND

4 Plaintiff

5 vs. Case Number

6 20-C-04-005095 DJ

7 DEPT. NATURAL RESOURCES CRITICAL AREA COMM

8 Defendant

9 _____/

10 OFFICIAL TRANSCRIPT OF PROCEEDINGS

11 MOTIONS HEARING

12 Easton, Maryland
Thursday, January 26, 2006

13

14 BEFORE:

15 THE HONORABLE John W. Sause, Jr.

16

17 APPEARANCES:

18 For the Plaintiff:

19 VICTORIA M. SHEARER, Esquire
20 Bryant, Karpinski, Colaresi & Karp, PA
120 East Baltimore Street, Suite 1850
21 Baltimore, MD 21202

22 MICHAEL L. PULLEN, Esquire
11 N. Washington Street
23 Easton, MD 21601

24 DANIEL KARP, Esquire
25 120 East Baltimore Street
Baltimore, MD 21202

COPY

FORM 2094 PENGAD • 1-800-631-6989

1
2 For the Defendant Dept Natural Resources:

3 MARIANNE MASON, Esquire
Office of the Attorney General
4 580 Taylor Avenue
Annapolis, MD 21401

5 JOSEPH GILL, Esquire
6 Office of the Attorney General
Dept of Natural Resources
7 580 Taylor Avenue
Annapolis, MD 21401

8 PAUL J. CUCUZZELLA, Assistant Attorney General
9 Office of the Attorney General
Dept of Natural Resources
10 580 Taylor Avenue
Annapolis, MD 21401

11
12 For the Defendant Commissioners of St. Michaels:

13 H. MICHAEL HICKSON, Esquire
Banks, Nason & Hickson
14 P.O. Box 44
Salisbury, MD 21803

15
For the Defendant Town of Oxford:

16
17 DAVID R. THOMPSON, Esquire
COWDREY, THOMPSON & KARSTEN, P.A.
18 P.O. Box 1747
Easton, MD 21601

19 BRYNJA MCDIVITT BOOTH, Esquire
20 Cowdrey, Thompson & Karsten, P.A.
P.O. Box 1747
21 Easton, MD 21601

22 For the Defendant Miles Point Property, LLC and
For the Defendant Midland Companies, Inc.:

23
24 RICHARD ALLEN DETAR, Esquire
MILES & STOCKBRIDGE, P.C.
25 101 Bay Street
Easton, MD 21601

FORM 2094 PENGAD • 1-800-631-6989

1 For the Defendant Miles Point Property, LLC and
2 For the Defendant Midland Companies, Inc.:

3 DEMETRIOS G. KAOURIS, Esquire
MILES & STOCKBRIDGE, P.C.
4 101 Bay Street
Easton, MD 21601
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22
LORI WHITEHEAD
23 Official Court Recorder
Court House
24 Easton, Maryland 21601
25 jmk

FORM 2094 PENGAD • 1-800-631-6989

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By Mr. Hickson	66
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FORM 2094 PENGAD • 1-800-631-6989

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

2 THE COURT: Good morning. Thank you. I don't
3 know whether I was late or not. It was my duty this
4 morning to pick up the maid. And I was up at 6:30 and I
5 picked her up and I went upstairs to read some more about
6 this case and I just totally lost track of time. I'm very
7 sorry. I think we better get ourselves organized and have
8 a game plan for today. How many people are there who want
9 to have a speaking part? I assume the county, the town of
10 St. Michaels, the town of Oxford, perhaps or maybe they
11 want to combine their operations.

12 MR. HICKSON: Mark Hickson, Your Honor, on
13 behalf of St. Michaels and I believe Mrs. Booth.

14 MS. BOOTH: Brynja Booth, Your Honor, on
15 behalf of the town of Oxford.

16 MR. HICKSON: And I believe we're going to argue
17 separately.

18 MR. DETAR: Richard DeTar on behalf of Miles
19 Point Properties.

20 THE COURT: All right. So there's one, two,
21 three. And the county and the commission, would that be
22 right?

23 MS. BOOTH: Yes.

24 THE COURT: So that's what five?

25 MR. HICKSON: Five.

FORM 2094 PENGAD • 1-800-631-6989

1 THE COURT: Five. How about then if we give
2 everyone forty-five minutes, including, well we'll give a
3 little extra time to the protagonist who I'm going to let
4 go first. I think what we'll do is let Talbot County go
5 first for a number of reasons. And then, I mean the
6 motions that we're here for today all point in the same
7 direction. There is little dispute about the existence of
8 any material fact. So I think that we can just choose a
9 random order. And it occurs to me that since Talbot County
10 seems to stand alone in this operation that it might go
11 first. All right if the rest of you would have a seat
12 please.
13 ARGUMENT ON MOTION
14 MS. SHEARER: Good morning, Your Honor, my name
15 is Victoria Shearer. I'm here representing the county
16 today. The county filed this lawsuit to seek judicial
17 review of the decision of the Critical Area Commission in
18 refusing to approve Talbot County Bill 933 as amended.
19 There are two counts currently at issue. Count one is for
20 declaratory judgement. Count two is for mandamus. The
21 first basis for Talbot County's motion for summary
22 judgement in this case is that the commission failed to act
23 in a timely manner in compliance with the statutes with
24 respect to Bill 933 and therefore Bill 933 is deemed
25 approved. Bill 933 was originally submitted to the

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1 Critical Area Commission on December 29, 2003. The date
2 stamp on the letter in (inaudible) bill 933 shows that the
3 bill 933 was received by the commission on December 31st,
4 2003. Now the day after this CAC, when I say CAC I mean
5 the Critical Area Commission, Your Honor. The day after
6 the commission received Bill 933 was the New Year's
7 holiday, therefore you have to begin counting the ten
8 working day period under the statute Section 8-1809M(2) on
9 2nd of January. So the statute, Section 8-1809M(2)
10 requires the commission to one, mail a notification to the
11 local jurisdiction that the proposal has been accepted for
12 processing. Or, two, return the proposal as incomplete.
13 And they have to do that within 10 working days. So the
14 end of that ten working day period was January 15th, 2004.
15 The commission has submitted an affidavit to one of its
16 employees stating that there was a phone call during the
17 ten working day period. But there is no dispute of fact
18 that a notification was not mailed, nor was Bill 933
19 returned to the county. On the last day of the ten working
20 day period there was a letter sent from the commission, Mr.
21 Ren Serey, to the county planning office. And that letter
22 stated, thank you for providing information on the
23 reference change to the Talbot County Critical Area
24 Program. As we discussed it's my understanding that the
25 County will be submitting this bill and several others

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1 resulting from the comprehensive review of the critical
2 area program. With a formal request of approval. Please
3 include the dates that the county council approved the
4 bills and the request. And that's really all it says, Your
5 Honor. And so again this letter, even though it came on
6 the 10th day of the working day period it did not comply
7 with the requirement of 8-1809M(2), that the commission
8 mail a notification...
9 THE COURT: Well it seems to. The way you
10 read it seems to be that the commission thought that the
11 actual submission was to be still to occur.
12 MS. SHEARER: Well it was clear based on a
13 telephone conversation that they were requesting more
14 information but the commission's action did not comply with
15 the statute's requirements of what it was supposed to do.
16 THE COURT: What were the contents of the
17 notice of transmittal?
18 MS. SHEARER: Transmitting the bill to the
19 commission?
20 THE COURT: Yes.
21 MS. SHEARER: "Enclosed you will find Talbot
22 County Bill 933 serving to review and reallocate the number
23 of number of reserved acres of growth allocation allocated
24 among the town's for rezoning. The bill has brought
25 consistent with Section 1-9109D(11) of the Talbot County

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1 Zoning Ordinance in order to comply with the Chesapeake Bay
2 Critical Area Commission for your review requirement. The
3 Talbot County procedure for this review and zoning
4 ordinance text amendment requires legislative action by the
5 county council similar to a zoning map amendment and is
6 treated as such in the process used for review. Bill 933
7 and all other relevant materials are attached for your
8 consideration. Please review the enclosed materials and
9 let us know whether you propose to have a public hearing or
10 if no public hearing is required when you will discuss it
11 with the commission. Thank you for your consideration."
12 That's what the cover letter with Bill 933 stated.
13 THE COURT: All right, go ahead.
14 MS. SHEARER: On January 16th, 2004 the day
15 after the expiration of the ten working day deadline for
16 the commission to either accept or return bill 933, by
17 default this is when the 90 day review period would begin.
18 However based on the commission's request apparently Bill
19 933 was resubmitted on January 19th, 2004 to the
20 commission. And it was sent with several other bills that
21 were part of the comprehensive review. The commission has
22 indicated in its opposition and its own motion for summary
23 judgement that it received the resubmission of Bill 933 on
24 January 21st, 2004. So the day after that date, the 22nd of
25 January would be the beginning of the ten working day

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1 period requiring the commission to either mail a
2 notification to the local jurisdiction that the proposal
3 has been accepted or return the proposal as incomplete.
4 THE COURT: What would have been the beginning
5 date?
6 MS. SHEARER: January 22nd, 2004.
7 THE COURT: 22nd?
8 MS. SHEARER: This is on the second submission
9 of the same bill.
10 THE COURT: I understand.
11 MS. SHEARER: The, if you count ten working days
12 from January 22nd the last day of the ten working day
13 period was February 4th, 2004. It's undisputed that the
14 commission did not comply with Section 8-1809M(2) and
15 either mail a notification to the county that the proposal
16 was accepted or return the proposal as incomplete by
17 February 4th, 2004. However on the next day February 5th
18 2004, the commission did send a letter to the county
19 stating that it was accepting Bill 933 for processing.
20 It's our argument, Your Honor, that because the
21 commission's acceptance of Bill 933 was one day late that
22 the 90 day period for it to either, to take action on Bill
23 933 should begin by default on the day after the ten
24 working day period expired, which was the February 4th.
25 And so February 5th would be the beginning of the 90 day

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1 review period for the resubmission of Bill 933. Now the
2 end of the first 90 day review period for the initial
3 submission of the bill is April 15th, 2004 and it's
4 undisputed that no action was taken on Bill 933 prior to
5 that date. The end of the second 90 day review period for
6 the resubmission of Bill 933 was April 4th. I'm sorry May
7 4th, 2004. And it's undisputed that the commission did not
8 take action on Bill 933 by that date. However on the next
9 day, February 5th, the commission voted to deny approval of
10 Bill 933. So whether you are looking at the original
11 submission of Bill 933 or the resubmission of Bill 933 the
12 commission failed to meet both 90 day review periods. And
13 therefore pursuant to Section 8-18090 or O Bill 933 is
14 deemed approved.
15 THE COURT: All right. Thank you.
16 MS. SHEARER: Now moving on to...
17 THE COURT: I'm terribly interested however in
18 what do you call this? Was it a program amendment, was it
19 a refinement, what was it?
20 MS. SHEARER: The commission decides whether
21 it's a refinement or an amendment. In this case they
22 decided that Bill 933 was a program amendment.
23 THE COURT: A program amendment, I see. And
24 well, you say the commission determined that they have the
25 right to ultimately determine but it gets submitted one way

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1 or the other. Where are the provisions in the law for an
2 amendment relating to allocation of growth provisions?
3 Where do I find that?
4 MS. SHEARER: Well are you referring to the
5 COMAR regulations, Your Honor, or are you referring to the
6 statute that...
7 THE COURT: I don't care where you're
8 referring. Where is the authority for it?
9 MS. SHEARER: All program amendments are
10 subjected to the same statutory criteria.
11 THE COURT: All right let me state it another
12 way. Where is the authority for regarding a withdraw of
13 allocation as an amendment to the Talbot County program?
14 MS. SHEARER: Well, Your Honor, that goes back
15 to the beginning of the story where in 1989 when the county
16 enacted its critical area local program it voluntarily
17 reserved a certain number of acres for the municipalities
18 in Talbot County. But it was not required to do so. And
19 therefore there is no provision in the statute for
20 unreserving those acres.
21 THE COURT: It was required to do so, wasn't
22 it?
23 MS. SHEARER: No, Your Honor.
24 THE COURT: It was, well how about the
25 provision in the code that says that in cooperation with

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1 the county that's supposed to make an equitable
2 distribution of some such thing. Go ahead. Is that a
3 requirement? Can we ignore that?
4 MS. SHEARER: I think you're referring, Your
5 Honor, to the COMAR regulation (inaudible) 27, those are
6 the criteria that the commission is supposed to consider in
7 deciding whether or not to approve a local program
8 amendment. And one of the, one of those criteria, the one
9 that's been most in dispute in this case is the criteria
10 that says that counties in coordination with municipalities
11 are to establish a process for growth allocation.
12 THE COURT: Well isn't that...
13 MS. SHEARER: That wasn't one of the reasons
14 that the commission rejected Bill 933, Your Honor.
15 THE COURT: All right. Go ahead.
16 MS. SHEARER: Well I was wondering, Your Honor.
17 I would like to address the standard of reviews since
18 that's apparently in dispute in this case. And then I
19 could go on to discuss what actually occurred with Bill
20 933.
21 THE COURT: Well be brief on the standard of
22 review please. You may assume and I mean I know I'm old
23 and constitutionally senile but I'm acquainted with the
24 standard of review. So just give it a lick and a promise
25 if you would please.

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1 MS. SHEARER: Well, Your Honor, I believe the
2 town's perhaps the commission have argued that their
3 actions in this case were purely quasi-legislative and
4 therefore the standard of review is very limited. Only to
5 whether or not the commission acted within its legal
6 boundaries. And that is one of your arguments that the
7 commission acted outside of its legal boundaries. But also
8 what happened in this case is that the commission went
9 beyond any purely legislative or quasi-legislative function
10 and engaged in adjudicative fact finding. And to the
11 extent they did so their decision is open to broad review.
12 And also I wanted to bring to Your Honor's attention the
13 discussion of this issue in Bucktail vs. Talbot County,
14 Maryland. In that case the Court held that it is clear in
15 Maryland that even where a statute or ordinance makes no
16 provision for judicial review, an implied limitation upon
17 an administrative board's authority is that its decisions
18 be supported by facts and that it be not arbitrary or
19 capricious or unreasonable.
20 THE COURT: Not arbitrary or capricious,
21 absolutely that goes all the way back to Heck vs. Crook.
22 Go ahead.
23 MS. SHEARER: Right. And the Court also noted
24 that reclassification in the critical area is not wholly
25 legislative. While the ultimate decision of the council in

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1 that case was legislative, the proceeding involved was
2 adjudicative in nature. And the Court thus held that the
3 appropriate standard of review was a substantiality of the
4 evidence test.
5 THE COURT: What was the adjudicated fact?
6 What were the adjudicated facts?
7 MS. SHEARER: In the case the developer was...
8 THE COURT: Not that case, this case. What
9 were the adjudicated facts.
10 MS. SHEARER: Well in this case, Your Honor, the
11 commission exceeded its statutory authority. Pursuant to
12 the statute the commission shall approve program amendments
13 that meet the standard set forth in 8-1808B(1) through (3).
14 THE COURT: You're not answering my question.
15 What were the facts adjudicated?
16 MS. SHEARER: The facts adjudicated in this case
17 were the basis for this commission's decision.
18 THE COURT: Well let's not quibble. What were
19 the facts that were adjudicated?
20 MS. SHEARER: Well the commission said that Bill
21 933 would negate the Strasburg growth allocation that was
22 already approved. While they had to engage in some sort of
23 adjudicative fact finding in order to come to that
24 conclusion. Because Bill 933 applies only to town growth
25 allocation.

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1 THE COURT: Was that fact disputed?
2 MS. SHEARER: Yes, everything was disputed, I
3 guess.
4 THE COURT: Who disputed it?
5 MS. SHEARER: The county.
6 THE COURT: The county said it didn't affect
7 it?
8 MS. SHEARER: No. Because it only effects the
9 county's growth allocation. And the other thing the
10 commission based its decision upon...
11 THE COURT: You've lost me. You said it
12 didn't effect anybody else because it only affected the
13 county's growth allocation even though it skewered
14 everybody else's?
15 MS. SHEARER: No, Your Honor, when the critical
16 area statute was enacted it contained a provision that said
17 that each local jurisdiction gets five percent of its RCA
18 land to develop and use as growth allocation. And when it
19 said each local jurisdiction it meant each municipality of
20 each county. And so the town's within Talbot County had
21 five percent of their RCA and the county had five percent
22 of its RCA lands to use as growth allocation. So in
23 1989...
24 THE COURT: But you see presumably at that
25 time the Critical Area Commission gave approval to all the

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1 critical area plans in Talbot County, that is regard to all
2 local jurisdictions, on the basis that each one had a
3 certain allocation. Right?
4 MS. SHEARER: No, Your Honor, that's one of our
5 arguments. I think you are referring to the issue of
6 reliance, the commission held that the towns relied upon
7 the county's reservation of its growth allocation acres for
8 use by the towns. And because they relied that the county
9 cannot amend its program.
10 THE COURT: No, no, no, no. I'm not talking
11 about the county. The commission had to give approval to
12 everyone's original plan. All right?
13 MS. SHEARER: Correct.
14 THE COURT: At that time the commission could
15 well have said, could they not, no Talbot County, we're not
16 going to approve your plan because you didn't give, share
17 enough of the growth allocation with the towns. Couldn't
18 they?
19 MS. SHEARER: No, Your Honor. That's not
20 correct.
21 THE COURT: Why not?
22 MS. SHEARER: Because they were not required to
23 reserve growth allocation for the towns.
24 THE COURT: Well what was the provision for
25 cooperation? You mean cooperation was wholly one sided?

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1 And that the county could act individually and arbitrarily
2 without regard to the rights of the interests of the
3 municipalities?
4 MS. SHEARER: No, Your Honor.
5 THE COURT: I find that difficult to believe.
6 MS. SHEARER: The county's growth allocation is
7 land in the unincorporated areas of the county. It's the
8 county's land. It's not within a municipality. And when
9 Talbot County initially enacted its program and sent it to
10 the commission for approval, it did provide for reservation
11 of a certain number of growth allocation acres for the
12 town. And it failed to establish any process by which the
13 county would be involved at all. And held those acres of
14 its own land were used. And so the statute requires...
15 THE COURT: You see I have so much trouble
16 with the concept of its own land.
17 MS. SHEARER: Land within the county.
18 THE COURT: Presumably this was a body, the
19 county was dealing in the public interest was it not? It
20 wasn't its. It was, as I read the statute, it was directed
21 to provide an equitable distribution of the overall, or the
22 county and the town were to provide an overall equitable
23 distribution.
24 MS. SHEARER: Well it does require the county to
25 accommodate the growth needs of the towns. And it also

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1 suggested that each jurisdiction work cooperatively with
2 the other in the spirit of cooperation. And so the county
3 did not have to reserve growth allocation acres in order to
4 accomplish those goals. It did do so. But the planning
5 match that were adopted in 1989 were based on assumptions
6 that certain things would happen in a certain manner.
7 Those assumptions turned out to be incorrect. And so the
8 current county council passed Bill 933 to establish an
9 actual process...
10 THE COURT: You mean what the county council
11 did then, the persons who happen to be elected and serving
12 at this time don't like and so they can emasculate not only
13 their own program but the programs of all the
14 municipalities in Talbot County, is that right?
15 MS. SHEARER: No, Your Honor.
16 THE COURT: The plan for St. Michaels was
17 approved, just for example, or you could say Oxford, was
18 approved by the commission originally based upon the fact
19 that it had a certain amount of growth allocation. There
20 is nothing to say that they would have approved it if it
21 had less. There is nothing to say that they would have
22 approved Talbot County's program if it had arrogated to
23 itself all of the land area within, outside of the
24 municipality. Nothing to say that at all.
25 MS. SHEARER: No, Your Honor, that's absolutely

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1 incorrect. St. Michaels critical area program was enacted
2 and approved prior to Talbot County's program. And so the
3 whole issue of reliance is simply not true.
4 THE COURT: What do you mean it was enacted
5 and approved?
6 MS. SHEARER: It was more than a year prior to
7 the Talbot County local critical area program that provided
8 the reservation of growth allocation. Now the town's argue
9 that they expected to receive the reserved growth
10 allocation from the county but they didn't have any right
11 to expect that. The county did it voluntarily. You have
12 to look at when the statute...
13 THE COURT: What was the representation of
14 growth allocation by the town at the time when it submitted
15 its original plan?
16 MS. SHEARER: What was, yeah, I think I just
17 said that the town's I guess generally, the claim that they
18 expected to receive growth allocation acres from the
19 county. See what the statue required was for the county to
20 establish a process that's going to accommodate growth and
21 try to work cooperatively...
22 THE COURT: Tell me where it says that.
23 MS. SHEARER: It's in the critical area statute,
24 Your Honor. I can find the exact number.
25 THE COURT: Well read it to me.

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1 MS. SHEARER: It's right there, Your Honor.
2 MR. DETAR: You want me to put this up there,
3 Your Honor? This is the provision everybody is discussing.
4 MS. SHEARER: But, Your Honor, that provision
5 applies to expansion and we're still talking about the
6 initial program and what the county did. There was nothing
7 in the statute that required the county to reserve growth
8 allocation acres to the town's, Your Honor. And in fact
9 the commission has approved many other county programs that
10 did not reserve growth acres for any municipalities. And
11 that don't even give the municipalities any say in how
12 growth allocation is to occur outside the municipalities
13 and adjacent to them. Bill 933 sets up a process whereby
14 growth allocation requests by the towns will be subject to
15 a joint review by the towns and by the county. It gives
16 towns a say where other county's don't give their towns any
17 say whatsoever. And the county again was never required in
18 the first place to do a so called reservation of a certain
19 number of acres for each town. They kind of made that up
20 and did it entirely voluntarily. And this council thinks
21 what they did was wrong. Thinks they failed to establish a
22 process as they were required to do originally. And they
23 were trying to rectify that situation.
24 THE COURT: Tell me how did this wisdom fall
25 upon, 20 to 30 years later, upon this particular group of

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1 county commissioners?

2 MS. SHEARER: Well, because, Your Honor, there
3 were three maps that were adopted with the original program
4 back in 1989. And they made certain planning assumptions
5 about how growth would occur and where it would occur. The
6 statute required the county to do a quadrennial
7 comprehensive review of the situation but the county for
8 whatever reason failed to do so.

9 THE COURT: I thought it was every six years.

10 MS. SHEARER: It was six and then they changed
11 it I think it's four.

12 THE COURT: Go ahead.

13 MS. SHEARER: So the county never did those
14 comprehensive reviews. And so everything stayed the way it
15 was. Then the commission told the county that if they
16 didn't do their required comprehensive review that they
17 were going to put a moratorium on all growth. And so the
18 council acted, the newly enacted council in 2002 acted to
19 do what it was supposed to do and perform the comprehensive
20 review. That's when they realized that all the planning
21 assumptions that had been made in 1989 the assumptions that
22 were the basis for the reservation of growth allocation for
23 the towns had all been incorrect or had not turned out to
24 be the way that they thought they would be. And so what
25 they decided to do to rectify that situation was to take

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1 back the reserve of growth allocation that was unvested...
2 THE COURT: That the towns weren't growing, is
3 that what that means?
4 MS. SHEARER: Pardon me, Your Honor.
5 THE COURT: That the towns weren't growing, is
6 that what that means?
7 MS. SHEARER: I think just that development had
8 not occurred at the pace and in the places that had been
9 expected back in 1989. And so Bill 933 whereas the council
10 in 1989...
11 THE COURT: Is this, is there a showing that
12 the allocation is needed for other places?
13 MS. SHEARER: I'm not sure what you mean, Your
14 Honor.
15 THE COURT: Well why withdraw it from the
16 towns unless it is casting a burden upon development
17 elsewhere?
18 MS. SHEARER: The failure in 1989 to ever
19 establish a process for how the growth allocation would be
20 used meant that the county had no input into the entire
21 process. So the towns would just do it by themselves. So
22 this council wants to put all the growth allocation back in
23 a common pool for the use of all the towns. See right now
24 the towns of St. Michaels and Oxford control 71 percent of
25 the growth allocation in the county. And so this would

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1 establish a process whereby there's joint review by the
2 county and the towns. And that satisfies the criteria for
3 accommodating growth in the towns and working cooperatively
4 with the towns and in coordination with them as required
5 under the COMAR regulation which Mr. DeTar has placed up
6 here for Your Honor. So where before in 1989 there was no
7 process, Bill 933 fixes that by making a process that
8 complies with all the statutory criteria and fairly
9 distributes growth allocation between all the towns in the
10 county. And gives the county citizens some say in how its
11 used.
12 THE COURT: Well all the towns in the county
13 don't need one do they?
14 MS. SHEARER: I think all the towns have
15 critical areas except Trappe.
16 THE COURT: Except for one.
17 MS. SHEARER: Yes. And Your Honor I would like
18 to talk specifically about how the commission exceed its
19 authority with respect to Bill 933.
20 THE COURT: Go ahead.
21 MS. SHEARER: In the North case the Court held
22 that the role of the commission is to examine an amendment
23 to determine whether it meets, it is consistent with the
24 criteria in the statute. And Your Honor in the Midlands
25 case, which you issued an order in April, again noted that

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1 the sole issue before the commission involves a wholly
2 objective determination, that being whether the amendment
3 proposed by the towns satisfies the definition of IDA as
4 set forth in the applicable criteria.
5 THE COURT: I didn't say the definition of
6 IDA. That is a gloss that has been put upon it. I said
7 the criteria for an IDA.
8 MS. SHEARER: Right, the definition of IDA as
9 set forth...
10 THE COURT: I didn't say definition. I said
11 the criteria. And there is a difference. I don't know
12 where that, well yes I do, gloss came from the commission.
13 MS. SHEARER: No, it's a direct quote from your
14 opinion.
15 THE COURT: What does it say?
16 MS. SHEARER: It's, I just read it. And then
17 you went on to say...
18 THE COURT: Well read it again to me.
19 MS. SHEARER: Sure. "The sole issue before the
20 commission involves a wholly objective determination that
21 being whether the amendment proposed by the town satisfies
22 the definition of IDA as set forth in the applicable
23 criteria." That was the issue in that case.
24 THE COURT: Criteria.
25 MS. SHEARER: Right. And conjecture as to

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1 whether the situation could be made better by the addition
2 of bells and whistles is beyond the authority of the
3 commission. Now turning Your Honor to Section 8-1809J of
4 the Natural Resources Article, it states that the
5 commission shall approve program amendments that meet one,
6 the standard set forth in 8-1808B(1) through (3). And two,
7 the criteria adopted by the commission under 8-1808. So
8 that's mandatory statutory language that if a program
9 amendment meets the standards and meets the criteria in the
10 statute that it has to be approved. Now the standards in
11 this case...
12 THE COURT: Even though, even though it
13 emasculates others, other jurisdictions programs.
14 MS. SHEARER: It doesn't affect other
15 jurisdictions programs, Your Honor.
16 THE COURT: It doesn't?
17 MS. SHEARER: It creates a process for how...
18 THE COURT: Well then why are all these people
19 here if they are not affected?
20 MS. SHEARER: I don't know.
21 THE COURT: Because there are (inaudible)?
22 MS. SHEARER: No, no.
23 THE COURT: What do you mean it doesn't affect
24 them?
25 MS. SHEARER: They support the commission's

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1 decision in this case, Your Honor.

2 THE COURT: What?

3 MS. SHEARER: They support the commission's

4 decision in this case. So the standards in the statute and

5 the criteria that are in the regulations in COMAR are all

6 that the commission was supposed to consider. But the two

7 basis provided by the commission for rejecting Bill 933

8 were not within the standards nor the criteria that the

9 commission was supposed to be considering.

10 THE COURT: What was that basis?

11 MS. SHEARER: Well the first basis was that

12 accepting Bill 933 would negate at least one prior

13 commission action approval of the Strasburg growth

14 allocation.

15 THE COURT: All right.

16 MS. SHEARER: And the second basis was that

17 accepting Bill 933 would create conflicts between the

18 county program and several approved municipal programs.

19 The municipal programs...

20 THE COURT: That's exactly what I said before,

21 isn't that true?

22 MS. SHEARER: No, it's not true.

23 THE COURT: Why?

24 MS. SHEARER: Because it's based on a false

25 premise that there was reliance by the towns upon the

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1 reservation of growth allocation acres in 1989.
2 THE COURT: What do you mean this has been
3 going on since 1989 and you're talking, somebody
4 erroneously relied upon it. It mean it's almost one of
5 those situations where that's been the case since the
6 memory of man (inaudible). After all that time they
7 couldn't rely on it?
8 MS. SHEARER: No, they're saying the relied on
9 it before it happened. They are saying that they expected
10 it to occur. Like I said St. Michaels....
11 THE COURT: Expected what to occur?
12 MS. SHEARER: They expected that the county
13 would reserve growth allocation acres in the county for
14 growth by the towns.
15 THE COURT: Well they did originally, didn't
16 they?
17 MS. SHEARER: Well they did but it was voluntary
18 on their part. They didn't need to do so. And the
19 commission has approved many other county programs that
20 (inaudible.)
21 THE COURT: I'm sure it's supposed to be
22 correct if I suggested the county is an Indian giver?
23 MS. SHEARER: Well they do want to take back
24 something they gave previously, that's true.
25 THE COURT: I find this horrendous. How in

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1 the world can the county go ahead, have the commission
2 approve its program and the program of the other
3 municipalities for the area as a whole. Have other, there
4 are other counties operated in good faith upon what Talbot
5 County said it had done, not what it was going to do, what
6 it had done. And then Talbot County finally decides 20 or
7 30 years later, oh, we don't want it this way, we want to
8 take everything back. So that we have a control over what
9 these municipalities do. Which is a (inaudible) here.
10 MS. SHEARER: Well it's not about control, Your
11 Honor, but factually it's incorrect to because their
12 programs were...
13 THE COURT: I'm sorry it is about control.
14 That's all that it's about. And all this hoopla about that
15 they wanted to participate in the equitable process is
16 simply control. That's what they want. They want to
17 control...
18 MS. SHEARER: The towns want to control too,
19 Your Honor.
20 THE COURT: They want to control what the
21 individual municipalities can do. That a municipality in
22 Talbot County is going to have to come hat in hand to
23 Talbot County and say please, please will you give us some
24 of the growth allocation that belongs to the people of our
25 county.

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1 MS. SHEARER: Well that's incorrect, Your Honor.
2 THE COURT: Well tell me what's correct then.
3 MS. SHEARER: Okay, well first you were
4 incorrect to say that there was reliance. There was none.
5 St. Michaels program was adopted before the county's
6 program where they reserved these growth allocation acres.
7 So there was no reliance. And the commission was
8 absolutely (inaudible).
9 THE COURT: How can you say that? For all
10 these years they've operated and maybe they wouldn't have
11 granted growth allocation to "x" last year or the year
12 before if they had known that they were running out of it.
13 They recently, how can you stand there and say that they
14 didn't rely on it? I, as you indicated before I've sat in
15 the Midlands case. They've utilized their growth
16 allocation in that case. Growth allocation which I suspect
17 you are going to try to take back. But how can you stand
18 there and say to me that they didn't rely on it? No, no,
19 no, don't go on. I want an answer. How you can tell me
20 that as an actual factual objective matter that the town of
21 St. Michaels did not rely upon that which Talbot County did
22 in 1989?
23 MS. SHEARER: Because they didn't have a legal
24 right to rely in the first place, what the county did was
25 voluntary...

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1 THE COURT: I didn't ask you about their legal
2 right.
3 MS. SHEARER: I'm starting...
4 THE COURT: No, no, no, please don't tell me
5 that. Please, I really want my questions answered. This
6 is a massive record. I've tried to understand it. I don't
7 think I fully do. But tell me as a factual matter, I don't
8 want you to give me this gobbley-gook about as a legal
9 matter they didn't have a right to rely on. I want you to
10 tell me as a factual matter is it your client's contention
11 that they did not in fact rely on? In fact.
12 MS. SHEARER: Yes, Your Honor.
13 THE COURT: They did, didn't they?
14 MS. SHEARER: Your Honor, St. Michaels program
15 was adopted over a year before the county's program.
16 THE COURT: I don't care. The operation has
17 gone on since then on that basis. As I said maybe they
18 would have decided last year that they would not have
19 approved something. You're pulling the rug out from under
20 them when they have operated and they have planned on the
21 assumption created solely by your client according to you,
22 that they had "x" amount of growth area. Now maybe that
23 planning would not have been the same if they had known
24 that they did not have it. Or that it might be taken away.
25 But as a factual matter I tell you right now that one of my

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1 declarations is that clearly as a matter of absolute
2 undisputable fact the towns relied upon what Talbot County
3 had done in 1989. Now it might be that they had no right
4 to rely upon it as you say. But they did. They clearly
5 did. Otherwise how could they have done what they did in
6 the Midlands case? Because they run out of growth
7 allocation by then hadn't they? According to you, go
8 ahead, or your client, not you.
9 MS. SHEARER: What, Your Honor, seems to be
10 implying that there was some sort of estoppel against the
11 county council that they can legislatively decide to change
12 a policy because it used to be different.
13 THE COURT: Well you know there is something
14 about that. Do you know about the doctrine of res judicata
15 in the administrative oath? And that is that once
16 something is done the county cannot, an administrative
17 agency cannot change that.
18 MS. SHEARER: But res judicata is a judicial
19 doctrine and the county council is a legislative elective
20 body.
21 THE COURT: I see and so is the Critical Area
22 Commission isn't it?
23 MS. SHEARER: No, it's a state administrative
24 agency.
25 THE COURT: No, you see, it's a legislative

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1 body but as you say it's adjudicated facts there because it
2 is making an adjudication of facts. So it involves that
3 mix that you were urging upon me before.
4 MS. SHEARER: Well that was, well when I was
5 talking about the standard applicable to the Critical Area
6 Commission.
7 THE COURT: I understand.
8 MS. SHEARER: Now I'm talking about the Talbot
9 County council and the legislative...
10 THE COURT: I understand. And the Talbot
11 County council somehow has rights superior to those of the
12 commission. I understand that. Go ahead. I understand
13 that's your contention, I don't understand that all.
14 MS. SHEARER: Your Honor, it's not my contention
15 that their rights superior. What I was trying to say is
16 that the county council has the legislative authority to
17 change its policies. You know even if the policy has been
18 one way for 20 years that doesn't stop a new council from
19 changing it. I mean that's why we have a representative
20 government and newly elected officials. But getting back
21 to the statutory criteria, none of the criteria permitted
22 the commission to determine, to decide or even to consider
23 whether Bill 933 would effect some other commission action,
24 such as the Strasburg growth allocation. And none of the
25 statutory standards of criteria permitted the commission to

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1 decide whether or not the towns reasonably relied to their
2 detriment upon the original growth allocation reserves.
3 THE COURT: You say there is no evidence of
4 that? Are you really arguing that to me?
5 MS. SHEARER: No, what I'm just saying that they
6 exceeded their statutory authority in considering those
7 things. Aside from the fact of whether you believe it's
8 true or not that they lied.
9 THE COURT: Why couldn't they consider that?
10 MS. SHEARER: Because they statutory standards
11 as set forth in 8-1801B(1) through (3) don't contain any
12 provision allowing them to consider that. And if you go to
13 the criteria adopted, which are in COMAR titled 27,
14 similarly there is nothing in there that gives them the
15 authority to consider those issues.
16 THE COURT: There's really nothing in there
17 either which gives them any authority to change or for that
18 matter the county, to change an allocation which it made in
19 1989.
20 MS. SHEARER: Well that's actually not true Your
21 Honor. That's...
22 THE COURT: Is that in the ordinance?
23 MS. SHEARER: Yes, yes, it permits program
24 amendments. And the very definition of a program amendment
25 shows that in this case the county could change its policy.

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1 THE COURT: What is it, what is the provision
2 of the Talbot County's original program that makes this
3 allocation?
4 MS. SHEARER: The initial growth allocation
5 reserves you mean? It was in the bill that enacted the
6 critical area.
7 THE COURT: I didn't ask you that, but what is
8 it?
9 MS. SHEARER: Oh, we reserved a certain number
10 of the county's RCA for growth allocation to the
11 municipalities.
12 THE COURT: And that's in the original
13 program?
14 MS. SHEARER: It's in, yes, Talbot County's
15 initially adopted critical area program.
16 THE COURT: Can you give me a reference to the
17 section?
18 MS. SHEARER: I don't have the 1989 bill with
19 me, Your Honor.
20 THE COURT: Well you see I have all these
21 mounds of materials, some of which I don't know where
22 everybody is coming from. But I dearly would love to have
23 a copy of the Talbot County, I would like to have a copy of
24 the provision that we're all talking about Talbot County
25 having the right to repeal.

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1 MS. SHEARER: Well, Your Honor, actually I think
2 I do have what it is you are asking for.
3 THE COURT: Go ahead.
4 MS. SHEARER: Exhibit 1 to our motion for
5 summary judgement is Resolution 56 adopted in 1989.
6 THE COURT: Which is what? In 1980 what?
7 MS. SHEARER: We can provide you with a copy of
8 the ordinance. This is the resolution adopting the plan.
9 And the plan is directly behind it. It's all Exhibit 1.
10 And in the plan there is reference to the reservation of
11 growth allocation acres.
12 THE COURT: Well read it to me. Do you have
13 it there? Read it to me.
14 MS. SHEARER: Oh, it's really long, Your Honor.
15 THE COURT: No, no, no. I didn't want you to
16 read me the whole plan. I just wanted you to read me the
17 provisions that have to do with growth allocations. Does
18 933 does that help you? Does that repeal, reenact that
19 section? I do not know.
20 MS. MASON: Your Honor, to assist the Court,
21 933 has cross outs through the allocations reserved for the
22 town so you can see what was reserved.
23 MS. SHEARER: That's true. Then you can see
24 what was taken out.
25 THE COURT: May I have that? Well is there

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1 any significance in the fact that it says that the
2 reservations are for growth allocation associated with
3 annexations? Is there any significance to that?
4 MS. SHEARER: Which portion are you referring
5 to, Your Honor?
6 THE COURT: I'm reading 19-109D(9)(a).
7 MS. SHEARER: Where it's crossed out where it
8 says of these 1,213 acres.
9 THE COURT: Am I to read that as meaning that
10 one is reserved of the towns are only for use of growth
11 allocation associated with annexations?
12 MS. SHEARER: That is what it says, Your Honor.
13 THE COURT: What?
14 MS. SHEARER: That is what it says.
15 THE COURT: Is that what occurred here?
16 MS. SHEARER: But it's deleted here.
17 THE COURT: I understand that.
18 MS. SHEARER: Oh, okay.
19 THE COURT: But is that it says?
20 MS. SHEARER: That's what the original ordinance
21 said, apparently, and then Bill 933 took that out.
22 THE COURT: What happens when a town annexes
23 land? Do they get a pro tanto under the present, the 933,
24 do they get a pro tanto part of what the county says is its
25 growth allocation?

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1 MS. SHEARER: Well when the critical area
2 statute was originally enacted in the 1980s it gave each
3 local jurisdiction five percent of its RCA lands to use as
4 growth allocation. And so if a town annexes property into
5 the county that is still county RCA growth allocation as
6 initially given to it under the statute when it was, the
7 critical area statute. So there is no provision in the
8 critical area statute for a change of county RCA, you know,
9 to the town just because of an annexation.
10 THE COURT: Well you see that really isn't
11 exactly right. Because as originally adopted the ordinance
12 said, not more than 1,213 acres of the critical area of the
13 county including all land lying within the critical area
14 within incorporated towns. So it calculated the growth
15 allocation based upon the entire area of Talbot County.
16 And then it split it up.
17 MS. SHEARER: Well that calculation did, yes.
18 THE COURT: Well 1,219 acres it still is,
19 isn't it. I mean that's the total growth allocation for
20 the entire county, correct?
21 MS. SHEARER: I believe so, Your Honor. No,
22 that's half of it.
23 THE COURT: Can I have this?
24 MS. MASON: Yes.
25 THE COURT: All right. Go ahead please.

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1 MS. SHEARER: So the critical area statute
2 provides for a local jurisdiction to amend their program,
3 which is what Talbot County did with Bill 933. So the
4 section is 8-1802A(9)(1), and it defines a program
5 amendment as any change to an adopted program that the
6 commission determines will result in the use of land or
7 water in the Chesapeake Bay Critical Area in the manner not
8 provided for in the adopted program. And number two,
9 program amendment includes a change to a zoning map that is
10 not consistent with the method for using growth allocation
11 contained in the initially adopted program. And so this
12 specifically, this part of the statute enacted by the
13 General Assembly specifically gave Talbot County the
14 authority to not only adopt a program amendment but to
15 adopt one that included a change to a zoning map that was
16 not consistent with the initial method (inaudible).
17 THE COURT: This is not a change to a zoning
18 map. This is not a change to a zoning map. Not a change
19 to a critical area.
20 MS. SHEARER: Well it repeals the maps that were
21 initially enacted which gave, you know, were part of the
22 initial 1989...
23 THE COURT: The maps don't reflect growth
24 area, original growth area. It inherently can't.
25 MS. SHEARER: Well, Your Honor, the statutory

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1 definition specifically says that a program amendment means
2 any change to an adopted program that the commission
3 determines will result in use of land or water in a manner
4 not provided for in the adopted program. I mean if you say
5 that the county can't make a change like this to its
6 program. You are effectively saying that no county can
7 ever change its local program because it might affect the
8 towns.
9 THE COURT: I'm not saying that. I'm not
10 saying that. What I'm saying is that it cannot revoke an
11 agreement or something that it did in the past upon which
12 others have relied in good faith for a long time. And
13 which absolutely it can amend its program, but what the
14 fall out is on other programs Talbot County doesn't worry
15 about. I find that somewhat unworthy of a public agency.
16
17 MS. SHEARER: Respectfully, Your Honor, I
18 disagree with your assessment because you can't claim
19 estoppel against the government. Especially when it comes
20 to the government's legislative function. And so that's
21 just incorrect as a matter of law. If the town council has
22 the statutory authority from the critical area statute...
23 THE COURT: Fairness, equity and good faith
24 have no place when it comes to the government, is that
25 right? The government can act willy-nilly without, and it

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1 can emasculate its feeding frenzy. It can feed on the
2 rights of other institutions too. It's a question of who's
3 at the top. It's the whole foolish thing that the county
4 and the towns are entirely separate. That is really very
5 clear. And what the county is trying to do clearly,
6 whatever you want to call it, however you want to paint it,
7 whatever coating you want to put on it, what it is doing
8 and what it is trying to do is to control the growth of the
9 towns. Now go ahead. You needn't answer that but go
10 ahead.
11 MS. SHEARER: The critical area statute as
12 enacted required the county to establish a process for
13 growth for the towns. That's a statutory mandate. So the
14 county has to do that. The county failed to do that in
15 1989. Instead it said, here, here's some reserve growth
16 allocation, you use it as you will. So there was no
17 process. Bill 933 does not attempt to take anything away
18 from the towns. It doesn't take their property and it
19 doesn't take their participation in how growth allocation
20 in the county is used. It sets up a fair...
21 THE COURT: But it stirs the county into the
22 mix. Which goes against every tenant of the Maryland
23 Constitution. Every concept which has to do with
24 municipalities in Maryland as being distinct from the
25 county. It is an absolute attempt to control the zoning

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1 and critical area authority of municipalities. No question
2 about it. Well let me take that back.
3 MS. SHEARER: Well it only applies to county
4 RCA, Your Honor.
5 THE COURT: What?
6 MS. SHEARER: It doesn't apply in the towns.
7 THE COURT: All right.
8 MS. SHEARER: And it sets up a joint review
9 process whereby the towns have equal participation and the
10 commission has approved many other programs that don't even
11 have that provision. They've approved many programs where
12 only the county decides how growth allocation in the county
13 is used.
14 THE COURT: Oh sure. And...
15 MS. SHEARER: And if you say it's
16 unconstitutional then the critical area itself is
17 unconstitutional.
18 THE COURT: Good point. Suppose something
19 comes up in another part of the county that isn't an
20 incorporated town, right? Now do the towns have a right to
21 cooperate in that decision?
22 MS. SHEARER: If someone inside, someone who
23 lives in an unincorporated area of the county is requesting
24 growth allocation, they go to the county.
25 THE COURT: Well isn't that something. If

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1 they are supposed to cooperate in the use of growth
2 allocation why don't the towns have a right to participate
3 in that decision?
4 MS. SHEARER: Because the county council
5 represents all the citizens within the county whether they
6 live in a town or...
7 THE COURT: It does not. As far as the
8 critical area statute is concerned it says that it has the
9 right to use the growth allocation only in cooperate, you
10 pushed that on me, only in cooperation with the towns.
11 Right? But how you construe it is that it may arrogate to
12 itself full powers when a town isn't involved. But when a
13 town is involved then it participates with the town and
14 indeed has full veto power.
15 MS. SHEARER: There is no veto power, Your
16 Honor.
17 THE COURT: No veto power?
18 MS. SHEARER: It's a joint review process.
19 THE COURT: It's a joint review. The town
20 wants it. The county says we don't want it. Isn't that a
21 veto.
22 MS. SHEARER: But, Your Honor, the town has no
23 interest in whether someone is developing out in the county
24 in an unincorporated area. I mean the way you are
25 suggesting it should occur is all the towns should all

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1 participate to decide in (inaudible) county...
2 THE COURT: Well the county really has no
3 interest in how a town is administering its critical area
4 program or its zoning program is it?
5 MS. SHEARER: Well I think the issue arises
6 where there's an annexation or a development that requires
7 an annexation. Like if part of the property is in the
8 town and part of its in the county.
9 THE COURT: The legislature has provided for
10 that. It doesn't leave it to Talbot County to resolve it.
11 The legislature has provided that there are certain
12 provisions when there is an annexation, just off the top of
13 my head and painting a very broad brush it's the county
14 zoning continues in effect during the annexation, unless
15 the county agrees. That's about as far as the law goes
16 anywhere in giving the county any rights.
17 MS. SHEARER: Yeah, that's traditional zoning,
18 yeah.
19 THE COURT: County police officers don't have
20 any right to operate within a town or vice versa indeed.
21 But for you to say that there has to be cooperation if a
22 town is involved but there doesn't have to be cooperation
23 if the town isn't involved is absurd.
24 MS. SHEARER: But, Your Honor, you're assuming
25 the town has an interest where it's not in their...

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1 THE COURT: No, no, no, it says that growth
2 allocation is to be cooperative. And they do have an
3 interest you see. They have a very great interest.
4 Because if the county laps up all the growth allocation
5 that's there it might have all the rights and cooperation
6 in the world but there is nothing there to cooperate with.
7 So it has a very real interest in making certain
8 cooperating and making certain that these aren't given to
9 somebody's political friends or they aren't given willy-
10 nilly or that they're used properly. So there is some left
11 over for use in the town if in some magnanimous gesture the
12 county may wish to share it.
13 MS. SHEARER: Well the critical area statute
14 promotes growth, you know, in and around the towns. And so
15 what's going to occur is that very often the towns are the
16 ones that are involved because the development could be
17 inside and outside of town if it's one big development.
18 THE COURT: That seems to me to be a very
19 strong favor in argument for the other side.
20 MS. SHEARER: But if someone in a very rural
21 portion of the county, nowhere near a town were to need a
22 growth allocation granted they would go to the county.
23 THE COURT: If the law says they are to
24 cooperate it doesn't say they are only to cooperate if a
25 town is involved. It doesn't say that.

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1 MS. SHEARER: No, it just says the county has to
2 accommodate the growth needs of the towns. That all it
3 says. That's what it requires. And it's to establish a
4 process and coordination with those municipalities to
5 achieve that. And that's what Bill 933 does. And as I
6 said the commission has approved many, many other county
7 programs. And I can actually go through them for Your
8 Honor. They've approved programs where only the county
9 decides who gets growth allocation and for what project.
10 And the towns have absolutely no input. This research by
11 the way that I'm referring to was done by the commission
12 while they were considering Bill 933. They had someone on
13 their staff research the critical area programs and many
14 different counties within the state. So like in Cecil
15 county for instance the local program provides that the
16 county controls use of growth allocation acres even if they
17 are inside the towns. So in Harford County if the town
18 wants growth allocation or a developer in a town, review of
19 application is through the county's procedures and the
20 county has approval. In Queen Anne's County they had a use
21 or lose it provision. If the municipality didn't utilize
22 growth allocations that were reserved for it within five
23 years then the acres reverted to the county pool again.
24 And additional growth allocation may be used by the towns
25 on a project by project basis subject to review and

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1 approval by the county. In Worcester County, Snow Hill has
2 to apply to the county for any request for growth
3 allocation. And the county has the sole authority to
4 approve such requests. That was approved by the
5 commission. Wicomico County also has a use it or lose it
6 provision. They originally allocated half of its growth
7 allocation to its towns. If they didn't use it within four
8 years it reverted back to the county. The towns must now
9 request growth allocation from the county and receive
10 county approval. That program amendment was approved by
11 the commission. In St. Mary's County the county amended
12 its local program following a comprehensive review. The
13 amended local program which was approved by the commission
14 provides that the towns must request growth allocation from
15 the county commissioners. So, Your Honor, the commission
16 approved all these other county programs where only the
17 county gets to decide how growth allocation is used. It
18 approved these programs where they were use it or lose it
19 provisions where the growth allocation even if it was
20 reserved would revert back to the county. And yet in this
21 case it rejected Bill 933 saying that there was this
22 alleged reliance. And I would submit to, Your Honor, that
23 the only difference between all these other counties who
24 received approval from the commission and Bill 933 in
25 Talbot County in this case is that they towns vehemently

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1 oppose the bill and got involved. And honestly I think the
2 commission just was led astray based on the town's
3 arguments, exceeded its authority to consider what it was
4 supposed to consider under the statute and exceeded its
5 authority in that regard. And then went with the town's
6 arguments because they've never been faced with that
7 before. So it's an arbitrary standard. You can't have
8 county approval programs approved by the commission because
9 there is no opposition from the towns. But then as soon as
10 there is opposition from the towns you don't approve a
11 similar program.
12 THE COURT: Well that's the whole purpose of
13 the courts having a decision making bodies, isn't it. They
14 don't usually arbitrarily decide something. They do it on
15 the basis of some sort of a contest. All right. Anything
16 else?
17 MS. SHEARER: No, thank you, Your Honor.
18 THE COURT: Thank you. All right Let's let
19 St. Michaels go next. No, the critical area commission go
20 next.
21 ARGUMENT ON MOTION
22 MS. MASON: Thank you, Your Honor. Marianne
23 Mason on behalf of the commission. The commission operates
24 as, Your Honor, has said as an oversight body. The purpose
25 of the critical area laws set forth by the general assembly

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1 in natural resources 8-1802 is for administration of
2 critical area programs by local jurisdictions, including 16
3 counties and 46 municipalities overseen by the commission
4 to ensure application in a consistent and uniform manner.
5 When the commission reviews either an initial program
6 submission as it did back in the 1980s or a program
7 amendments it operates under this umbrella authority of
8 ensuring that the critical area programs operate in a
9 consistent and uniform manner. We submit, Your Honor, that
10 the commission had every obligation under the direction
11 given by the general assembly to look at this program
12 amendment from Talbot County to see what effect it had on
13 other approved critical area programs. Counsel for the
14 plaintiff has gone through a list of some of the other
15 counties and how their growth allocation programs work.
16 What she failed to mention was that all of those programs
17 were approved initially, Your Honor. No other jurisdiction
18 has attempted to amend the way in which it allocates its
19 growth allocation acres. This was a new first impression
20 concept for the commission to have a county come in and
21 say, we told you we were going to do it one way in 1989,
22 now in 2003 we're changing everything all together. And by
23 the way you can't look at the effect that this has on other
24 approved equal status programs in municipalities. The
25 commission had to look at that, Your Honor. And it also

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1 was charged with the responsibility to ensure that this
2 program amendment complied with the provision that was
3 standing up there, what is now on the floor, that the
4 counties in coordination with effected municipalities
5 establish a process for expanding their intensely and
6 limited development areas. Bill 933 we've heard a lot of
7 talk about it. You have it up there in front of you, Your
8 Honor, but on its face in the bill there is absolutely no
9 process. The bill does not establish any process for the
10 towns to get growth. And this is what the commission
11 looked at and said, there's no process here.
12 THE COURT: May I interrupt you for just a
13 second?
14 MS. MASON: Yes, Your Honor.
15 THE COURT: On your first point before you
16 leave it, as I read this sort of cold. I mean I haven't
17 been involved in any of this, frankly some of the specifics
18 I don't get or understand. But anyway I'm referring to 8-
19 1801.1(b) of the statute.
20 MS. MASON: 8-1801?
21 THE COURT: 8-1808.1.
22 MS. MASON: Oh, 8-1808.
23 THE COURT: That's the one headed, growth
24 allocation and resource conservation area. And it says
25 that the growth allocation for local jurisdictions shall be

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1 calculated based on five percent of the total (inaudible)
2 in the local jurisdiction in the Chesapeake Bay area at the
3 time of original approval of the local jurisdictions
4 program. Now I understand that that can and must be read
5 as meaning that the amount of growth allocation is not a
6 fluid thing and the growth allocation can't increase or
7 decrease depending on the ebb and flow of the tide or
8 (inaudible). But it also seems to me that it also means to
9 be a determination made a the time of the original, the
10 approval of the original program.
11 MS. MASON: Yes, Your Honor, the amount of
12 acreage is set at the time of the approval of the original
13 program based on the land uses in effect on the ground in
14 1985. So that that number is fixed. If Talbot County has
15 say 2,500 acres and Anne Arundel County has 45 acres that
16 number was fixed at the time of original program approval.
17 THE COURT: But my point was that I was not
18 sure that that can't be read in saying that that
19 determination and its allocation is to be determined at the
20 time of the original approval.
21 MS. MASON: I understand, Your Honor's
22 suggestion and I guess all I can say about that is that the
23 commission has not interpreted that provision in that
24 sense. The actual award of a growth allocation from
25 jurisdiction, either a municipality or a county comes to

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1 the commission as an amendment to that jurisdictions
2 program. The commission looks at I would conservatively
3 estimate about 50 per year of growth allocations throughout
4 the critical area as program amendments or program
5 refinements. So they review them under the standards set
6 forth by the general assembly for the commissions review of
7 a program change.
8 THE COURT: Let me ask you mechanical, I'm
9 sorry.
10 MS. MASON: Yes, Your Honor.
11 THE COURT: I'm really not trying, I'm trying
12 to get through this as best I can. I not trying to throw
13 you all off stride. How would this work? I am told, I
14 don't know this, but I am told by the county that Queen
15 Anne's County for example does not make any provision for
16 growth allocation with respect to the town. But whether
17 it's Queen Anne's County or whatever, let's assume that
18 there is such a thing. How does that come before the
19 commission? It obviously can't come as a program amendment
20 by the town. Because the town doesn't have the allocation.
21 I mean how mechanically does that work?
22 MS. MASON: Mechanically, Your Honor, let's
23 get through it this way. There are 16 counties with, in
24 the critical area. 16 counties. Let's leave Talbot out of
25 it for right now. Two of those counties have no

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1 municipalities so we don't have to worry about those,
2 that's Prince George's and Baltimore. Nine of the counties
3 actually set aside acres, particular acres for their
4 municipalities as did Talbot. So with Talbot that makes
5 ten. The other four did not specifically allocate a number
6 of acres, like 28 acres or 46 acres to municipality. What
7 they said was, we're going to establish a process and those
8 are Caroline, Cecil, Harford and Worcester. They
9 established processes back in the 1980s in coordination
10 with their towns on how they were going to award growth
11 allocation within the town. Now let's take Princess Anne
12 because they've got a growth allocation that's coming in
13 for approval to the commission next month. They don't have
14 any acres specifically reserved to them. But the town of
15 Princess Anne under the process established by Somerset
16 County, I think it is, went to the county and applied for
17 growth allocation for a specific development there. The
18 county then comes in to the commission and says, we want to
19 amend our critical area program. Deduct these acres from
20 our program, give them to Princess Anne and use them for
21 this project. That, it's kind of a joint process. But
22 it's actually the county that comes into the commission.
23 THE COURT: But the point is that the
24 commission approved it?
25 MS. MASON: Yes.

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1 THE COURT: On the basis that there was an
2 existing cooperation agreement...
3 MS. MASON: Yes. Correct.
4 THE COURT: That was satisfactory to the
5 municipalities.
6 MS. MASON: Correct.
7 THE COURT: And not on the basis that the
8 county had unilaterally arrogated to itself the entire
9 process.
10 MS. MASON: Correct, Your Honor. And that...
11 (Electronic tape ended and new tape begins with the
12 following.)
13 MS. MASON: Problem with Bill 933, if you,
14 when you look at some of the voluminous transcripts that
15 are in record you'll see the panel hearings that the five
16 panel members of the commission how a very well attended
17 public hearing here in the county and then had three open
18 public meetings after that to discuss the implications of
19 Bill 933. One of their major concerns was this bill on its
20 face sets up no process. All it does it take away the
21 town's growth allocations. And in the process, which was a
22 great concern to the community....
23 THE COURT: Which itself is absolutely
24 impossible under the statute. Because any growth
25 allocation must be subject to a plan, we'll call it that or

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1 an arrangement, make it more neutral. An arrangement that
2 was prepared in accordance, in cooperation with the town.
3 And there is no arrangement.
4 MS. MASON: I believe there is evidence in the
5 record to that effect, Your Honor, there was (inaudible).
6 THE COURT: At this moment there is no
7 cooperative arrangement. I mean this business that it was
8 forced upon me and has to be done under cooperation, well
9 how?
10 MS. MASON: It's not in the bill, Your Honor.
11 There is nowhere in that bill that says how they are
12 planning to coordinate or cooperate.
13 THE COURT: So the towns must come on bended
14 knee to the county and say, give us some of this. And the
15 county, there is no criteria which the county has for doing
16 it. This, I'm told that this group of county council
17 wanted to change policy. So we have another policy next
18 year and there are no criteria by which the county is going
19 to share any of the growth allocation, right?
20 MS. MASON: Correct, Your Honor. Not in Bill
21 933. The bigger problem...
22 THE COURT: Not anywhere else either.
23 MS. MASON: Well the county would argue that
24 another bill which was enacted four years earlier to
25 accommodate Easton, which had used up all of its growth

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1 allocation and then wanted more, the county has argued that
2 that bill somehow should be grafted onto Bill 933 and used
3 for these other towns that hadn't used up the growth
4 allocation. But leaving that aside the bigger problem for
5 the critical area commission was that if, if my client, if
6 the state agency had approved this county bill it would
7 have been undoing an action that it took previously, which
8 was to approve a growth allocation at St. Michaels had duly
9 done through its program in 2003, for a development known
10 as the Strasburg property. And the critical area
11 commission approved that under St. Michaels program as a
12 growth allocation. As a program...
13 THE COURT: Well doesn't 933 purportedly
14 grandfather that?
15 MS. MASON: No, it does not, Your Honor. The
16 language in 933 is quite specific as to what it claims to
17 cause reversion to the county of any utilized growth
18 allocation. And the definition of unutilized you have my
19 copy but I'm kind of going from memory, the definition of
20 unutilized is basically any growth allocation for which a
21 stake hasn't been put in the ground, construction hasn't
22 started. It's sort of like the zoning concept of vesting.
23 And so you have the entire Strasburg project. You have a
24 couple of projects in Easton which were approved under
25 Easton's program by the commission for which some lots in

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1 those subdivisions haven't been built on yet. And you
2 would have the state agency by virtue of approving Bill 933
3 changing its mind on no basis whatsoever. The commission
4 couldn't I believe, could not unilaterally undue an action
5 which it took in 2003 and it could not allow the county to
6 undue a state action. I think under the higher archy that
7 Your Honor is talking about. If you have a county
8 ordinance that purports a state action you've got a
9 problem.
10 THE COURT: To say nothing to the action which
11 the commission took with respect to the (inaudible)
12 approval of the municipalities based upon the theory that
13 they had "x" amount of (inaudible).
14 MS. MASON: Yes, Your Honor. Because St.
15 Michaels program and Oxford's both establish and I'm sure
16 their attorneys will speak to this in more detail. But
17 both the programs establish procedures for how the towns
18 are going to go about holding hearings, deciding on growth
19 allocations and certainly as, Your Honor, is well aware
20 there is a massive one that's been going through the
21 process in St. Michaels for some years now under its town's
22 process. So the commissions reservations about this bill
23 were several. The coordination issue. The fact that the
24 bill would unilaterally allow the county to undue previous
25 state action, which in our view is not permissible. And

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1 also because it by on its face the bill created an
2 inconsistency with other approved programs. The county
3 would have you believe that the commission is not allowed
4 to look outside of its narrow binders. And at other
5 approved programs and what this bill would do to those
6 programs. We would submit that the commission would have
7 to close its eyes and completely go to sleep to ignore the
8 effect that Bill 933 would have.
9 THE COURT: It may shock everyone in the room
10 that even I don't believe that.
11 MS. MASON: As far as the timeliness issue I
12 would like to spend a moment on that, Your Honor, because
13 the county has argued that rather vigorously. Our position
14 is that the county has to make a great leap here. It's
15 looking at the provision in Section 8-1809 which states
16 that within ten working days of receiving a proposal that
17 the commission has to mail a notification or return a
18 proposal as incomplete. And then it says, well, because
19 the commission allegedly didn't do that within the ten
20 days, which we're not conceding, but let's say accepting
21 what they say is true, then the proposal is deemed
22 accepted. That's not what the statute says. The statute
23 gives no consequences. Now I'm not abdicating that my
24 agency should be able to do whatever it wants at any time.
25 But there is a very strong case...

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1 THE COURT: Well from what was said to me it
2 sounds as though there were conversations running probably
3 on the telephone and someone thought that in good faith
4 nobody was really worried about that. They knew you had
5 it. And everybody was discussing it and getting around to
6 that picky, picky little point of sending that was really,
7 well first of all it was the use of the statute because
8 everybody knew it. They knew you knew it.
9 MS. MASON: I'm sorry Your Honor I'm not.
10 THE COURT: Well it was purely a formal thing
11 to be done. It had no basis in fact, there was no need for
12 it in fact because everybody was talking about it and they
13 knew you had it.
14 MS. MASON: Correct, Your Honor. The
15 commission had a letter saying here's our bill. But when,
16 as Ms. (Inaudible) affidavit said, when she talked to the
17 county planning office and said we need more information
18 the county then sent a full package with all of its
19 comprehensive bills, there were maybe six or seven bills
20 that came in for review at the same time. But anyway, even
21 if the commission missed that deadline by one day there is
22 no sanction for what, certainly the sanction doesn't say...
23 THE COURT: You needn't dwell on that.
24 MS. MASON: You have to accept it.
25 THE COURT: I complete agree and the judge

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1 will find as a fact that it has no significance.

2 MS. MASON: The 90 day time limit was

3 definitely, the commission met that because it sent the

4 letter to Talbot County on February 5th. 90 days from then

5 was May the 4th. Or May the 5th. Anyway we counted it out

6 on the calender, believe me. And they met the 90 day time

7 deadline so there is no merit to the argument that the

8 amendment had to be deemed approved. I ask in closing I

9 would say, Your Honor, that the bill, Bill 933.

10 THE COURT: What day was it sent?

11 MS. MASON: It was accepted on February the

12 5th, Your Honor.

13 THE COURT: Well let me ask you a silly

14 question. It was February the 5th, isn't that right?

15 MS. MASON: Correct, Your Honor. Yes.

16 February the 5th, 2004.

17 THE COURT: 2004 was a leap year, was it not?

18 MS. MASON: I believe this year is a leap

19 year.

20 THE COURT: No, no, no, this year is not a

21 leap year.

22 MR. PULLEN: May I approach, Your Honor, with a

23 calender?

24 MS. MASON: So the first day that (inaudible)

25 we would have started counting then on the 6th.

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1 THE COURT: Well there were 29 days. If you
2 start on the 5th...
3 MS. MASON: Well we start the day after under
4 the rules you start the day after an event is supposed to.
5 THE COURT: Yeah, that's right. So it's the
6 6th, right?
7 MS. MASON: Starting the 6th, yes, Your Honor.
8 THE COURT: So that's 23 right? 23 more days
9 in the month. 31 and 30 takes you through April. That's
10 84. So you had until the 6th of May.
11 MS. MASON: Correct, Your Honor, we had until
12 the 5th. The action was taken on the 5th.
13 THE COURT: Well then let's move on from that
14 too then, please.
15 MS. MASON: Yes, Your Honor, we believe that
16 the commission did act timely.
17 THE COURT: I'm not trying to cut you off.
18 Look there is an awful lot to be covered.
19 MS. MASON: Oh, indeed.
20 THE COURT: And there are a lot of really very
21 hard substantive issues. And I just don't want to dwell on
22 these.
23 MS. MASON: No, Your Honor, nor do I. I just
24 wanted to address it that the county did.
25 THE COURT: I don't object to bringing it up.

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1 Again I think that was all right but I don't think it has
2 any basis of fact.
3 MS. MASON: Anyway the basis for the
4 commission's rejection of Bill 933 which legally, Your
5 Honor, can look and has the authority to look and up hold
6 the commission's action based on it's an any ground for
7 which it had authority. One ground would be that there was
8 no cooperation between the county and the municipalities.
9 The second ground would be the impact of Bill 933 on other
10 approved programs thereby creating an inconsistency in
11 which is contrary to the commissions mandate to make sure
12 that programs are administered in a uniform and consistent
13 manner. And the third ground would be the impact of Bill
14 933 on previous state action. And we believe that for all
15 those grounds the commission's action should be affirmed.
16 THE COURT: Can this matter cannot be compared
17 to a use of growth allocation or some other thing requiring
18 factual support, it was simply a matter of law and policy,
19 is that correct?
20 Ms. Mason: This amendment came in as an
21 ordinance, Your Honor, along with a package as we said of
22 other bills. A county ordinance and the commission
23 appointed a panel to hold hearings on all of the ordinances
24 reviewed them but it couldn't put on as I said blinders and
25 say, well, we're not even going to look at what this

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1 ordinance does to other programs that we the commission
2 have approved. It's, if the commission were to approve it
3 we would be approving something that created an
4 inconsistency. And that's certainly not good policy and
5 it's not good law to do something like that. Thank you.
6 THE COURT: Now let's take St. Michaels next.
7 ARGUMENT ON MOTION
8 MR. HICKSON: Thank you, Your Honor. Michael
9 Hickson for the commission of St. Michaels. This is as
10 Your Honor said a somewhat complicated case. Procedurally
11 a complaint filed by the county challenging the critical
12 area commission's actions. And there's a counter-complaint
13 filed by St. Michaels and Oxford requesting declaratory
14 judgement orders relative to bill 933 and any law that the
15 county may pass that has some of the same characteristics
16 of Bill 933. With regard to...
17 THE COURT: I can't do that can I? I can't
18 conjure up a law that has characteristics of 933 and join
19 those can I?
20 MR. HICKSON: No, Your Honor, but I think you
21 can make a declaratory order that says what it is about 933
22 that is illegal.
23 THE COURT: I think that's an error under the
24 law, go ahead.
25 MR. HICKSON: And so then we all would have some

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1 guidance for the future which I think would be very helpful
2 to both the county and towns so that we don't have to go
3 through these processes hopefully so much in the future.
4 With regard to the county's complaint I submit that because
5 the court is reviewing an action of the Critical Area
6 Commission, that action by the commission was a quasi-
7 legislative action, and so therefore the standard of review
8 with respect to the county's complaint should be a standard
9 and is appropriate for a quasi-legislative action. One
10 that is...
11 THE COURT: You said quasi-judicial. Did you
12 mean quasi-legislative.
13 MR. HICKSON: I mean quasi-legislative action.
14 The county submitted a piece of legislation, it was the
15 commission's duty to review it to see it complied with the
16 law. There is not fact finding involved, there was no....
17 THE COURT: As they would have been with
18 regard to a...
19 MR. HICKSON: Quasi-judicial.
20 THE COURT: With regard for instance to a
21 proposed use of growth allocation. It would have involved
22 some.
23 MR. HICKSON: As far as the commission is
24 concerned I submit that at the commission, while at the
25 town level on a specific application for growth allocation

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1 that is certainly a quasi-judicial process. But I submit
2 at the commission level, even when the commission is
3 reviewing a town's proposed amendment to its program for
4 the purposes of awarding a specific quantity of growth
5 allocation I submit that that is a quasi-legislative
6 process. And I believe that that was found in the case of
7 North vs. Kent Island Limited Partnership. If I'm not
8 mistaken.
9 THE COURT: You all keep rubbing my nose in
10 it.
11 MR. HICKSON: Well, Your Honor, this is a
12 complicated area that involves...
13 THE COURT: Oh, I use it too, you see.
14 MR. HICKSON: And I think we all need to be
15 educated, which is why we are here for a declaratory
16 judgement. But as I said I think the standard to be
17 applied here is a quasi-legislative standard, no
18 requirement of finds of fact. No requirement of a written
19 decision. This was not a contested case situation. So
20 that the commission acted and did all it needed to do when
21 it voted on its disapproval of Bill 933. It is clear from
22 the record if, Your Honor, wants to go there that the
23 commission was relying on those things that, those
24 (inaudible) stated. I submit that they all essentially go
25 back to the word coordinate and cooperate. The word

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1 coordinate when it comes to growth allocation is contained
2 in COMAR section 27.010206A2, which Mr. DeTar has been kind
3 enough to reproduce for us today. And I would ask that the
4 bailiff put it upon the board so that Your Honor can
5 readily see it.
6 THE COURT: I can readily see it because I
7 readily have it here.
8 MR. HICKSON: It has a long citation to it that
9 I'm not going to go through the exercise of referring to it
10 by number (inaudible).
11 THE COURT: Just refer to it as it.
12 MR. HICKSON: I will refer to it as it or the
13 principle COMAR section. But it is very important in the
14 idea of growth allocation, Your Honor, referred earlier to
15 Natural Resources Article Section Number 8-1808.1, which is
16 the section that says in essence that the amount of growth
17 allocation that each jurisdiction will have is five percent
18 of all of the RCA acreage in this territory as of the date
19 that the commission grants approval of its program. That's
20 a fixed number. A fixed amount of acreage. I suggest to,
21 Your Honor, that in the case of St. Michaels which has a
22 lot of water tonnage in it and which has more than 60
23 percent of its territory in the critical area that growth
24 allocation is extremely important. It's also extremely
25 important in Oxford. And in the case of St. Michaels based

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1 upon that fixed five percent, St. Michaels would get about
2 five acres of growth allocation. And if the law were that
3 St. Michaels was only entitled to five acres for all time I
4 suggest to you that that's not the way the critical area
5 laws is intended to work. Well if section 8-1808.1
6 establishes a fixed amount, the question in my mind when I
7 started going through all of this is, how does that amount
8 ever change? And I suggest to you that it changes because
9 each local program is required by it, if you will, by that
10 COMAR section right up there on the board, to have a
11 provision in it for coordination with municipalities. And
12 to establish a process that provides for accommodation of
13 the future growth needs for that municipality. So by that
14 COMAR section the county is required to have some provision
15 in its local program that allows for growth allocation to
16 be increased.
17 THE COURT: Yeah, and it has none.
18 MR. HICKSON: And now it has none. You're
19 absolutely right. Now again coming back to the word
20 coordination I think that is really the key word here.
21 Because without coordination none of this, without
22 coordination between the counties and the towns, none of
23 this works. The state policy, the smart growth policy and
24 state legislation that has been enacted to promote the
25 notion that growth should occur in and around

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1 municipalities cannot be served by a static amount of
2 growth allocation that for instance in St. Michaels remain
3 five acres forever. There has to be a way to make growth
4 allocation fluid.
5 THE COURT: Well there is.
6 MR. HICKSON: Well there is because...
7 THE COURT: You can go hat in hand to the
8 county and say please kind sir and miss please will you
9 give us the growth allocation.
10 MR. HICKSON: That's right. And if you do that
11 you cannot establish an effective comprehensive plan. You
12 cannot effectively zone and exercise your zoning ordinance.
13 You cannot effectively exercise the powers of subdivision
14 control.
15 THE COURT: Because it's going to be
16 controlled ultimately by the county.
17 MR. HICKSON: Exactly. And the state law is
18 clear that municipalities are given exclusively to zone, to
19 plan, to do subdivision control within their territories.
20 Bill 933 changed that all around. And that's one reason
21 why we're here for declaratory judgement. Because we
22 submit and St. Michaels submits and I believe Oxford
23 submits that two legitimize Bill 933 would take away those
24 powers would constitute a conflict for state law. And Bill
25 933 would be preempted by state law. This has to work

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1 together. And I submit the reason for something like that
2 COMAR section that I quoted, is because no two counties in
3 the state are the same. And the municipalities in each
4 county are different. Talbot County is a prime example of
5 that because we have on the one hand we have Trappe that
6 has no growth allocation and it doesn't even have a
7 critical area program I believe because it's not on the
8 water, it has not critical area within its municipalities.
9 On the other extreme we have Oxford which I believe has
10 virtually one hundred percent of its territory within the
11 critical areas. So obviously growth allocation is
12 immensely more important to Oxford than it is to Trappe.
13 In between those two extremes we have Easton, which has
14 some waterfront territory but not nearly as much as St.
15 Michaels does. Because St. Michaels has in excess of 60
16 percent of its land territory in the critical area. And in
17 fact when you focus in St. Michaels upon land that is
18 undeveloped except for in fill lots, St. Michaels has an
19 excess of 80 percent of its undeveloped land in the
20 critical area. So growth allocation is extremely important
21 to St. Michaels and Oxford because in essence in the
22 critical area without growth allocation there is no
23 development. So regardless of what you might say in your
24 comprehensive plan, regardless of what you might say in
25 your zoning ordinance and in your subdivision regulations

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1 you simply cannot fulfill what they hope to accomplish
2 without growth allocation, which brings it all back to the
3 need for coordination and cooperation. And each
4 municipalities needs are going to differ.
5 THE COURT: Well you see it seems to me that
6 coordination can be addressed in two separate ways. It can
7 be addressed by setting up some kind of arrangement with
8 criteria upon which the county would share, if that's the
9 proper word, or that growth actually attributable to some
10 place outside of the town could be utilized by the town.
11 But that, it seems to be a cooperation with the town
12 clearly implies that this not be based upon whim or caprice
13 as it is here, but based upon some arrangement, agreement
14 if you will, between the town and the counties where they
15 agreed that under certain circumstances the town may have
16 it, one. Two, the other is to approach it as was
17 originally done here, which is by not having, obviating the
18 necessity for any sort of agreement like that. But just by
19 giving the town's that from the very beginning and saying,
20 this is what you've got to live with.
21 MR. HICKSON: I agree, Your Honor. In either
22 case the towns have something that they can, bank on, if
23 you will. They can...
24 THE COURT: They need something to bank on.
25 This whole business, you see, the real Achilles heel here

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1 is of what the county has done is the provision, is their
2 absolute lack of want any semblance of cooperating with the
3 municipalities. And two, providing no mechanism for the
4 operation of the sharing of growth allocation.
5 MR. HICKSON: I agree, Your Honor.
6 THE COURT: And it's got to be, I might as
7 well say it now, the ordinance faults on those regards, if
8 nothing else.
9 MR. HICKSON: But for future guidance, Your
10 Honor, when I say the towns need something that they can
11 bank on, in the case of the program that the county has now
12 they have acres they can bank on so they can create their
13 planning documents and their zoning documents and they know
14 what they've got. In the other, in the second method that
15 you suggested I agree. That's a plausible method. But it
16 cannot give the county veto power at whim. There has to be
17 standards there. That are basically the town standards.
18 THE COURT: Absolutely.
19 MR. HICKSON: Not the county standards.
20 Because if it's the county standards then again it's the
21 county doing the planning and the county doing the zoning.
22 THE COURT: And I don't care, you know, I mean
23 the argument was attempted to be made to me that this does
24 not in effect give veto power to the town over action, but
25 the county over action of the town but that's purely and

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1 simply what it is. And you know not being too cynical I
2 can conclude that that's what it was designed to do for one
3 reason or another.
4 MR. HICKSON: And the very, at the very heart of
5 the critical area law just like zoning law is that the
6 local jurisdiction is the one that should be both
7 developing it in the words of the critical area law and
8 implementing. That is to say the county shouldn't be in a
9 position to dictate to the towns what their program is
10 going to be. And the county shouldn't be in a position of
11 sitting side by side with the town decision makers and
12 making its own decision such that either one of them gets
13 to trump the other. And that's what we have here. So I
14 suggest to you that Bill 933 is far off of the mark. As
15 far as something that can and should be approved by the
16 Critical Area Commission. It does not meet one of the
17 criteria that the county is claiming that it should meet.
18 And that is it does not meet the content of that COMAR
19 regulation that is right up there on the board before you.
20 That is one of the criteria that is referred to in the
21 critical area section of the county has referred you to and
22 that is I believe 8-1809J. That section refers to criteria
23 adopted by regulations and indeed what is on the board
24 before you is one of those regulations. So without that
25 coordination for future growth needs, not on an application

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1 but application basis so you know what you have with
2 respect to one application but you don't even know what the
3 standards are for future applications. That is not
4 providing for future growth needs. That is taking things
5 one step at a time.
6 THE COURT: It is not cooperative.
7 MR. HICKSON: It is not cooperative.
8 THE COURT: Inherently not cooperative.
9 MR. HICKSON: So we have a situation where there
10 is no process. There is no cooperation and there is no
11 provision for future growth needs. So as the Critical Area
12 Commission pointed out is what you have if this bill were
13 approved, is you would have a program in the county that
14 doesn't match the programs in the towns. They are
15 dysfunctional. They don't talk to each other. The towns
16 would be in a position of having to go back, rethink how
17 they had perhaps to their regret awarded growth allocation
18 in the past and basically get on board with the county as
19 to how they want to do it now. And the county is not in a
20 position of being able to assess what the towns should be
21 doing in its land use intent. So all of this is wrong.
22 But getting back to the initial complaint by Talbot County
23 I want to just for a minute echo a little bit of what Ms.
24 Mason said. I want to refer the Court to something that I
25 missed when I read the Critical Area Commissions's brief.

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1 And so therefore the town took a little bit different
2 position in its memo to the Court. I missed the case that
3 was in a footnote in the Critical Area Commission brief
4 which is Solomon's vs. Board of Physician's Quality
5 Insurance. And that case specifically says that where
6 there is a time requirement in an ordinance such as this
7 where a administrative body is to act in a certain period
8 of time, if there is no sanction or consequences set forth
9 for a failure to abide by that time...
10 THE COURT: I can give you better authority
11 for that or the opinions of that record to this Court says
12 precisely that.
13 MR. HICKSON: On the other hand the 90 day rule
14 by contrast in the very same section does support a
15 sanction or a consequence. And that says if you don't act
16 in the 90 days then approval, then it's deemed approved.
17 So the legislature in the very same section of the code
18 demonstrated that it knows the difference, knows how to do
19 one thing (inaudible) and knows how to do the other.
20 THE COURT: First of all, first of all you
21 needn't dwell on that. First of all there is zilch
22 prejudice shown. Absolutely none. Two, it was under the
23 circumstances of the case it was a purely perfunctory
24 exercise because everybody knew that the commission had it.
25 I thought I made it clear before that the judgement in this

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1 case that the judge is going to declare that it was not
2 untimely. That it did not come into effect phoenix like
3 from the failure of the commission to act in some way.
4 MR. HICKSON: I understand, Your Honor, but I
5 had made it contrary position in one of my briefs and I
6 want to disown it. I suggest that summary judgement is
7 appropriate here. With regard to some required reasoning
8 that the county is claiming that the commission must make
9 for its disapproval, the notion of coordination was in
10 front of the commission to the point of exhaustion. In the
11 local public hearing held here in Easton on Bill 933,
12 Oxford, St. Michaels, Easton, and the State Planning
13 Commission all appeared and argued strenuously that Bill
14 933 lacked the requirements of that COMAR section that I
15 had cited to in front of you. In addition to that I wrote
16 to the commission and reiterated those points. The
17 transcript from that hearing in Easton and my letter are in
18 the record. In addition to that the commissions minutes
19 and a transcript from the full commission meeting at which
20 the approval or I should say the disapproval of Bill 933
21 was rendered are in the record and they too referred to
22 that COMAR section that is on the board in front of you.
23 And at the very heart of it again get to the notion of lack
24 of coordination. Finally Talbot County talks about this
25 being an arbitrary, capricious decision because other

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1 programs were approved. I submit that this is the first
2 amendment as Ms. Mason point out.
3 THE COURT: From what Ms. Mason pointed out
4 this is the very first program which has provided neither a
5 specific allocation or a cooperative agreement for
6 allocation.
7 MR. HICKSON: In addition...
8 THE COURT: There is none other, so that this
9 one is totally unique in that regard.
10 MR. HICKSON: In addition to that for all we
11 know it's the first instance in which the towns have
12 appeared and protested strenuously because these things
13 were lacking. For all we know the other towns who are not
14 situated like Oxford and St. Michaels are perhaps growth
15 allocation wasn't that big of an issue for them. For
16 whatever reason there is no indication that there was a
17 protest. In addition to that there is no indication that
18 any of these things that awards that had previously been
19 made were taken away. I should point out that with respect
20 to the awards of growth allocation that St. Michaels made,
21 St. Michaels also entered into agreement that that growth
22 allocation did not have to be acted on immediately, so that
23 immediate construction was not necessary to best that
24 growth allocations where St. Michaels is concerned. In one
25 instance the Strasburg case there was an annexation

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1 agreement which specifically gave Strasburg, I believe it
2 was something on the order of 20 or 30 years to exercise
3 the growth allocation because they simply wanted the land
4 into the town as an estate planning device, they have no
5 immediate claim.
6 THE COURT: That argument has very little
7 appeal to me for the reason that the law in Maryland is
8 rather clear that there is no vesting until there is, the
9 one case in Washington, I forget it's name, where the
10 people actually did go out and put in footings but they
11 were underground and the Court of Appeals said, well that
12 wasn't enough because they weren't clear and visible for
13 something like that. And I think that law is very clear.
14 And I don't think that a springing executory growth
15 allocation is a really very good idea. It's bad policy it
16 seems to me, but we're not getting into policy.
17 MR. HICKSON: Well I want to point out that I
18 believe a local jurisdiction can as its own policy not have
19 vesting in the type that normally is applied throughout the
20 state.
21 THE COURT: It cannot.
22 MR. HICKSON: It doesn't have...
23 THE COURT: It cannot because a future board,
24 it cannot provide a future board to change something. So
25 inherently it cannot do so. I mean maybe you can make a

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1 contract and do it. But not with regard to a dispensing or
2 a use of a public matter. It might be with regard to a
3 sale of something or something like that. But not to use.
4 MR. HICKSON: Your Honor, I want to point out a
5 motion of a development rights and responsibility agreement
6 which is sanctioned by the law in Article 66B which I
7 suggest does permit exactly that. It allows the town to in
8 essence freeze its...
9 THE COURT: It was done but that wasn't done
10 so let's not talk about that.
11 MR. HICKSON: It was done in the case of
12 Midland. There is a developer's rights and responsibility
13 agreement in the case of Midland. And the growth
14 allocation that was awarded in that instance.
15 THE COURT: Well it's good to hear it's still
16 active after Queen Anne's County experience. The county
17 commissioners there repealed it, development's rights and
18 responsibilities. Is there an act? Is there an
19 ordinance...
20 MR. HICKSON: Yes, absolutely there is an
21 act....
22 THE COURT: That St. Michaels passed?
23 MR. HICKSON: There was an act that was passed
24 pursuant to the authority granted in Article 66B. There is
25 a developer's rights and responsibilities agreement and it

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1 is recorded in the land records of this county.
2 THE COURT: That isn't really informing
3 anybody so.
4 MR. HICKSON: So to wrap up, Your Honor, in
5 terms of the county's complaint I suggest that summary
6 judgement is appropriate for the Critical Area Commission
7 on all points there. Reviewing this as a quasi-legislative
8 act. With regard to the town's counterclaim for
9 declaratory judgement I too suggest that a summary
10 judgement is appropriate for the towns in that case.
11 Declaring that Bill 933 does not contain those kind of
12 things that COMAR section I have pointed out requires. And
13 that the county did not do those kinds of things leading up
14 to its formulation of Bill 933 that may well have lead to
15 the kind of coordination in Bill 933 or something similar
16 to it that would wind up in the program, the county's
17 program, that would be acceptable. Thank you, Your Honor.
18 THE COURT: Let's have Oxford next.
19 MS. BOOTH: I have to do a little reshuffling
20 here.
21 THE COURT: How are you today?
22 MS. BOOTH: Just fine, Your Honor. Just give
23 me a second to get organized here.
24 THE COURT: Please do.
25 ARGUMENT ON MOTION

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1 MS. BOOTH: Your Honor, on behalf of the town
2 of Oxford, Brynja Booth and David Thompson. Not to be flip
3 but I think that what this boils down to for the town of
4 Oxford came to a simple trust class action. The town of
5 Oxford gets to say what kind of zoning, planning and land
6 use decisions are made in the town of Oxford. And if the
7 county council wants to effect that they ought to move to
8 the town of Oxford and run for office and get themselves
9 elected. I think it's important procedurally to make the
10 record clear that the town of Oxford isn't just asking the
11 Court to affirm the decision on the Critical Area
12 Commission. The town of Oxford and the town of St.
13 Michaels have both filed separate counterclaims seeking
14 declaratory judgement, asking the Court to find that 933
15 isn't valid under state law and that the town of Oxford is
16 entitled to argue above and beyond what the Critical Area
17 Commission did in this case. I want to take a broader look
18 at 933 in the context of Article 23A and 66B. Because I
19 think that one of the fundamental issues the Oxford has
20 with Bill 933...
21 THE COURT: I have trouble with 66B. There
22 were references to that in some of the memoranda and this
23 is Natural Resources Article 66B. I understand it in some
24 way but one of the memoranda's I recall urged that this was
25 voided by 66B because it was inconsistent, but I don't

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1 think 66B has anything to do with this, does it? I mean
2 why?
3 MS. BOOTH: The town is not arguing that the
4 critical area law is somehow superceded by 66B. What the
5 town is saying is you have to read the critical area law
6 against the backdrop of Article 66B and Article 23A.
7 Because that is where, those are two of the provisions of
8 state law where the towns get their planning and zoning
9 authority. And call it what you want, whether it's
10 critical area classifications, whether it's zoning, whether
11 it's planning, it is still land use classifications and you
12 have to read the Critical Area Commission's statute and
13 what the county is permitted to do under that statute in
14 the context of 66B and 23A. Because what those statutes
15 provide is that within the town boundaries, the town of
16 Oxford has exclusive planning and zoning and land use
17 authority. The county doesn't have any say with one
18 exception that Your Honor mentioned earlier that I want to
19 expand upon a little bit. Under Article 23A Section 9(c),
20 a municipality shall have exclusive planning, and zoning
21 and subdivision control within any area annexed into the
22 town with the exception that no municipality may annex land
23 and reclassify it to a substantially different zoning
24 classification for a period of five years. That provision
25 in state law is the only authority that Talbot County has

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1 inside the town of Oxford with respect to land use. And I
2 will refer to that as the five year rule. One of the
3 things that 933 does and I know Your Honor has a copy up
4 there in front of you , is that it specifically strikes out
5 Section 190-109D(15). And in that provision, what that
6 provision said was that to the extent the property has been
7 in the town for more than five years the county doesn't get
8 a say as to the reclassification. The growth allocation
9 process in other words once its annexed, once the five year
10 rule has expired is an exclusively town process. And what
11 the county has tried to do with 933, can the county change
12 its law? Yes. But can the county change its law in a way
13 that isn't permitted by state law we believe that they
14 can't. And there's nothing, if you read Article 66B and
15 23A together with the critical area law, there is nothing
16 in the critical area law that says that the growth
17 allocation process was intended to be a county process
18 controlled by the county. Each of the jurisdictions have
19 the ability that are located in the critical area to create
20 a separate program subject only to the Critical Area
21 Commission's oversight. The pre '93 county law, which I
22 believe is still in effect today, observed and recognized
23 the legal distinction between the town and the county and
24 that once land is annexed into the town after five years
25 the county has no say over planning and zoning within the

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1 town boundaries. Attached to our motion for summary
2 judgement Exhibit C, is the Oxford zoning ordinance.
3 Included in the Oxford zoning ordinance is the town's
4 critical area program and critical area ordinance. It was
5 enacted in 1988 and I think to clarify a point on the
6 reliance issue that was made earlier, the Oxford program
7 has been reaffirmed at least twice since it was introduced
8 and adopted with the specific growth allocation context in
9 mind. If you look at the Oxford zoning ordinance, Exhibit
10 C, which was approved by the Critical Area Commission,
11 growth allocation is an entirely municipal process. The
12 application as considered by the Oxford Planning Commission
13 public hearings are held in Oxford. And the Commissioners
14 of Oxford make the decision as to whether to grant or deny
15 the growth allocation subject only to the Critical Area
16 Commission's oversight and review. Under 933 Talbot County
17 Council, not the Commissioner's of Oxford, would be the
18 legislative body who decides whether growth allocation
19 should be granted in the town. The town is I think it's
20 stated in the affidavits, is almost 100 percent located
21 within the critical area. The town has IDA, LDA and RCA.
22 Under Bill 933 if the town wanted to reclassify some of the
23 land that came in say as part of the Bachelor Point
24 annexation back in 1987 they would have to, well first I'm
25 not sure which ordinance applies, does the Oxford ordinance

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1 that was approved back in the '80s apply and reaffirmed
2 twice? Or does the county provision or lack thereof? The
3 county would be in essentially the driver's seat as to
4 whether the town of Oxford could reclassify its own lands
5 that have come in as part of an annexation.
6 THE COURT: Absolutely. And I asked that
7 question before. I asked that question of counsel for the
8 county which is obviously true. I mean they are taking
9 this land which the county says is incorporated in the town
10 and there is no provision for any pro tanto transfer of the
11 growth allocation that was attributable. Go ahead.
12 MS. BOOTH: That'S the point I'm trying to
13 make with respect to 66B and 23A in the annexation
14 provisions, because state law specifically reserves that
15 right to the municipality's once annexation has occurred
16 for five years. And so I don't think that the county can
17 undermine state law by attempting to establish a process
18 that's inconsistent with state law. There seems to be the
19 concept argued by the county that they somehow control the
20 growth allocation process. And I don't see a reading of
21 that anywhere in the critical area statute. Each local
22 jurisdiction has the primary responsibility for developing
23 and implementing a program, like Oxford did. Each local
24 jurisdiction is defined as a county or a municipality with
25 planning and zoning powers. There is no support in the

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1 critical area statute that we can find that supports that
2 they somehow own this process. And they get to determine
3 how growth allocation is used. When I read their...
4 THE COURT: It isn't. That's an exceedingly
5 good point. The fact that the county, that the calculation
6 is made on the basis of the entire county does not mean
7 that, necessarily mean that the county owns all of it.
8 Their position is, as I understand it is, that what you get
9 is five percent of your growth, five percent of the land
10 which would be growth allocation within the boundaries of
11 your town and that's all.
12 MS. BOOTH: I don't read anywhere in that
13 statute that somehow can be construed that they own the
14 process based on that one provision.
15 THE COURT: If that were true why would there
16 be a provision requiring cooperation. If it were just that
17 simple why would there be any provision for cooperation?
18 MS. BOOTH: I agree, Your Honor.
19 THE COURT: I'm sorry I'm apparently being
20 very obscure this morning. I think that I know what you
21 are going over, go ahead.
22 MS. BOOTH: In reviewing their opposition to
23 the motions that were filed in their case they bring up the
24 little Town of Queen Anne, which isn't a part of this case,
25 but it's interesting to try to figure out how Bill 933

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1 would effect Queen Anne. The town of Queen Anne is located
2 in the critical area, but it's also located in two
3 counties. It's located in Queen Anne's County, it's
4 located in Talbot County. Under the county scenario they
5 somehow control growth allocation in the town of Queen
6 Anne. It would be akin as I can see it to a bit of a
7 custody dispute where two parents might fight over the
8 child in this case, Queen Anne, the town of Queen Anne as
9 to who "controls growth allocation". I think Queen Anne
10 might say that it controls its own growth allocations. And
11 I think the fundamental issue in this case and I won't
12 belabor the point because it's been made by other folks
13 here today is that in enacting Bill 933 both the process by
14 which it was enacted and the substance, the county has lost
15 sight of the fact that Oxford is an independent, coequal,
16 political subdivision with the power to enact its own laws
17 and its own critical area programs. And the approval
18 process really does illustrate that point. You have in the
19 record an affidavit from Sidney Campen, former president of
20 the Commissioner's of Oxford, as well as an Anthony
21 Redmond, who was a planner who assisted the towns in
22 creating the process back in the late '80s. And what those
23 affidavits established and the record reflects is that back
24 when these programs were created there was involvement and
25 communication and coordination and participation between

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1 the towns, the county planning commission, the town council
2 and it was a cooperative effort whereby each individual
3 entity created its own program in coordination with one
4 another. And what's glaringly lacking in this case is the
5 county council's complete and utter lack of cooperation or
6 communication at all with the commissioners of the towns.
7 And I would submit to, Your Honor, that if the record
8 reflects pursuant to some public information that request
9 that we made, if the county had the time to lobby the
10 Critical Area Commission staff before they introduced the
11 bill they certainly had the time to consult with the
12 elected officials of the towns. That smacks in the face of
13 cooperation and participation.
14 THE COURT: Well there simply was no
15 cooperation. I mean that is it. I don't care how thin you
16 slice it, it's still no cooperation.
17 MS. BOOTH: And I think that, and again enough
18 has been said on the issue and I don't need to make a whole
19 lot of it, but it's an absurd result and inconsistent with
20 basic principles of statutory interpretation to say that
21 the commission, the Critical Area Commission is required to
22 ignore the policy and to not apply their own regulations.
23 And I know Mr. DeTar has a board with some COMAR
24 regulations cited on it, but if you look at other
25 provisions of COMAR cooperation is all over the place. I'm

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1 just going to refer, Your Honor, to one other section Title
2 27...
3 THE COURT: You see the significant thing is
4 this. That there has never been according to counsel for
5 the commission, there has never been any plan approved
6 which did not include either one, an allocation, a specific
7 allocation such as here or B, an arrangement, a defined
8 arrangement for use of growth allocations by the towns.
9 Now whether or not the fact that there was no objection I
10 think can be taken to mean that the town's didn't object to
11 the procedure which was done. But at least it doesn't
12 suggest to me that they were unaware of it necessarily. Or
13 that they couldn't have objected to it if they wanted to.
14 MS. BOOTH: The fact that and just so I can
15 make the point, the fact that other jurisdictions do it
16 differently to me has no significance to this case. Maybe
17 they need better lawyers, I don't know.
18 THE COURT: Well what does have significance
19 is this, the point that the county tried to make is that
20 there are other places that don't give the grant that the
21 Talbot County ordinance originally did. But the point is,
22 and that the commission had approved those, the point is
23 however, that those that they approved which did not have a
24 specific allocation stated in numbers had a defined
25 procedure for the county to get it. So they haven't just

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1 willy nilly, I can make it real easy. They never adopted,
2 according to counsel for the commission, any plan like this
3 which had neither a specific allocation nor a plan for a
4 procedure for a cooperative decision with regard to the
5 municipality obtaining it.
6 MS. BOOTH: I agree with Your Honor and...
7 THE COURT: I thought you would when I finally
8 articulated it so you could understand it.
9 MS. BOOTH: I want to raise one issue that I
10 anticipate that the county will raise in their rebuttal
11 argument, which is Bill 762, which was a bill enacted by
12 the county in 2000 to address supplemental growth
13 allocation because Easton had used all of it, it's growth
14 allocation. If you look at the provisions of the county
15 code what the county will argue is that even there is no
16 process in 933, there was a process in Bill 762. And that
17 all of the towns had notification of that process and gee
18 whiz no one objected then. I would submit to, Your Honor,
19 and the record is before you that supplemental growth
20 allocation process, which deals with just that,
21 supplemental growth allocation, doesn't apply to the
22 situation where the town of Oxford is seeking to reclassify
23 its own property.
24 THE COURT: In context it was supplemental to
25 the growth allocation which the municipalities already had.

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1 MS. BOOTH: Exactly, Your Honor. So you know
2 for the fact that St. Michaels and the town of Oxford
3 didn't jump up and down about a supplemental bill that
4 conceivably would never have any application to them to me
5 is of no consequence in this case. Even the Maryland
6 Department of Planning noted that Bill 933 basically does
7 give veto power.
8 THE COURT: No, not virtually, it does give
9 veto power.
10 MS. BOOTH: And I submit that the argument
11 will be well just look at the process with Easton under
12 Bill 762, look how well we played in that case. I would
13 refer Your Honor's attention to Exhibit 34...
14 THE COURT: Easton was really pretty much
15 under the hammer though. It had used up all of its growth
16 allocation.
17 MS. BOOTH: As John Ford, President of Easton
18 Town Council, I think he as the president at that time,
19 submitted to the Critical Area Commission the fact that one
20 developer was willing to give a million dollars basically
21 and buy growth allocation from the town doesn't necessarily
22 mean that the process works. I think that the term has
23 been bantered around that that was just a simple
24 extraction. I can think of a couple other words for it but
25 I probably won't clutter the record with them. But there

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1 maybe other instances where the town of Oxford wants to do
2 affordable housing and the folks can't afford to buy growth
3 allocation for a million dollars so I'm not here suggesting
4 that 762 is a process that would even be applicable. But
5 if it is it certainly doesn't provide the coordination...
6 THE COURT: You mean that somebody actually
7 paid money for growth allocation?
8 MS. BOOTH: Your Honor, I believe that is in
9 the record. But...
10 THE COURT: (Inaudible). Anyway go ahead. At
11 least it was paid into the public coffer.
12 MS. BOOTH: Let me just see if I've missed
13 anything here. I don't think that there is anything else
14 hasn't either hit or that Mr. DeTar won't hit in his
15 argument. We believe that the Court should enter a
16 declaratory judgement and a motion from summary judgement
17 on the point submitted by Oxford in this case. I guess
18 that's all I have to say, thank you.
19 THE COURT: Thank you.
20 ARGUMENT ON MOTION
21 MR. DETAR: May it please the Court, Richard
22 DeTar on behalf of Miles Point Property and the Midland
23 Companies. As the Court is aware from other proceedings
24 Miles Point and Midland, who I shall refer to as Midland
25 henceforth, is here because Midland represents an applicant

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1 for growth allocation in the town of St. Michaels who has
2 gone through a seven year process with the town of St.
3 Michaels. Was on the eve of obtaining growth allocation
4 from the Town of St. Michaels at the time Bill 933 was
5 proffered. And Bill 933 would have a very real effect on
6 Midland and its ownership of the Perry Cabin land because
7 at this point it would undue those seven years of effort
8 that resulted in the award of growth allocation from the
9 town of St. Michaels which was then affirmed by the
10 Critical Area Commission. Now I'm going to spend very
11 little time on the first issue which is simply to reiterate
12 that Miles Point also agrees that the standard applicable
13 is one based upon the Critical Area Commission and the
14 context of Bill 933 being a quasi-legislative
15 administrative body. And I will very quickly say the
16 difference here is what was before the Critical Area
17 Commission was proposed legislation. It was not an
18 allocation for growth allocation. It did not involve
19 somebody seeking to do something specific on a specific
20 piece of property. It was pure legislation that would have
21 broad effect on the general public. And for that reason
22 this is clearly a quasi-legislative context in which the
23 Critical Area Commission was acting. Now having said that,
24 Your Honor, my approach is going to be much different than
25 all other counsel today. The Court has had literally

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1 several hundred pages of legal argument presented to it.
2 And more than 500 pages of exhibits, which would be
3 overwhelming for any of the lawyers who have lived this
4 case for years and years, much less a judge...
5 THE COURT: It over overwhelms me.
6 MR. DETAR: My approach...
7 THE COURT: The poor people who have to carry
8 it back and forth to my room will be.
9 MR. DETAR: What I would like to do, Your
10 Honor, is in arguing this I have taken 11 pieces of
11 evidence that are in the parties briefs. I have
12 highlighted the relevant sections of that and I'm providing
13 a copy to counsel for all of the parties. And I'd like to
14 walk the Court through it as well. And the reason for that
15 is because the Court may want to write a decision. And in
16 doing so at least from Miles Point's perspective we'd like
17 to have brought the salient points to the Court in a manner
18 that doesn't require you to spend hours and hours going
19 through hundreds and hundreds of pages. Now before doing
20 that I'll speak very briefly on the law because despite all
21 of the legal briefs the law in this case is incredibly
22 simplistic. One of the requirements that a county has in
23 adopting its critical area program and in implementing its
24 critical area program is set forth in COMAR 27.01.0206A2.
25 And that is that large blow up that the Court is familiar

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1 with. It is there really, frankly for purposes of
2 emphasizing just how simplistic the law is. And it's very
3 simple. Counties in coordination with effected
4 municipalities shall, shall establish a process to
5 accommodate the growth needs and municipalities. For
6 purposes of a legal standard that's it. So not a lot of
7 time and effort needs to be spent on the law. I believe
8 the focus of this is whether or not the county satisfied
9 the obligation that it shall work, cooperate with
10 municipalities to accommodate their growth needs. And the
11 answer to that we believe in the evidence is undisputed and
12 clearly known. And there are really two reasons for that,
13 number one, and I'm going to go through the evidence, is we
14 believe and it's very clear that Bill 933 was unilaterally
15 imposed by the county without any consultation or
16 coordination with the municipalities for the specific
17 intent of preventing municipalities from acting in a manner
18 that accommodated municipalities growth needs. Two, the
19 effect of Bill 933 would result in there being absolutely
20 no process on the books whatsoever for the towns of Oxford
21 and St. Michaels to ever use growth allocation. So there
22 could be no coordination in the future because Talbot
23 County didn't even have a law on the books that provided a
24 process for Oxford or St. Michaels to get growth
25 allocation. Now having said that rather than explaining to

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1 you why I think that's the case I'm going to live with the
2 evidence that's in the record. Undisputed evidence in the
3 record. I'm just going to walk through it. And initially
4 I'm going to focus on Bill 933. You'll note that the
5 exhibit list specifically references where each of these
6 exhibits is in the submittals to the Court today. The
7 first is the affidavit of Sherry Thomas, which is Exhibit
8 11, in the town's motion for summary judgement. I'm not
9 going to continually reference where these arose because
10 it's in the exhibit table of contents. Now Ms. Thomas
11 undisputedly says that the town of St. Michaels had no idea
12 that Talbot County was even proposing Bill 933 until a town
13 employee happened to notice on the county's website that
14 they were having a hearing on November 18 of 2003 to
15 introduce the legislation. Now once the town learned that
16 Sherry Thomas, the town manager, picked up the phone and
17 called the county and said, I'd like to at least see this
18 legislation that's going to affect our growth allocation.
19 At all times prior to the hearing she was told a copy of it
20 is not available. Just prior to the hearing she attended
21 the hearing and was told, I'm sorry copies are not
22 available.
23 THE COURT: How do you introduce something
24 that is not available?
25 MR. DETAR: That's a good question, Your

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1 Honor. You would think that a public process would allow
2 the public to at least have some opportunity to
3 understand...
4 THE COURT: It's on purpose. The procedure
5 established in the code.
6 MR. DETAR: I cannot disagree.
7 THE COURT: I mean I can't imagine somebody
8 over in Annapolis introducing a bill and I go over there
9 and want to see what it is. And they say well, you can't
10 see that. You'll find out about it soon enough.
11 MR. DETAR: Even after the introduction of the
12 bill by three of the county council members Ms. Thomas in
13 her affidavit was unable to obtain a copy. In fact Oxford,
14 I'm sorry, St. Michaels, couldn't get a copy of the bill
15 until one of the commissioners telephoned one of the county
16 council members. And it was only then, the day after it
17 had already been introduced that St. Michaels ever got to
18 see a copy of the bill. Now again the law is very clear.
19 What is required is coordination shall, coordination with
20 the effected municipalities shall establish a process to
21 accommodate. Introducing a bill and refusing to show it to
22 municipality prior to its introduction is not cooperation.
23 Now another thing that Ms. Thomas talks about in her
24 affidavit is, not only did they never see this bill, but
25 bear in mind we are in 2003, which is approximately five

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1 years into Midland, my client's efforts to obtain growth
2 allocation from the town of St. Michaels. We're five years
3 into the process. So if Talbot County believes that it's
4 important that it have some opportunity to have a say in
5 that process, let's look at what Talbot County did in the
6 past. Ms. Thomas explains in her affidavit, I'm looking to
7 see exactly where it is, well I'll tell you what I don't
8 want to delay this, her affidavit expressly says, no one
9 from Talbot County has ever, ever had any input concerning
10 that growth allocation practice. In fact if you flip to
11 tab 2, what you have is a letter from the planning and
12 zoning director of Talbot County, Dan Cowee, who
13 specifically explains the manner in which the town of St.
14 Michaels is to implement its 245 acres of growth allocation
15 and it says, this acreage can and has been used subject to
16 your town ordinance with no review by the county. So for
17 five years the county is telling the town, apply your
18 ordinance and do what you deem fit. For five years and in
19 the record its established over a million dollars of
20 analysis goes into this while the town of St. Michaels has
21 decided (A) how do we use our growth allocation? What do
22 we want to see? What don't we want to see? The county is
23 saying you know what that's your baby, we don't have any
24 say in it. You do it. A developers rights and
25 responsibilities agreement is negotiated by the town. The

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1 obtain over eleven million dollars in benefits from this
2 project all of which is as the court says, in factual
3 reliance are not only the county having allocated 245 acres
4 of growth allocation, but having specifically told the town
5 of St. Michaels during their growth allocation processes
6 that the county will have no review or say, you do it under
7 your own ordinances. And then when the town of St.
8 Michaels is finally ready to do it, what does the county
9 do? It proposes Bill 933, that's what it does. That bill
10 was proposed on November 18 of 2003. If you look at
11 exhibit 4, which is an article in the Star Democrat...
12 THE COURT: Oh, that was coincidental.
13 MR. DETAR: On that Friday following that.
14 THE COURT: That was coincidental.
15 MR. DETAR: The county specifically met and
16 voted unanimously to say we think that you should deny
17 growth allocation for the Miles Point project. They came
18 out and publicly said the same week that they proposed Bill
19 933, you should deny growth allocation for the Miles Point
20 project. Now let's turn to tab 5. Tab 5 is the panel
21 hearing held in Talbot County by the Critical Area
22 Commission which actually was continued to April 1, there
23 were two days for those panel hearings, concerning Bill
24 933. Mr. Pullen on behalf of Talbot County spoke for
25 Talbot County. And on page 42 of that transcript here is

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1 what Mr. Pullen says. Mr. Chairman if I may I would like
2 to yield the balance of the county's presentation at this
3 point to the Honorable John C. North. Now again, this is
4 in the record. John C. North was appointed to the planning
5 commission recently by Talbot County and happens to live on
6 Yacht Club Road immediately adjacent to the Midland
7 project. Mr. North spoke on both April 24, I'm sorry,
8 March 24 and then again on April 1. And at tab 6 here is
9 what Mr. North says. He says, talking about the town of
10 St. Michaels, but after having raised taxes in the town
11 twice and legal expenses exceeding a million dollars,
12 ladies and gentlemen, fending off Mr. Valanous who is a
13 principle of Midland, after doing that they ran out of
14 steam and consequently the town voted to grant growth
15 allocation to this project. By the way that vote was a 5-0
16 planning commission vote, followed by a 5-0 commissioner
17 vote. Then Mr. North goes on to say, fortunately the
18 county of Talbot in the form of a county council came
19 galloping to the rescue and consequently they instituted a
20 bill to recover unused growth allocation from all
21 municipalities in the county of Talbot. Now I've read the
22 brief filed by Talbot County. And they say a motive for
23 legislation is irrelevant. That may be true in the
24 abstract but when the applicable regulation of the Critical
25 Area Commission had to apply to decide whether or not Bill

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1 933 was lawful required the county to be cooperative with
2 the municipality on the facts of this given case based on
3 the applicable law before the Critical Area Commission.
4 Having the county gallop to the rescue five years after the
5 process to take growth allocation back on the eve that it
6 was going to be awarded because the county council believe
7 the scale of the project in the Town of St. Michaels was
8 too large is not called cooperation to accommodate the town
9 of St. Michaels growth needs. Now the second thing I'd
10 like to talk about having moved from Bill 933 and its lack
11 of cooperation and its motive, which had nothing to do with
12 cooperation and had everything to do with seizing control
13 is Bill 762, and that is in tab 7. And the reason I want
14 to talk about that is because Bill 933 after having
15 purported to take back all of the growth allocation from
16 St. Michaels and Oxford does nothing to explain what future
17 process there would be for some alleged cooperation between
18 the county and the municipalities concerning future growth
19 needs in those towns. And the county's answer to that is
20 Bill 762. Well Bill 762 as you can see on its face
21 expressly says a bill to establish procedures for awarding
22 supplemental growth allocation. This was on March 28 of
23 2000. And it's very clear in the record the reason this
24 bill was proposed is because Easton had used up all of its
25 growth allocation. Unlike Oxford and St. Michaels which

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1 had banked it, Easton was out of it. Bill 762 was here
2 specifically for supplemental growth allocation. And by
3 the way Bill 762 if you look at again, this is Exhibit 7,
4 specifically talks about the amount of growth allocation
5 that had been reserved for Easton, Oxford and St. Michaels.
6 And notes from Midland's perspective the 245 acres to the
7 Town of St. Michaels. So it was very clear given that
8 everybody admits that St. Michaels had used up its 245
9 acres, but a bill relating to supplemental growth
10 allocation could not possibly pertain to the Town of St.
11 Michaels and its administration of the 245 acres of growth
12 allocation that the bill acknowledged...
13 THE COURT: You (inaudible) supplemental is
14 what you referred to in paragraph, small roman I isn't it?
15 MR. DETAR: That is absolutely true, Your
16 Honor. And I believe all we would have needed was to read
17 Bill 762. But this is one of those unusual cases where
18 there is history of the legislative intent that is
19 absolutely unambiguous and clear. And that you will find
20 in tab 8. Because in tab 8 that is a transcript of the
21 proceedings before the county council when they were
22 considering bill 762. And in particular, I'm not going to
23 belabor all the points but I've highlighted by the way in
24 everybody's copy the same things. In particular you will
25 find in there the statement on page 77 Mr. Higgins is

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1 speaking, he's saying, now in my opinion it does not affect
2 St. Michaels and Oxford at this time. Ms. Spence, these
3 are county council members, "Right". Mr. Higgins, "Because
4 they have not gone through their initial allocation which
5 is around 200 acres for each of those municipalities. So
6 they will fall into the same procedure if at any point in
7 the future they have gone through theirs." Now if you look
8 at a little further down on the highlighting, Mr. Cowee is
9 the planning and zoning director says, "It is my
10 understanding that until the acreage is used up they will
11 not be under this process." Ms. Spence says, "Right until
12 it is used up." And then Mr. Foster, a third county
13 council member says, "They cannot. Is that you
14 understanding Mr. Pullen."
15 THE COURT: Yeah, there really wasn't any
16 pitch made by the county today about that.
17 MR. DETAR: Well here's my point, if you look
18 at this not only do I have a specific discussion I have
19 three of the five county council members who voted in favor
20 of 762 all making clear their intention. They had no
21 application of Oxford...
22 THE COURT: No, I said that's probably the
23 county that had probably seen the light about that and I
24 didn't hear that pitch today.
25 MR. DETAR: The significance of that is that

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1 Bill 933 takes effect and Bill 762 has no process for
2 Oxford and St. Michaels, then Oxford and St. Michaels have
3 no means of growing whatsoever. And there is simply no way
4 any reasonable person would interpret this COMAR provision
5 which requires a process and coordination that shall
6 establish, shall be established to accommodate growth needs
7 in municipalities. There is no way on the facts of this
8 case, Your Honor, a colorable position can even be stated
9 by any reasonable person. Now the next thing I'd like to
10 direct your attention to is Exhibit 9. Which is a letter
11 from John Ford, who is the President of the Easton Town
12 Council. What this letter does is explain, this is the
13 Bill 762, joint process between Easton and Talbot County.
14 And what Mr. Ford says is gee, it did work this time but
15 frankly there was really no cooperation between the county
16 and the municipality of Easton. In fact the county council
17 participated in the joint hearing with the town council, it
18 says, while the county council participated in the joint
19 hearing with the town council, the county also held a
20 subsequent separate public hearing on the application
21 before granting the allocation. In other words and I did
22 not highlight that. That was on page 2 of Mr. Ford's
23 letter, second full paragraph right in the middle. In
24 other words Mr. Ford is saying, the county had their own
25 separate process and had a veto right available right then

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1 and there. The fact that they extracted a million bucks
2 from this particular applicant and the applicant was
3 willing to go along with it, hardly in the town's mind
4 means this works as a cooperative process. Now that's
5 simply an indication of what Bill 762 does even for the
6 town of Easton. Again in the Oxford and St. Michaels case
7 they don't even get the benefit of 762. They don't have a
8 process for growth allocation any longer. Now the last two
9 exhibits I have are Exhibits 10 and 11. Exhibit 10 are the
10 two panel reports that were provided to the 29 member
11 Critical Area Commission before they unanimously voted to
12 deny Bill 933. Unanimous in that 28 members voted no, one
13 member abstained. And the reason that I have that in here
14 is because very clearly in the initial panel report that
15 panel specifically references the COMAR regulation
16 regarding cooperation and specifically discusses the lack
17 of cooperation that Bill 933 exhibits towards the
18 municipalities. Now I also have in here a letter from a
19 staff member of the Critical Area Commission dated May 14
20 which simply provides written notice of what the 29 member
21 Critical Area Commission voted. It is a stretch for Talbot
22 County to try to seize upon the letter providing written
23 notice as suddenly constituting all of the grounds for the
24 vote of the 29 members. Those 29 members have the panel
25 reports in front of them. The panel report specifically

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1 mentioned and focused on the cooperation aspect. And
2 specifically noted that there was no cooperation because
3 this legislation would have taken back growth allocation
4 that was already awarded such as Strasburg and St.
5 Michaels. And it didn't have a process, ala Bill 762
6 doesn't apply for growth allocations in the towns of St.
7 Michaels and Oxford. And by the way that letter, the May
8 14 written notice, while I don't believe that constitutes
9 the decision of the Critical Area Commission it does
10 specifically reference both panel reports that are in
11 Exhibit 10, including the panel report that devotes its
12 attention to the lack of cooperation. I thank you for your
13 efforts, Your Honor. I know that this is almost an
14 insurmountable record and hopefully these exhibits will
15 help you get through it.
16 THE COURT: Yes, indeed. We'll hear from the
17 county again.
18 MR. DETAR: I'm sorry, Your Honor, I forgot I
19 had one other thing.
20 THE COURT: All right.
21 MR. DETAR: And that is this really only
22 occurred to me during argument today. When I heard the
23 county arguing, this argument about the 90 days and that
24 the Critical Area Commission didn't act within 90 days
25 therefore Bill 933 is deemed accepted. I'm going to leave

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1 alone the argument that in fact we have the 90 day period
2 which is what I agree with. But what I would like to point
3 out to the Court that even assuming arguendo the county is
4 right, not so fast. If you look at the critical area
5 statute, the natural resources article, specifically
6 Section 8-1809O, paragraph 1 of that talks about the 90 day
7 period the Critical Area Commission has. Paragraph 2 of
8 that says, the local jurisdiction shall incorporate the
9 approved program amendment into the adoptive program within
10 120 days of receiving notice from the commission that the
11 program amendment has been approved. So even if, even if
12 for some reason you or an appellate court would say, gee,
13 I'm impressed with this 90 day argument, the next element
14 of the statute is that Talbot County put it into their
15 local ordinance within 120 days, that's the follow through.
16 I'd like to provide a copy to the Court of an article in
17 the Star Democrat which was just slightly 120 days after
18 the Critical Area Commission acted on May 5. Where the
19 county council acknowledged that the Critical Area
20 Commission had denied the amendment and therefore the
21 county council did not incorporate it into their zoning
22 ordinance. So I'd submit to the Court, belt and
23 suspenders. Critical Area Commission met the 90 days.
24 Talbot County didn't meet the 120 days even if arguendo the
25 90 day time period wasn't met. Now that is all I have.

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1 THE COURT: Which may be evidence of the fact
2 that they were aware of it. All right. The town have any
3 response?
4 MR. PULLEN: Your Honor, I'm going to allow
5 Mrs. Shearer take the bulk of the response but I do want to
6 comment on this newspaper article that was just handed to
7 me. Your Honor may recall that there were a number of
8 bills that were submitted to the Critical Area Commission
9 at that time. This article happens to refer to four of the
10 other bills that were approved with amendments by the
11 Critical Area Commission. And those amendments, this bill
12 has to, or this newspaper article that Mr. DeTar just
13 submitted to the Court has really nothing to do with Bill
14 933. These were the other bills that the Critical Area
15 Commission had approved subject to amendments. And this
16 whole discussion in the newspaper article had to do with
17 whether, how to process those amendments to those other
18 bills.
19 MR. DETAR: Your Honor, if I might briefly be
20 heard. We might clear this up right now by the Court
21 asking Mr. Pullen whether or not in fact within 120 days
22 Talbot County incorporated Bill 933 into its charter or
23 zoning ordinance.
24 THE COURT: I don't know what that has to,
25 what he's saying is the newspaper article had nothing to do

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1 with the Bill 933. I suspect that's true. But it
2 certainly indicates the attitude that the county council
3 members had, some of them at least, with regard to the
4 action that St. Michaels was taking with regard to the
5 Midland application. And it I'm sure was just a
6 coincidence that within days of that expression and opinion
7 933 was introduced. I'm sorry I'm not a rocket scientist
8 but frankly it doesn't leave much to the imagination. What
9 do you got now? I've been begged to have a break. How
10 long are you going to be?
11 MS. SHEARER: Not very long, Your Honor.
12 THE COURT: Well we will have a break though.
13 (Recess.)
14 THE COURT: Go ahead please.
15 ARGUMENT ON MOTION
16 MS. SHEARER: Your Honor I had prepared an
17 opposition to the towns motion for summary judgement, an
18 argument in that respect. But I guess since, I guess I'll
19 start with a rebuttal of the Commission's arguments. With
20 respect to other programs approved for other counties in
21 Maryland, the counsel for the commission had stated that no
22 other programs that had been approved were amendments like
23 Bill 933. And I just wanted to point out that the
24 research that the commission conducted which is attached to
25 our motion for summary judgement as Exhibit 20,

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1 specifically stated that in St. Mary's County the county
2 amended its local program following a comprehensive review.
3 And the amended local program was approved by the
4 commission and it provided that the towns have to request
5 growth allocation from the county. So the commission
6 approved that program or that program amendment for St.
7 Mary's County.
8 THE COURT: Did it provide a procedure?
9 MS. SHEARER: I'm just reading from the research
10 that the commission did, Your Honor. It doesn't say. It
11 just says that the towns must request growth allocation
12 from the county commissioners. I guess that's the
13 procedure. And also in Dorchester County there was local
14 program amendment that was just approved the commission.
15 THE COURT: To what effect?
16 MS. SHEARER: That was similar, yes. So...
17 THE COURT: Why would they have denied yours?
18 MS. SHEARER: I don't know. Ours sets up a
19 joint review process where the towns and the counties have
20 equal participation. The St. Mary's County program
21 required the towns to request growth allocation from the
22 county commissioners.
23 THE COURT: Well your's does too. I mean your
24 supplemental thing.
25 MS. SHEARER: In the supplemental what?

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1 THE COURT: In your, in the supplemental, what
2 was it 7 something?
3 MS. SHEARER: Well Bill 762 established the
4 joint review process and Bill 762 was applicable to
5 supplemental growth allocation in the town of Easton. And
6 when Bill 933 was written in and introduced...
7 THE COURT: You see what you all, what you and
8 the county miss is the fact it doesn't say, it says that
9 the procedure is to be adopted cooperatively. And nothing
10 was done cooperatively here at all. It was done all by the
11 county.
12 MS. SHEARER: Well the provision that you are
13 referring to is the one that's on the board in front of
14 you. First of all it requires counties to establish the
15 process. So the county has never asserted that it owns the
16 process. The county is simply trying to comply with that
17 COMAR regulation. It says county's in coordination with
18 municipalities shall establish a process. And so the
19 county is required to establish the process. And that's
20 the way the general assembly set it up.
21 THE COURT: No, no, no, that isn't what it
22 said. It said the county in cooperation with the
23 municipalities shall develop a program.
24 MS. SHEARER: Right. I was just going to
25 discuss that, Your Honor. It says in coordination with the

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1 municipalities. And so it comes down to how you interpret
2 the requirement in coordination.
3 THE COURT: The county plainly interprets it
4 means to ignore.
5 MS. SHEARER: No, the county's argument is that
6 Bill 933 does coordinate with the municipalities. It does
7 accommodate growth and it does work cooperatively with them
8 because it provides, it establishes a joint review process
9 that will be followed whenever growth allocation is
10 requested.
11 THE COURT: But it can have the effect of
12 doing just exactly what the county said it wanted to do in
13 the newspaper article. It can put a kibosh on something
14 that the town wants. And that is not what the law is. I
15 don't think. That a county can run roughshod over a
16 municipality that way.
17 MS. SHEARER: They are not running roughshod,
18 Your Honor. The other county ...
19 THE COURT: They can use the growth
20 allocation. It's theirs, it's ours. We can use it any way
21 we want. We will let you have it if it happens to be
22 something that we agree with. Without any criteria we can
23 say no, just as we did in this bill. We don't have to give
24 a reason for what we do. Just as in this bill. We can
25 just say, no, we don't want it. But I mean I can't

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1 believe, I simply cannot believe that any public agency can
2 operate that way. Without any standards whatsoever. Even
3 in the 700 ordinance it has no standards whatsoever. The
4 county is supreme.
5 MS. SHEARER: There are standards, Your Honor,
6 and also there are programs that have been adopted by
7 counties across Maryland that require the towns to request
8 growth allocation from the county commissioners. They do
9 not give the towns an equal voice or joint participation.
10 The commission has approved those programs. Bill 933
11 doesn't set up a program where the county only gets to
12 decide.
13 THE COURT: That isn't what counsel said. Is
14 that what you, excuse me a minute, is that what you said?
15 MS. MASON: Your Honor, the programs that Ms.
16 Shearer refers to were amendments to programs in which the
17 incorporated municipalities had run out of the allocation
18 similar to what Easton did. The St. Mary's program
19 initially allocated a certain number of acres to
20 Leonardtown. Leondardtown ran out. And then Leonardtown
21 in cooperation with the county they established a joint
22 process. And the other county was...
23 THE COURT: But they established, it was a
24 cooperative arrangement.
25 Ms. Mason: It was cooperative. Dorchester

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1 also, Your Honor, in the record of course it's not in this
2 record but the record before the commission, Cambridge had
3 run out of its acreage. It initially had a number of acres
4 allocated, used it all up, one or more of the county and
5 the towns cooperated, there is evidence in the record
6 before the commission on that one of cooperation. Letters
7 from the town saying we're okay with this, we like the way
8 this works. So it, I would respectfully suggest that the
9 processes are in place.
10 THE COURT: There is nothing, nothing,
11 approaching that in what the county did here. Nothing.
12 MS. SHEARER: Well in response to Ms. Mason's
13 comments, Your Honor, I would say, I don't want to go back
14 through them all again but in Cecil County a growth
15 allocation request from inside a town has to go to the
16 county commissioners. You know Harford County, Queen
17 Anne's County, Worcester County, Wicomico. Queen Anne's
18 and Wicomico have use it or lose it provisions. If the
19 towns don't use the growth allocation it reverts back to
20 the county pool. All these county's have to go to the
21 county for approval of their growth allocation request.
22 And these programs or amendments were approved by the
23 commission. Yet Bill 933 was not. It's entirely
24 inconsistent.
25 THE COURT: Are copies of all those in here?

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1 MS. SHEARER: Your Honor, it's Exhibit 20 to
2 Talbot County's motion for summary judgement.
3 THE COURT: The copy of all those is there?
4 MS. SHEARER: Well it's a copy of the research
5 that was performed by the commission.
6 THE COURT: No, no, I'm didn't, I'm old
7 fashioned I do my own research. And I want to know what
8 they say. Not somebody's synopsis of what they say. So...
9 MS. SHEARER: Well that's what they had before
10 them when they considered Bill 933.
11 THE COURT: All right.
12 MS. SHEARER: But, yes, Your Honor, I'll be
13 happy to do that extra research and submit it to you.
14 THE COURT: Which are the ones that you can
15 specifically, and I'm asking the Critical Area Commission
16 to furnish me with copies, not the whole thing, just the
17 pertinent pages of what the other counties use. You said
18 Dorchester and...
19 MS. SHEARER: The counties that are listed in
20 the research are Anne Arundel, well some of them don't have
21 critical area but they are listed her anyway. Anne
22 Arundel, Baltimore, Calvert, Caroline, Cecil, Charles.
23 MS. MASON: Dorchester is completely
24 inapplicable because their allocation procedure was amended
25 after this lawsuit was started. So unless you want after

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1 the fact.

2 THE COURT: But it was done with the approval

3 and cooperation with an indeed approval of.

4 MS. MASON: The other programs are original

5 (inaudible). Would you want the record, the transcripts

6 from the commission hearings, Your Honor?

7 THE COURT: No, no, no. I just, see it's one

8 thing to say that you have to ask for the county for it.

9 It's quite another thing, you know, if I go to ask the

10 county for subdivision approval there are certain standards

11 that the county has to follow in granting me that approval.

12 If I can meet those standards I have a right to it. Here's

13 there's nothing. Nothing. It's the total whim of the

14 agency as to whether they do it or not. And the effect of

15 it is to run another jurisdiction. And to knock out

16 something that citizens in one jurisdiction have decided

17 through their public officials they want and to say, well

18 you might want it but you're not going to have it.

19 MS. MASON: That's the problem the commission

20 had with 933, it's inconsistent.

21 THE COURT: Well it is indeed a problem. And

22 it's a problem that one hopes is easily settled. Go ahead.

23 MS. SHEARER: Your Honor, that's pure

24 speculation that the county would do that. And the remedy,

25 the remedy of the county to do that would be to file suit

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1 in a court of law.

2 THE COURT: The count, pure speculation of

3 what? The fact that the county did Bill 933 the way it did

4 it, leaves no room for any speculation as to what they do.

5 Absolutely none. And the business about not providing a

6 copy is absolutely reprehensible.

7 MR. PULLEN: Your Honor can I comment on that?

8 THE COURT: No, you can't. Go ahead.

9 MR. PULLEN: Well Your Honor.

10 THE COURT: I'm not interested. Go ahead.

11 MR. PULLEN: Your Honor I would like, if the

12 Court is going to accept that as a fact then I would like

13 an opportunity to respond to it.

14 THE COURT: All right respond to it briefly.

15 MR. PULLEN: As a matter of fact. The request

16 for legislation typically before it is introduced, Your

17 Honor, is not granted as a matter of policy. And the

18 reason is that a counsel person may choose to not introduce

19 the legislation.

20 THE COURT: All right.

21 MR. PULLEN: And that is the reason it was not

22 produced prior to introduction. After introduction it's

23 produced as immediately as it is available.

24 THE COURT: All right. Thank you. Go ahead.

25 MS. SHEARER: Your Honor, it's the county's

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1 position that the coordination and cooperation comes from
2 the very fact that Bill 933 sets up a joint review process
3 wherein the towns and the county have equal participation
4 in deciding development of growth allocation acres. Where
5 the county didn't have to do that. You look at all the
6 other counties that have sole power to decide growth
7 allocation requests in one county even if the growth
8 allocation is the towns they have to go to the county for
9 approval.
10 THE COURT: Which county is that?
11 MS. SHEARER: That was the first one that...
12 THE COURT: Have you read any of them?
13 MS. SHEARER: Cecil County.
14 THE COURT: Have you read any of the
15 ordinances themselves?
16 MS. SHEARER: No, no, I relied upon the
17 commission's research, Your Honor.
18 THE COURT: Do you know whether those which
19 933 does not develop criteria or tests that are to be
20 applied in making the determination? No. You say it's
21 joint with the towns except that in point of fact the towns
22 can come up with what they want and say we want it and the
23 county can say no and that's the end of it. And nobody has
24 a right to say it nay. I don't know anybody in Maryland
25 except the Maryland legislature that has the right to

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1 operate without having any standards of criteria upon which
2 to operate. The county does not delegate to Talbot County
3 or any other place the right to operate upon whim.
4 MS. SHEARER: It's not whim Your Honor. There
5 are standards that are applicable. And if the County were
6 in fact to operate on a whim then their decision would be
7 challengeable in a court of law.
8 THE COURT: What are those standards?
9 MS. SHEARER: The standards that apply to,
10 they're supposed to be, the process that occurs is that
11 there's planning commission hearings in the town and in the
12 county and then council and then each decide. And if they
13 conflict I don't know but it's not a veto power.
14 THE COURT: Well if they conflict and the
15 county has the entire say guess who wins?
16 MS. SHEARER: Well it's a joint review process.
17 It's equal Your Honor.
18 THE COURT: Head I win, tails you lose. It's a
19 terrible situation. Go ahead.
20 MS. SHEARER: Your Honor, the other point I
21 wanted to make is that the representatives of the
22 commission acknowledges that Bill 933 met the statutory
23 criteria and standards. Yet they still rejected it. In
24 the panel report issued on May 5th, 2004 it acknowledges
25 that county code section 190-109D, which was the provision

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1 enacted by Bill 762, outlines a joint review and hearing
2 process whereby elected official from Talbot County and the
3 effected municipality will work cooperatively together on
4 projects involving the town's proposed use of growth
5 allocation. And so the panel reported acknowledged that
6 fact. And then at the hearing...
7 THE COURT: Thank you very much for reading
8 that because that illustrates the point where I don't like
9 to base my decisions on somebody else's research because my
10 own research which I've just done here says, that in
11 context it provides a provision supplementary to that which
12 existed. So I'm not calling into question the good faith
13 of the person who prepared the report. But I think that in
14 the context in which we are speaking the report is
15 deficient. Go ahead.
16 MS. SHEARER: At the May 5th hearing Ms. Mason,
17 counsel for the commission stated that "The process that
18 the county has said that they intend to use under Bill 933,
19 that is the joint process through Bill 762. The panel
20 believed was definitely in line with or appropriate under
21 the state law and criteria." And so that explains why in
22 the letter they sent the county the commission did not
23 say...
24 THE COURT: What did you just read from?
25 MS. SHEARER: Those were Ms. Mason's comments at

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1 the May 5th, 2004 hearing.

2 THE COURT: That you were reading from? What

3 did she say?

4 MS. SHEARER: She said, "The process that the

5 county has said that they intend to use under Bill 933,

6 that is the joint review, the joint process through Bill

7 762. The panel believed was definitely in line with or

8 appropriate under the state law and criteria."

9 MS. MASON: Ms. Shearer finish the quote.

10 Finish it.

11 THE COURT: Finish reading it.

12 MS. SHEARER: You can have a chance to explain

13 it.

14 THE COURT: No, she doesn't. I want you, I'm

15 instructing you to finish the quote.

16 MS. SHEARER: Okay, Your Honor. I'm fairly sure

17 from my memory Your Honor that Ms. Mason went on to say

18 that because there was no actual process...

19 THE COURT: No, no.

20 MS. SHEARER: Stated in Bill 933.

21 THE COURT: I want to hear it.

22 MS. SHEARER: Well I'm looking for it Your

23 Honor.

24 THE COURT: Take your time and I'll wait as

25 long as it takes.

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1 MS. SHEARER: Okay, Your Honor, I found it.
2 It's at, well the page numbers are cut off, I believe it's
3 page 140 of the transcript which is Exhibit 22. Ms. Mason
4 says, "That the process that the county has said that they
5 intend to use, that is the joint process through Bill 762,
6 the panel believed was definitely in line with or
7 appropriate under the state law and criteria. But the
8 actual wording of the bill which is what the panel had to
9 look at created the problem for this commission of negating
10 the commission action." I'm not even sure what that means
11 but I think that she was referring to the fact that Bill
12 933 on its face did not state the process over again
13 because the process was already in the Talbot County Code
14 as it had been adopted through Bill 762. But the
15 commission in its reasons for denying Bill 933 never said
16 that there was a lack of coordination. That was not one of
17 the basis they stated for their decision. They said they
18 were rejecting Bill 933 because it would negate the
19 Strasburg growth allocation, allegedly, and that it would
20 also cause a conflict between the county program and the
21 municipal programs. The first basis was one they were not
22 supposed to consider and the second basis also was not
23 within the criteria of standards they were supposed to
24 consider. And more over it is arbitrary because it looks
25 into whether the municipality is relied when the issue is

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1 whether the Bill met the criteria. It's arbitrary because
2 the reliance was not, the towns were not legally entitled
3 to rely and so to the degree that they did is something
4 that shouldn't have stopped the commission from approving
5 Bill 933, which established a joint review process which is
6 better than what other counties had where towns would have
7 to go the county's commissioners and request growth
8 allocation.
9 THE COURT: Anything else?
10 MS. SHEARER: The other thing that was argued by
11 the commission is that as a first basis for rejecting Bill
12 933 they said it would (inaudible) Strasburg growth
13 allocation.
14 THE COURT: It what?
15 MS. SHEARER: They said it would negate the
16 Strasburg growth allocation. But under this reasoning it
17 would prevent a county from adopting a program amendment as
18 it's defined in the statute itself. I mean any change to a
19 program could possibly effect previous approvals by the
20 commission of other programs or other program amendments.
21 And certainly to the extent that Bill 933 effects unvested
22 property rights its (inaudible) with Maryland law. And
23 I've heard so much about coordination this morning and the
24 lack, the county's alleged lack of coordination but the
25 process they established creates the very coordination the

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1 town's say that they want. And it was not one of the
2 reasons that the commission even rejected Bill 933. I
3 would think the county has the right to rely upon the
4 commission's statement of its reasons for why it rejected
5 their bill.
6 THE COURT: Well that's (inaudible) reasons
7 raised for declaratory judgement by the other parties
8 though, does it?
9 MS. SHEARER: No, Your Honor, I had a separate
10 argument for that. I was just rebutting the arguments made
11 by the commission. And there is one other thing I want to
12 state with regard to the commissions position. The second
13 reason they gave for rejecting Bill 933 was that it would
14 create conflicts and therefore be contrary to the
15 commission's oversight responsibility and the purpose of
16 the critical area law that there be uniformity and
17 consistency in programs. So as a exercise of statutory
18 construction the statute tells the commission specifically,
19 you shall approve this local program amendment if it meets
20 these standards and criteria. And then it gives the
21 standards and criteria. Well the uniform and consistent
22 manner language comes from an entirely different provision
23 of the statute. It's not one of the statutorily identified
24 standards or criteria. And simply the fact that it's a
25 goal of the program can't, you know, lead to the conclusion

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1 that Court should construe the statute to mean something
2 other than what it actually says. The statute specifically
3 tells the commission what they can consider and as long as
4 a bill meets those standards and criteria then it shall be
5 approved. Now with respect to the town's motions for
6 summary judgement. They assert that Bill 933 is
7 unconstitutional or that it's pre-empted by Article 66B.
8 With respect to the constitutional arguments they are not
9 ripe for review. To the extent their facial challenges Bill
10 933 is not yet in legal effect. And so it's not ripe for a
11 Court to review at this time. To the extent the town's are
12 asserting as applied unconstitutional claims, these are
13 also hypothetical and unripe. Bill 933 has never taken
14 legal effect. Once it does or it if it ever does the towns
15 would at that time bring their constitutional challenges
16 either facial or as applied. And then I would like to
17 address the substantive arguments made by the towns with
18 regard to the alleged unconstitutionality of Bill 933. In
19 making the argument that Bill 933 is unconstitutional
20 because it usurps the towns zoning and planning authority,
21 the towns are actually attacking the critical area law
22 itself because it permits that. It permits it not in the
23 way that they say it does but in the way that it initially
24 gave each local jurisdiction five percent of their RCA land
25 as growth allocation. So that amount of growth allocation

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1 was fixed at the time the statute was enacted. So the
2 issue, the towns claim that because they do an annexation
3 that RCA land is no longer the county's, but it is. And I
4 think it's problematic that the critical area statute
5 doesn't address the issue of annexations. But the fact
6 that it doesn't leads to the implication that the general
7 assembly didn't attend annexations to effect the law and
8 effect the five percent rule for growth allocation in each
9 local jurisdiction. And so while it is true that when an
10 annexation occurs zoning and planning authority shift to
11 the town after five years unless the county waives that
12 right. There is no indication that that zoning provision
13 or annexation provision has anything to do with the
14 critical area statute. The critical area statute created
15 pretty much like an overlay district of land use
16 classifications based on protecting the environment. It
17 has nothing to do with traditional Euclidean zoning or
18 zoning powers and authority granted to municipalities under
19 Article 66B. And so the presumption that...
20 THE COURT: Well Article 66B is not
21 exclusively Euclidean is it?
22 MS. SHEARER: Pardon me, Your Honor?
23 THE COURT: It's not exclusively Euclidean
24 anymore is it? Go ahead, it's nothing. Just a
25 (inaudible). Go ahead.

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1 MS. SHEARER: And that really leads into the
2 argument that the General Assembly enacted both Article 66B
3 and the critical area law. Now Article 66B grants zoning
4 and planning powers to municipalities, but the source of
5 their power is solely from the General Assembly. They
6 don't have any authority to plan or zone unless it was
7 given to them by the state as it was in Article 66B. But
8 the critical area statute which was also enacted by the
9 General Assembly has separate purposes. And the only
10 similarity is that it sets up land use classifications for
11 purposes of protecting the environment. But to say that
12 Article 66B or its provisions pre-empt Bill 933 or the
13 critical area law itself it would be incorrect, because you
14 have to read the provisions of Article 66B and the critical
15 area law in (inaudible) and construe them in harmony and so
16 that they can be read together to effectuate both their
17 purposes. And so when the town says Bill 933 which only
18 effects county RCA is infringing upon their municipal
19 zoning and planning authority that's just incorrect as a
20 matter of fact in law. And with regard generally to the
21 constitutional arguments raised by the towns the Court is
22 supposed to avoid deciding constitutional issues wherever
23 possible. The Court if reasonably possible is to construe
24 and act in a manner which avoids casting serious doubt upon
25 its constitutionality. The Court has to begin with a

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1 presumption of constitutionality of the statute. And as
2 the party challenging the statute the towns have the burden
3 of proof of demonstrating its unconstitutionality. And for
4 the reason I just stated Bill 933 and moreover the critical
5 area statute itself are both constitutional. And Bill 933
6 is entirely (inaudible) with the provisions of the critical
7 area statute. It does not effect any RCA that is municipal
8 and that was given to the towns by the critical area
9 statute when it was initially adopted. And I think one of
10 the exhibits we've offered is the St. Michaels zoning
11 ordinance. And in the St. Michaels zoning ordinance it
12 acknowledges the fact that "growth allocation is a finite
13 resource created by the state and delegated to the counties
14 of Maryland. Talbot County has delegated a part of its
15 growth allocation to the town and the surrounding area."
16 And that really just goes back to the critical area statute
17 itself.
18 THE COURT: No proof. You said report. No
19 proof if the county is relying on the allocation. Remember
20 you said that before and now you read me that.
21 MS. SHEARER: Oh, well this is just their zoning
22 ordinance. It's a recognition that the county did set
23 aside this growth allocation.
24 THE COURT: But you told me before they didn't
25 rely on it. There's no evidence that they relied on to.

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1 MS. SHEARER: Well this ordinance, this is...
2 THE COURT: It says there, you just read it to
3 me.
4 MS. SHEARER: It was adopted May 2004, Your
5 Honor.
6 THE COURT: I don't care when it was adopted.
7 MS. SHEARER: Okay. Well I think that leads
8 back to estoppel against the government which is not
9 possible.
10 THE COURT: Was it there at the prior
11 ordinance?
12 MS. SHEARER: I'm not sure, Your Honor. But you
13 can't have estoppel against a government. You can't say
14 that a county can't change its legislative policy because
15 they did it one way previously. And the COMAR provision
16 there does give the counties the responsibility to set up a
17 processing coordination with the towns for growth
18 allocation and Bill 933 does that.
19 THE COURT: You see when you say estoppel,
20 estoppel is an equitable doctrine. And estoppel is a
21 wonderful thing when its applied in equitable situations.
22 But the county has given no equity whatsoever to, it is
23 estopped to do nothing. But the county, but the towns are
24 estopped to have any say or any reaction or any use of the
25 growth allocation which was given to them. I don't

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1 understand estoppel.

2 MS. SHEARER: Because, Your Honor, the critical
3 area statute provides that each local jurisdiction can
4 adopt a program and then it also allows them to adopt
5 refinements or amendments to those programs. Now if you
6 say that Talbot County...

7 THE COURT: Now wait a minute we've been
8 through all this before. Your position is that they can do
9 it even no matter who it skewers. No matter how arbitrary
10 and capricious it is and how many heads roll because of it.
11 And despite the fact that it contains absolutely no
12 criteria for the county's exercise of its so called powers
13 with respect to the growth allocation given to the entire
14 county. I understand your position to be that.

15 MS. SHEARER: But, Your Honor, there is a lot of
16 things, there's a lot of policies of our government that I
17 rely upon every day. And that doesn't stop them from
18 changing their policies.

19 THE COURT: That's the most telling argument,
20 that's the most strongest argument I've heard yet about the
21 933.

22 MS. SHEARER: I think it's an even stronger
23 argument, Your Honor, that the commission has approved
24 other counties programs that are not even as generous as
25 Bill 933. Bill 933...

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1 THE COURT: Oh, I've asked you to prove that
2 and you can't do it. You haven't even, you haven't even...
3 MS. SHEARER: I'm relying on the commission's
4 own research, Your Honor.
5 THE COURT: You haven't even read the other
6 ones. And the commission's report doesn't purport to go
7 into the matter, into those depths. All it says is there
8 are other, it says in effect that there have been two kinds
9 of matter approved as counsel for the commission said. One
10 is where as here there was initially a specific allocation.
11 And two, where there was a cooperative arrangement set up
12 which provided standards and so forth for the use of growth
13 allocation by a municipality. You see the one thing is
14 that it won't be me but I don't really think that it's very
15 fair of a county to expect a judge each time that a
16 municipality begs for one of these allocations and gets
17 turned down to have to decide well, what were the criteria
18 for turning it down. And what you are going to tell me is,
19 and what you are going to tell the judge is, well that's
20 none of your business. The county can do it for any
21 reason.
22 MS. SHEARER: That's not what I'm saying, Your
23 Honor.
24 THE COURT: Well what standards are you using?
25 MS. SHEARER: It's a joint review process Your

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1 Honor. There are all these other counties and the
2 commission has approved their programs...
3 THE COURT: Look, do me a favor, don't talk to
4 me about something you haven't read yourself. Now I mean
5 that. You say all these other counties, that trips lightly
6 off the tongue. But you don't know what they say.
7 MS. SHEARER: I'm relying on the commissions own
8 research Your Honor. They did it.
9 THE COURT: What?
10 MS. SHEARER: And they haven't refutted that
11 it's true.
12 THE COURT: Haven't refutted what?
13 MS. SHEARER: The evidence that we've introduced
14 as Exhibit 20 is research that was done by the commission.
15 THE COURT: I asked and counsel told me that
16 there were things of two kinds. As I just said that the
17 ones in which there was a cooperative process had standards
18 and guidelines and criteria upon which the application was
19 to be assessed. Am I wrong? Am I putting words into your
20 mouth?
21 MS. MASON: Your Honor, certainly the ones
22 that I personally have reviewed, that is St. Mary's and
23 Dorchester which were recently amended after their
24 municipalities ran out of growth allocation, there were
25 cooperative processes and standards established. I can't

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1 speak to the ones that were proved initially like Cecil
2 County although I've just gone through a growth allocation
3 in one of the municipalities up there (inaudible).
4 THE COURT: Well when the report speaks
5 generally of an application, I mean an application process
6 does that necessarily mean that it's one, even by
7 implication that it's one as here, has absolutely no
8 standards or safeguards whatsoever?
9 MS. MASON: No, Your Honor, and Dorchester is
10 a good example of that. Because as Ms. Shearer said they
11 recently did amend their program with the consent and
12 cooperation of all their municipalities to work together to
13 figure out how they are going to use growth allocation.
14 It's in the commission's view it was a different process
15 than 933.
16 MS. SHEARER: Your Honor, that's very telling.
17 The commission appears to be applying the standard that if
18 all the municipalities don't oppose you, your plan or your
19 process or they otherwise consent to it, then they'll
20 approve it.
21 THE COURT: No, they're saying, they're saying
22 that at very least cooperation is being a good faith effort
23 to develop a program with the municipalities. And the
24 county made zero effort to do that. And that is not only
25 in my opinion illegal and deficient under the statute but

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1 it really certainly doesn't suggest any sort of
2 accommodating, does it? They could have at least...
3 MS. SHEARER: For the record, Your Honor, I just
4 want to say...
5 THE COURT: They could have at least gone to
6 the municipalities and tried to develop something. But they
7 didn't even do that. They come out with an article in the
8 newspaper that they don't think that
9 St. Michaels ought to be doing something and then they go
10 ahead and as Judge North says, ride to the rescue. And
11 come in with this Draconian measure which effects what they
12 desire according to their comments in the newspapers. Now
13 if that's the way life is run I don't know. But I've never
14 heard of it like that before.
15 MS. SHEARER: For the record, Your Honor, we
16 just disagree over how that particular COMAR provision
17 requiring coordination should be interpreted.
18 THE COURT: I understand.
19 MS. SHEARER: We feel that we complied with
20 that. And I also would like to...
21 THE COURT: You understand, you see...
22 MS. SHEARER: That there was cooperation in
23 establishing Bill 762 and Bill 933 just adopts that
24 process...
25 THE COURT: What process did...

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1 MS. SHEARER: For all towns.

2 THE COURT: What participation did St.
3 Michaels or Oxford have to do with 762? That was done with
4 regard to Easton wasn't it?

5 MS. SHEARER: No, Bill 762 was circulated to
6 the towns and they made comments and agreed to its final,
7 Mr. Hickson made comments, and the final legislation was
8 agreed upon.

9 THE COURT: But of course their understanding
10 of course was that it only applied to supplemental.

11 MS. SHEARER: True, Your Honor, but why the
12 county does not lack the power to adopt a program amendment
13 that would make it applicable to all of the towns.

14 THE COURT: We're beginning to repeat
15 ourselves. Do you have anything else you would like to
16 say?

17 MS. SHEARER: I'll check. Just in response to
18 something Mr. DeTar had argued. He talks about the motives
19 of the county and alleged bad faith of the county. And
20 those things are irrelevant in this case. And first of all
21 the motives of legislators in adopting a piece of
22 legislation are never delved into by the courts and are not
23 relevant and should not be considered by this Court. And I
24 also want to say this...

25 THE COURT: Well let me say this. In this

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1 case it does an awful lot your contention that this was
2 simply an innocent quarterly I think you said review of the
3 ordinance. It wasn't. It was specifically designed for
4 one purpose. And frankly I think the county's argument
5 that it was simply something that came about during a
6 quarterly review is at best I can think if disingenuous.
7 MS. SHEARER: Well it was part of a
8 comprehensive review, Your Honor. And there were many
9 bills adopted along with Bill 933 as part of that process.
10 And with respect to the town of Easton and the supplemental
11 growth allocation that was granted under the joint review
12 process established by Bill 762, there was a mention of
13 alleged exactions from the developer. He had to buy growth
14 allocation. And I just want to point out the fact that
15 Easton, the town of Easton was given a credit on
16 development impact fees. The developer was given a credit
17 on development impact fees in virtually the same amount
18 that it was required to spend. And so there was no
19 exaction, Your Honor, even if that were relevant. Thank
20 you, Your Honor.
21 THE COURT: Mr. Pullen, I would like you to
22 send me please a copy of ordinance 722 or 62, whatever it
23 is please. As well as a copy of any provision that it
24 amended as it was before 762 was adopted. Would that be
25 asking too much?

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1 MR. PULLEN: Your Honor, may I be heard?
2 Procedurally no argument. Bill 762 is in front of you now.
3 It was Exhibit...
4 THE COURT: Well what I'm really getting at is
5 does it show the strike out?
6 MR. PULLEN: It does not.
7 THE COURT: Well see that's what I want. I
8 want a copy...
9 MR. PULLEN: You mean 933 or 762?
10 THE COURT: 762.
11 MR. PULLEN: That's Exhibit 7 in the book that
12 I submitted which was...
13 MS. SHEARER: It's the County's Exhibit 3, Your
14 Honor.
15 MR. PULLEN: Exhibit 3 Talbot County. There is
16 one procedural point. I'm not arguing anything that was
17 already said, Your Honor. I simply want to know whether we
18 have closure on today's proceedings because there has been
19 some discussion of things that are not in the record.
20 THE COURT: Well before we go on let me say
21 this. I see 762. What I want to know is how much of that
22 was there before? And how much of it was added by 762.
23 Now if this were an act of the legislature the amendment
24 would be in italics or underscored or somewhat but this
25 doesn't. And so I now have 762 Mr. Pullen but I would like

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1 to have a copy of Section, of Title 19-14C(4)(c)(1) as it
2 existed before 762. Okay. That's all.
3 MR. PULLEN: Your Honor, is that the only thing
4 that would be added to the record? And otherwise these
5 proceedings are completed?
6 THE COURT: Yes, sir.
7 MR. PULLEN: Thank you.
8 THE COURT: Look if you think I'm going to add
9 any more to this record you are very, very foolish.
10 Anything else that I can do for the good of the cause?
11 (Court was adjourned.)
12 -oOo-
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1
2 CERTIFICATE OF TRANSCRIBER
3
4
5 I, Juanita M. Kohn, Transcriber for the Circuit Court for
6 Talbot County, Maryland do hereby certify that an accurate
7 and true transcript of the electronically recorded hearing
8 held in the case of Talbot County Maryland vs. Dept Natural
9 Resources Critical Area Commission Chesapeake/Atlantic
10 Coastal, Case Number 20-C-04-005095 DJ, held on Thursday,
11 January 26, 2006, in the Circuit Court for Talbot County,
12 before the Honorable John W. Sause, Jr., was made by me.
13
14
15
16
17 Juanita M. Kohn, Transcriber
18 For the Circuit Court for
Talbot County, Maryland
19 P.O. Box 165
Hillsboro, MD 21641
20 410-364-5084
21 April 29, 2006
22
23
24
25

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324-231

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2006 FEB 14 PM 2 15

THE CIRCUIT COURT FOR TALBOT COUNTY

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

: : : : :

MEMORANDUM

At the hearing on January 26th, we requested that we be furnished copies of § 190-109 of the *Talbot County Zoning Ordinance,* as it was originally adopted and all subsequent amendments, including the proposed amendment with which we are here concerned.

We take this to include the following:

09-10-1991 by Bill No. 459, effective 11-9-1991;
01-28-1992 by Bill No. 465, effective 3-28-1992;
08-11-1992 by Bill No. 487, effective 10-10-1992;
02-25-1997 by Bill No. 642, effective 4-16-1997;
10-27-1998 by Bill No. 691, effective 12-26-1998;
03-30-1999 by Bill No. 699, effective 5-29-1999;
04-15-2000 by Bill No. 762, effective 6-24-2000;
08-24-2001 by Bill No. 837, effective 10-23-2001]

Counsel are requested to confer and determine whether the above represents all pertinent amendments. Thereafter, counsel for Talbot County is requested to obtain copies of the relevant documents and forward them to Post Office Box 70, Centreville, Maryland 21617.

Although not required, copies indicating deleted and new material would be most helpful.

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

February 12, 2006

324-231

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND	:	
Plaintiff	:	
vs.	:	
DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS	:	
	:	
Defendant		
vs.	:	Civil Action No. 2-C-04-005095 DJ
THE COMMISSIONERS OF ST. MICHAELS	:	
	:	
and		
	:	
TOWN OF OXFORD, MARYLAND		
	:	
Interveners, Defendants and Counter-Plaintiffs	:	

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2006 FEB 23 PM 12

LINE

Madam Clerk:

Pursuant to the Court's request per Memorandum filed February 14, 2006, please find Talbot County's Letter of Transmittal in reply concerning and listing all documents supplied.

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

Certificate of Service

I HEREBY CERTIFY that on this 23rd day of February 2006, a copy of the foregoing was mailed first-class, postage prepaid to:

Hon. John W. Sause, Jr.
P.O. Box 70
Centreville, Maryland 21617

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Baltimore, Maryland 21202-1605

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Easton, Maryland 21601

Of Counsel for Plaintiff
Talbot County, Maryland

TALBOT COUNTY, MARYLAND
OFFICE OF LAW

MICHAEL L. PULLEN
County Attorney

11 N. Washington Street
Easton, MD 21601
Phone: 410-770-8092
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LETTER OF TRANSMITTAL

TO: Hon. John W. Sause, Jr.

CC: Victoria Shearer, Esq.
Richard A. DeTar, Esq.
Marianne D. Mason, Esq.
H. Michael Hickson, Esq.
David R. Thompson Esq.

FROM: Terry Ertter, Paralegal

RE: **Talbot County, Maryland v. Department of Natural Resources**
Circuit Court of Maryland for Talbot County
Civil Action No. 2-C-04-005095 DJ

Court's Request for Documents

DATE: February 23, 2006

Pursuant to your request, I have attached the following documents:

- Bill 459, Bill 465, Bill 487, Bill 642, Bill 691, Bill 699, Bill 762, and Bill 837

Additionally, in fulfillment of your request made during the January 26th hearing for a historical version of §190-109 (prior to enactment of amendments) I've attached an excerpt of the Talbot County Zoning Ordinance effective June 22, 1991, pages 14-15 through 14-25. Please note that the earlier version used a different numbering sequence. When the zoning ordinance was codified § 19.14 (c) (iv) became § 190-109 D. (9).

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

1991 LEGISLATIVE SESSION, LEGISLATIVE DAY NO. August 13, 1991

as amended Sept. 10, 1991

BILL NO. 459

Introduced by: The County Council

A BILL TO AMEND CERTAIN SECTIONS OF TITLE 19 OF THE TALBOT COUNTY CODE AS PART OF THE COMPREHENSIVE REVISION OF THE ZONING ORDINANCE, INCLUDING ZONING MAPS, FOR TALBOT COUNTY.

By the Council August 13, 1991

Introduced, read first time, ordered posted, and public hearing scheduled on August 27, 1991, at 2:00 p.m. in the Council Chambers, Easton, Maryland.

By Order Donald E. Johns
Secretary

E. 2178

A BILL TO AMEND CERTAIN SECTIONS OF TITLE 19 OF THE TALBOT COUNTY CODE AS PART OF THE COMPREHENSIVE REVISION OF THE ZONING ORDINANCE, INCLUDING ZONING MAPS, FOR TALBOT COUNTY.

SECTION ONE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code is amended by adding Section 19.1(l) to read as follows:

(l) Special Exceptions and Variances Continued

A Special Exception or Variance granted before the effective date hereof shall continue in effect, being hereby confirmed under the same terms and conditions provided in the original grant of the Special Exception or Variance.

SECTION TWO: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.3(a)(1) be amended to add the following Subsection (ix).

(ix) Critical Area Designations

The following table describes how the various Talbot County Zoning Districts within the Critical Area relate to the Critical Area designations of Intensely Developed Area (IDA), Limited Development Area (LDA) and Resource Conservation Area (RCA).

<u>RCA Designation</u>
Resource Conservation (RC)

<u>LDA Designation</u>
Town Residential (TR)
Village Center (VC)
Rural Residential (RR)
Limited Commercial (LC) less than 20 contiguous acres
General Commercial (GC) less than 20 contiguous acres

<u>IDA Designation</u>
Limited Commercial (LC) 20 contiguous acres or more
General Commercial (GC) 20 contiguous acres or more
Limited Industrial (LI) 20 contiguous acres or more

SECTION THREE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code be amended to add a new condition to 19.4(a), Accessory Agricultural Uses and Structures, to read as follows:

- Structures for animal manure, composting and similar purposes, minimum 200 foot setback.

SECTION FOUR: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.4(a) be amended to allow Mineral Extraction Activities as a special exception use in the RC district.

SECTION FIVE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.4(a) be amended to change "Substations for Gas and Oil Pipelines" to "Pump Stations for Gas and Oil Pipelines".

SECTION SIX: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.4(a) be amended to allow Utility Structures and Services - Excludes Essential Utility Services as a special exception use in all zoning districts.

SECTION SEVEN: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.4(b)(6)(i) is amended to read as follows:

(i) The County may take on-site samples of sludge from transport trucks or the land. The County Planning Office is to be notified at least one (1) day prior to the initiation of land application of sludge.

SECTION EIGHT: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.4(b)(6)(ii)[d] be amended to read as follows:

[d] The Maryland Department of Environment Sewage Sludge Permit Number.

SECTION NINE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.4(b)(6)(ii) be amended to delete the following sentence:

The manifest shall be delivered to the County Planning Office within seven (7) days of the delivery to the site.

SECTION TEN: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.4(b)(6) be amended to add a new section (v) to read as follows:

(v) The sewage sludge applicator shall submit a monthly report to the County Planning Office and Department of Environmental Health. At a minimum this report shall detail the cumulative effect of all sludge application activities conducted during the previous month and year in Talbot County by the applicator. Specific information shall include the amount and content of each truckload of applied sludge, detailed information on how much sludge was applied to each site, and resulting nutrient and trace metal additions to the soil.

SECTION ELEVEN: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.4(a) be amended to add a condition for horse stables as an accessory residential use which reads as follows:

- The minimum setback from property lines for horse stables and related manure storage areas is 100 feet

SECTION TWELVE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.4(a) be amended to revise the conditions for Private Airports, Landing Strips and Heliports/Helistops to read as follows:

- 40 acre minimum lot size for private landing strips and airports
- 200 foot setback for private landing strips and airports
- 20 acre minimum lot size for heliports/helistops
- 1,000 foot setback from existing residences for heliports/helistops unless consent to reduce the setback is received from all residence owners within the 1,000 foot setback. Minimum setback 200 feet from property lines.

SECTION THIRTEEN: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.4(a) be amended to revise the conditions for Sawmills to read as follows:

- 200 foot setback in all zones except VC, LC, GC and LI
- Setback reduced to 50 feet for existing sawmills at the effective date of this Ordinance

SECTION FOURTEEN:: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.4(a) be amended to delete Kennel (Commercial) as a special exception use in the RC district.

SECTION FIFTEEN: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.4(a) be amended to add a new condition for "Shared Facilities For Sewage Collection, Treatment and Disposal" to read as follows:

- Shared facilities for development outside the Critical Area may not be located within the Critical Area.

SECTION SIXTEEN: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.4(a) be amended to delete Solid Waste Transfer Station as a special exception use in the RC and RR districts and add the following condition to read as follows:

- Not permitted within the Critical Area.

SECTION SEVENTEEN: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.4(a) be amended to add a new condition for "Nursing Home (Existing Structure)" to read as follows:

- In Critical Area shall be located in a dwelling existing prior to December 1, 1985.

SECTION EIGHTEEN: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.4 be amended to revise the second and third conditions for "Compounding Industries (Permanent)" to read as follows:

- 1,000 foot setback from existing residences unless consent to reduce the setback is received from all residence owners within the 1,000 foot setback.

SECTION NINETEEN: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.8(p), the first two paragraphs, be amended to read as follows:

(p) Special Provisions For Dedesignation

A property owner of an existing Historic District Overlay Zone may make a request to have the Historic District Overlay Zone modified or dedesignated upon enactment of this Ordinance, or if Section 19.8 is subsequently amended so as to substantially alter the effect of the Historic Preservation zoning on an existing Historic District.

Upon enactment of this Ordinance, or if such an amendment is subsequently made to Section 19.8, the Historic Preservation Commission shall notify all existing Historic District property owners within thirty (30) days of the effective date of the amendment. The property owner shall have thirty (30) days from notification to request in writing to the County Council to have the Historic District Overlay Zone modified or removed.

SECTION TWENTY: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.10(j) be amended to read as follows:

(j) Special Setbacks From State Highways

All setbacks from major state highways (Routes 50, 404, 333, 322, 33, 328, and 331) shall be increased to 150 feet in the RAC, RC and RR Districts, and shall be increased to fifty (50) feet in the VC, TR and LI Districts. Setbacks on all other state highways shall be increased to 100 feet in the RAC, RC and RR Districts and shall be increased to fifty (50) feet in the VC, TR and LI Districts.

SECTION TWENTY-ONE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.10 be amended to add new section (w) to read as follows:

(w) Structures on Property Line of Contiguous Lots or Parcels Under Same Ownership

[Lots or parcels] Where a structure(s) is constructed across [a] the boundary line, between two (2) contiguous lots or parcels [where] which [the] lots or parcels are under [the same] common ownership, such lots or parcels shall be [considered to be] treated as one lot or parcel for any future activities permitted under this Ordinance. Provided however that should said structure(s) be removed, said lot or parcel shall revert to its pre-construction configuration, subject to all other then-applicable rules, laws and ordinances.

SECTION TWENTY-TWO: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.10 be amended to change sections (w), (x), (y), (z), (aa), (bb) and (cc) to (x), (y), (z), (aa), (bb), (cc) and (dd) respectively.

SECTION TWENTY-THREE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.10(y)(6)(ii) is amended to read as follows:

Section 19.10(z)(6)(ii)
(ii) The maximum wall sign surface area on any lot in the Village Center or Limited Commercial zoning districts or for commercial or industrial uses in the RAC district shall not exceed seventy-five (75) square feet. The maximum wall sign area for nonconforming commercial or industrial uses in the RC and RAC zoning districts shall not exceed fifty (50) square feet.

SECTION TWENTY-FOUR: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.10(y)(7)(ii) be amended to read as follows:

Section 19.10(z)(7)(ii)
(ii) In the Village Center or Limited Commercial zoning districts or for commercial and industrial uses in the RAC zoning district, a single side of a freestanding sign shall not exceed fifty (50) square feet in surface area if the lot on which the sign is located has less than 200 feet of frontage on the street toward which that sign is primarily oriented and seventy-five (75) square feet on lots with 200 or more feet of frontage. For nonconforming commercial or industrial uses in the RC and RAC zoning districts a single side of a freestanding sign shall not exceed fifty (50) square feet in surface area.

SECTION TWENTY-FIVE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.10(y)(8)(i) be amended to read as follows:

Section 19.10(z)(8)(i)
(i) In the Village Center and Limited Commercial zoning districts or for commercial and industrial uses in the RAC zoning district or for nonconforming commercial or industrial uses in the RC and RAC zoning districts, no development may have more than one (1) freestanding sign.

SECTION TWENTY-SIX: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.10(y)(10)(v) be amended to read as follows:

Section 19.10(z)(10)(v)
(v) Setbacks from property lines for signs in the Village Center, Limited Commercial, General Commercial and Limited Industrial zoning districts or for commercial and industrial uses in the RAC zoning district or for nonconforming commercial or industrial uses in the RC and RAC zoning districts shall be one-half of the required setback for the affected yard in the zone in which the sign is to be located.

SECTION TWENTY-SEVEN: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.10(x)(8) be amended to read as follows:

Section 19.10(y)(8)
(8) Off-street parking spaces shall be provided in accord with the following Off-Street Parking Requirements. In cases not specifically covered by this Section, the Planning Officer shall have the authority to determine the parking requirements using this section as a guide. GFA is defined as gross floor area.

Due to particularities of any given development, the inflexible application of the parking standards set forth in section 19.10(y) of this Ordinance may result in a development either with inadequate parking space or parking space far in excess of its needs. Therefore the Planning Officer, after recommendation of the Planning Commission, may permit deviations from the requirements of Section 19.10(y) and may require more parking or less parking whenever it is found that such deviations are more likely to satisfy the standards set forth in Section 19.10(y) of this Ordinance.

SECTION TWENTY-EIGHT: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.10(g) be amended to add the following Subsection (6):

(6) Site Coverage and Landscaping

For sites outside of the Critical Area, the maximum site coverage for all principal and accessory buildings and uses, not including parking areas and access drives, shall not be more than twenty-five (25) percent and at least twenty-five (25) percent of the site shall be landscaped in a manner acceptable to the Planning Commission.

For sites within the Critical Area see Section 19.12(b)(5)(vi)[c][1][i]a.

SECTION TWENTY-NINE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.10(h) be amended to add the following Subsection (6):

(6) Site Coverage and Landscaping

The maximum site coverage for all principal and accessory buildings and uses, not including automobile parking areas and access drives, shall not be more than twenty-five (25) percent and at least twenty-five (25) percent of the site shall be landscaped in a manner acceptable to the Planning Commission.

For sites within the Critical Area see Section 19.12(b)(5)(vi)[c][1][i]a.

SECTION THIRTY: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.10(i) be amended to add the following Subsection (6):

(6) Site Coverage and Landscaping

The maximum site coverage for all principal and accessory buildings and uses, not including automobile parking areas and access drives, shall not be more than fifty (50) percent and at least twenty-five (25) percent of the site shall be landscaped in a manner acceptable to the Planning Commission.

For sites within the Critical Area see Section 19.12(b)(5)(vi)[c][1][i]a.

SECTION THIRTY-ONE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.10(y)(16)(i) be amended to add the following sentence to the end of the paragraph:

Section 19.10(z)(16)(i)
All on-premise freestanding signs existing at the effective date of

this Ordinance which have nonconforming setbacks shall be permitted to remain in their existing location subject to the provisions of Sections 19.10(z)(15)(ii),(iii),(iv),(v),(vi) and (vii).

SECTION THIRTY-TWO: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.10(y)(8)(ii) be amended to add the following sentence:

Section 19.10(z)(8)(ii)
(ii) ... In no case shall a lot have more than two (2) freestanding signs.

SECTION THIRTY-THREE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.10(x)(8) be amended to revise the off-street parking space requirements for produce stands to read as follows:

Section 19.10(y)(8)

Produce Stands	1 space per 120 square feet of display and sales area

SECTION THIRTY-FOUR: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.10(k) be amended to read as follows:

(k) Special Front Yard Setbacks

In the RAC, RC, RR, TR and VC Districts, the front yard setback for a new principal residential structure on an infill lot may be reduced to the average front yard setback of all existing principal residential structures located on the same side of the street on both sides of the lot for a distance of 100 feet.

SECTION THIRTY-FIVE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.10(b)(2) be amended to add the following:

Residential density calculations for a parcel, lot or tract shall be based on the size of the original parcel, lot or tract on June 21, 1991. If a lot is subdivided from an original parcel, that lot may not be further subdivided unless additional enumerated subdivision rights are specifically granted to that lot by deed and subdivision plat notation.

SECTION THIRTY-SIX: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.10(b)(2) be amended to revise the maximum density formula for Cluster Subdivisions With TDRs to read as follows:

3 DUs plus 1 DU/5 ac.

SECTION THIRTY-SEVEN: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.12(b)(5)(vi)[c][1][i]a. be amended to read as follows:

a. Constructed impervious areas shall be limited to fifteen (15) percent (twenty-five [25] percent for a parcel or lot of 1/2 acre or less in size, that was in residential use or zoned for residential purposes on or before 12/1/85; twenty-five [25] percent for a parcel or lot of 1/4 acre or less in size, that was in non-residential use on or before 12/1/85; twenty-five [25] percent for a lot of one [1] acre or less in size, as part of a subdivision approved after 12/1/85, impervious surfaces of the lot may not exceed twenty-five [25] percent and the total impervious surface of the entire subdivision may not exceed fifteen [15] percent). A maximum impervious area shall be designated on the subdivision plat for each parcel or lot.

SECTION THIRTY-EIGHT: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.12(b)(5)(iii)[b], third sentence, be amended to read as follows:

> In the case of contiguous slopes of fifteen (15) percent or greater, the buffer shall be expanded four (4) feet for every one (1) percent of slope, or to the top of the slope, whichever is greater in extent.

SECTION THIRTY-NINE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.13(d)(2)(i) be amended to read as follows:

(i) Nonconforming structures within the Shoreline Development Buffer may be expanded if the impervious area of the parcel or lot's Shoreline Development Buffer and of the entire parcel or lot on which the structure is located is limited to fifteen (15) percent (twenty-five [25] percent for a parcel or lot of 1/2 acre or less in size, that was in residential use or zoned for residential purposes on or before 12/1/85; twenty-five [25] percent for a parcel or lot of 1/4 acre or less in size, that was in non-residential use on or before 12/1/85; twenty-five [25] percent for a lot of one [1] acre or less in size, as part of a subdivision approved after 12/1/85, impervious surfaces of the lot may not exceed twenty-five [25] percent and the total impervious surface of the entire subdivision may not exceed fifteen [15] percent). In addition, setbacks from property lines for such an expansion, shall not be less than the setbacks of the existing nonconforming structure.

SECTION FORTY: BE IT ENACTED by the Talbot county Council that Title 19 of the Talbot County Code, Section 19.13(d)(2)(ii) be amended to read as follows:

(ii) Nonconforming structures outside the Shoreline Development Buffer may be expanded if the impervious area of the entire parcel on which the structure is located is limited to fifteen (15) percent (twenty-five (25) percent for a parcel or lot of 1/2 acre or less in size, that was in residential use or zoned for residential purposes on or before 12/1/85; twenty-five (25) percent for a parcel or lot of 1/4 acre or less in size, that was in non-residential use on or before 12/1/85, twenty-five (25) percent for a lot of one (1) acre or less in size, as part of a subdivision approved after 12/1/85, impervious surfaces of the lot may not exceed twenty-five (25) percent and the total impervious surface of the entire subdivision may not exceed fifteen (15) percent).

SECTION FORTY-ONE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.13(d)(1) be amended to delete Subsection (iii) and add a new Section 19.13(d)(3) to read as follows:

(3) If a building or structure was constructed or reconstructed under a permit that is otherwise valid except for the failure to comply with the setback line restrictions, the County may not initiate an action or proceeding that arises out of a failure of the building or structure to comply with a setback line restriction more than three (3) years after the date on which the violation first occurred. For purposes of this subsection, the date on which the violation first occurred shall be deemed to be the date on which the final building inspection was approved.

SECTION FORTY-TWO: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.13(c)(1),third sentence be amended to change the cross reference from Section 19.10 to Sections 19.10 and 19.12.

SECTION FORTY-THREE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.13(g), first sentence, be amended to read as follows:

Notwithstanding any other provisions of this Ordinance, certain structures erected prior to April 11, 1991 (August 13, 1989 in the Critical Area), though not the subject of specific building permits, are declared to be permitted accessory structures and are allowed to remain in use in their present location.

SECTION FORTY-FOUR: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.13(e) be amended to read as follows:

(e) Enlargement or Expansion of NonConforming Uses.

A nonconforming use shall be allowed to enlarge or expand no more than twenty (20) percent in floor area for a structure or, in those cases not involving structures, no more than ten (10) percent in site area as existing on the effective date of this Ordinance (August 13, 1989 in the Critical Area) subject to all applicable provisions of this Ordinance.

SECTION FORTY-FIVE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.14(c)(1)(iii)[a] be amended to change the cross reference from Section 19.14(c)(1)(iv)[9] to Section 19.14(c)(1)(iv)[g].

SECTION FORTY-SIX: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.14(c)(1)(iv)[b], seventh line, be amended to change the cross reference from Section 19.10 to Sections 19.10 and 19.12.

SECTION FORTY-SEVEN: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.14(c)(1)(iv)[b][6] be amended to read as follows:

[6] Have minimal effect or improve on stormwater, floodplain and stream character.

SECTION FORTY-EIGHT: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.14(c)(1)(iv)[j], second paragraph, first sentence, be amended to read as follows:

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.

SECTION FORTY-NINE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.14(c)(1)(iv)[g], fourth sentence, be amended to read as follows:

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.

SECTION FIFTY: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.14(c)(1)(iv) be amended to revise Subsection [m] to read as follows:

[m] Zoning map amendments from one 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 for a non-Critical Area zoning map amendment as prescribed in Section 19.14(c)(1)(ii).

SECTION FIFTY-ONE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.14(b)(4)(i) be amended to add the following sentence at the end of the paragraph to read as follows:

Special Exception uses within the Critical Area may only be approved by the Board of Appeals after notification to the Chesapeake Bay Critical Area Commission.

SECTION FIFTY-TWO: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code be amended to change the zoning on Tax Map Number 25, Parcel 92 from RAC to LI.

SECTION FIFTY-THREE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code be amended to change the zoning on a Tax Map Number 11, Parcel 280 from VC to GC.

SECTION FIFTY-FOUR: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code be amended to change the zoning on a portion of Tax Map Number 10, Parcel 25 (as delineated on the attached Talbot County Tax Map) from VC to RAC.

SECTION FIFTY-FIVE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code be amended to revise the zoning for Tax Map 42 Parcels 58, 274, 173 and 65 from GC to RC.

SECTION FIFTY-SIX: BE IT FURTHER ENACTED that this Bill shall take effect sixty (60) days from the date of its passage.

SECTION FIFTY-SEVEN: BE IT FURTHER ENACTED that each individual Section of this Bill may be reviewed as a separate amendment or refinement by the Chesapeake Bay Critical Area Commission.

Having been posted and Notice of time and place of hearing and Title of Bill having been published according to Charter, a public hearing was held on August 27, 1991 and concluded on August 27, 1991.

Read the third time.

Passed September 10, 1991 (With Amendments)

By Order

Paulette E Johnson, Secretary

Bradley - aye
Duncan - aye
Higgins - aye
Anderson - aye
Clem - aye

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

1991 LEGISLATIVE SESSION, LEGISLATIVE DAY NO. December 31, 1991

BILL NO. 465

As amended January 14, 1992

Introduced by: The Talbot County Council

A BILL TO AMEND CERTAIN SECTIONS OF TITLE 19. ZONING, OF THE TALBOT COUNTY CODE.

By the Council December 31, 1991

Introduced, read first time, ordered posted, and public hearing scheduled on January 14 1992, at 2:00 p.m. in the Council Chambers, Easton, Maryland.

By Order Patricia J. Rasmussen
Secretary

E. 2192

A BILL TO AMEND CERTAIN SECTIONS OF TITLE 19. ZONING, OF THE TALBOT COUNTY CODE. Amended January 14, 1992

SECTION ONE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.2(c) is amended to read as follows:

Nontidal Wetlands -[CA]- See applicable Chesapeake Bay Critical Area, State and Federal regulations for definition of Nontidal Wetlands.

SECTION TWO: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.4(a) be amended to add a condition for Compounding Industries (Permanent).

- Shall not be allowed in the Chesapeake Bay Critical Area

SECTION THREE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.12(b)(5)(vi)[c][1][i]a. be amended to add the following sentence to the end of the paragraph:

This Section does not apply to a Trailer Park (Manufactured Home Development) that was in residential use on or before December 1, 1985.

SECTION FOUR: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.13(d)(2)(i) be amended to add the following sentence to the end of the paragraph:

This Section does not apply to a Trailer Park (Manufactured Home Development) that was in residential use on or before December 1, 1985.

SECTION FIVE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.13(d)(2)(ii) be amended to add the following sentence to the end of the paragraph:

This Section does not apply to a Trailer Park (Manufactured Home Development) that was in residential use on or before December 1, 1985.

SECTION SIX: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.14(c)(1)(iv)[b][6] be amended to read as follows:

[6] Have a minimal impact or cause an improvement to stormwater, floodplain and stream characteristics.

SECTION SEVEN: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.14(b)(4)(i) be amended to change the last sentence of the paragraph to read as follows:

Special Exception uses within the Critical Area may only be approved by the Board of Appeals after receipt of notification by the Chesapeake Bay Critical Area Commission

(iv) Specific provisions for Bed and Breakfast Accommodations. Bed and Breakfast accommodations may be operated as home occupations subject to the following regulations:

[a] Bed and Breakfast accommodations shall only be permitted as home occupations with the specific written permission of the Planning Officer.

[b] In the Chesapeake Bay Critical Area, Bed and Breakfast accommodations shall only be permitted in a dwelling existing as of August 13, 1989;

[c] The minimum lot size in a RC (Rural Conservation) zoning district for a Bed and Breakfast use shall be (2) acres;

[d] Bed and Breakfast accommodation uses shall be at least 500 feet apart;

[e] A Bed and Breakfast enterprise shall have no more than four (4) guest bedrooms, accommodating no more than twelve (12) guests at any one time. No paying guest shall stay on any one visit for more than thirty (30) days;

[f] Not more than twenty-five (25) percent of the gross floor area may be devoted to guest bedrooms;

[g] One (1) off-street parking space for each guest bedroom shall be provided in a side or rear yard;

[h] Meal service is limited to one daily meal between 4 am and 11 am per paying overnight guest. The applicant should note that meal service is subject to Health Department approval of food preparation areas;

[i] Bed and Breakfast accommodations shall be operated by owner-occupants of the residence. Any new owner of a residence in which a Bed and Breakfast is operated must apply to the Planning Officer for written permission to continue the operation;

[j] Bed and Breakfast enterprises shall be required to pay the Talbot County Accommodations Tax for each guest bedroom; and

[k] In the Chesapeake Bay Critical Area, enlargement of the principle and accessory structures may not exceed fifty (50) percent of the gross floor area of each individual building above that which existed at the time of adoption of these regulations.

SECTION NINE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.10 (z)(2) is amended by adding Section 19.10(z)(2)(ix) to read as follows:

(ix) One property security system identification sign provided that such sign shall not exceed fifty (50) square inches in area. Further, all such signs existing at the effective date of this amendment which do not meet the size requirement shall be removed and brought into compliance by July 1, 1992.

SECTION TEN: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.6(a)(2)

submitted with the rezoning application. Such plans or plats shall be of sufficient detail to determine if the development generally complies with the site plan and design standards for manufactured home developments.

Prior to establishment of a Manufactured Home Development Floating Zone, a concept site plan or concept subdivision plat shall be reviewed by the Planning Commission and approved by the Planning Officer. The Planning Officer may grant final site plan or final subdivision plat approval once the rezoning is approved by the County Council. Final plans and plats shall be based on an approved concept plan or plat.

If a final site plan or final subdivision plat is not approved within two (2) years of the effective date of the manufactured home development rezoning, the County Council may reclassify the property back to its original zoning designation.

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

SECTION TWELVE: BE IT FURTHER ENACTED that each individual Section of this Bill may be reviewed as a separate amendment or refinement by the Chesapeake Bay Critical Area Commission.

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill having been published according to Charter, a public hearing was held on January 14, 1992, and concluded on January 14, 1992.

BY THE COUNCIL

Read the third time

PASSED: January 28, 1992

By Order Patricia J. Kaiser, Secretary

VOTE:

Bradley - Aye

Duncan - Aye

Higgins - Aye

Clem - Aye

Anderson - Aye

E. 2196

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

1992 Legislative Session, Legislative Day No. July 28, 1992

Bill No. 487

Introduced by Mr. Bradley, Mr. Higgins, Mr. Anderson, Mrs. Clem

A BILL TO AMEND SECTIONS 19.[illegible] AND [illegible] OF TITLE 19 OF THE TALBOT COUNTY CODE.

By the Council July 28, 1992

Introduced, read first time, ordered posted, and public hearing scheduled on August 11, 1992, at 2:00 p.m. in the Council Chambers, Easton, Maryland.

By Order Patricia J. Hammond
Secretary

E. 2197

A BILL TO AMEND SECTIONS 19.14(C)(1) AND 19.14(C)(1)(iii) OF TITLE 19 OF THE TALBOT COUNTY CODE.

SECTION ONE: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.14(c)(1) be amended to read as follows:

(1) The provisions of the Talbot County Zoning Ordinance 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 (4) categories: (i) amendments to the Zoning Ordinance text, (ii) amendments to the Official Zoning District Maps excepting properties within the boundaries of the Critical Area where growth allocation acreage is requested, (iii) amendments to the Critical Area provisions of the Zoning Ordinance, and (iv) growth allocation district boundary amendments in the Critical Area.

SECTION TWO: BE IT ENACTED by the Talbot County Council that Title 19 of the Talbot County Code, Section 19.14(c)(1)(iii) be amended to read as follows:

(iii) Amendments to the Official Zoning District Maps excepting properties within the boundaries of the Critical Area, where growth allocation acreage is requested.

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

SECTION FOUR: BE IT FURTHER ENACTED that each individual section of this Bill may be reviewed as a separate amendment or refinement by the Chesapeake Bay Critical Area Commission.

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill having been published according to Charter, a public hearing was held on August 11, 1992.

BY THE COUNCIL

Read the third time.

PASSED: August 11, 1992

By Order _____, Secretary

Bradley - Aye
Duncan - Aye
Higgins - Aye
Anderson - Aye
Clem - Aye

COUNTY COUNCIL

OF

TALBOT COUNTY

1997 Legislative Session, Legislative Day No. February 4, 1997
Bill No. 642

Introduced by: Mr. Andrew, Mr. Bradley, Mr. Higgins, Mr. Kinlock

A BILL TO AMEND SECTION 19.14(c)(1)(iv)[g], OF TITLE 19. ZONING, OF THE TALBOT COUNTY CODE, TO REQUIRE FINAL SUBDIVISION RECORDATION OR SITE PLAN APPROVAL WITHIN TWO (2) YEARS AFTER FINAL GROWTH ALLOCATION APPROVAL.

By the Council February 4, 1997

Introduced, read first time, ordered posted, and public hearing scheduled on February 18, 1997, at 2:00 p.m. in the Council Hearing Room, Courthouse, Easton, Maryland.

By Order Kimberly D. Smallwood

E. 2200

19.14(C)(1)(iv)[g], Growth Allocation District Boundary Amendments in Critical Area, be amended to read as follows:

[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.

SECTION TWO: BE IT FURTHER ENACTED that this Bill shall take effect sixty (60) calendar days from its passage.

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PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 642 having been published, a public hearing was held on February 18, 1997.

BY THE COUNCIL

Read the third time.

ENACTED: February 25, 1997

By Order Kimberly N. Smallhorn
Secretary

Bradley - Aye
Kinlock - Aye
Andrew - Aye
Anderson - Aye
Higgins - Aye

E. 2202

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

1998 Legislative Session, Legislative Day No. September 22, 1998

Bill No. 691

Introduced by: Mr. Higgins

A BILL TO AMEND TITLE 19. ZONING, OF THE TALBOT COUNTY CODE, BY REPEALING AND REENACTING SECTION 19.14(c)(iv)[d] TO CLARIFY THE COUNTY COUNCIL'S AUTHORITY WHEN VOTING UPON REQUESTS FOR GROWTH ALLOCATION DISTRICT BOUNDARY AMENDMENTS IN THE CRITICAL AREA.

BY THE COUNCIL September 22, 1998

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, October 13, 1998, at 2:15 p.m. in the Council Hearing Room, Courthouse, Easton, Maryland.

BY ORDER Kimberly D. Snalhorn
SECRETARY

E. 2203

SECTION ONE: BE IT ENACTED by the County Council of Talbot County that Title 19. Zoning, of the Talbot County Code, Section 19.14(c)(iv)[d] "Growth Allocation District Boundary Amendments in Critical Area" is hereby repealed.

SECTION TWO: BE IT FURTHER ENACTED that Section 19.14(c)(iv)[d] "Growth Allocation District Boundary Amendments in Critical Area" is hereby reenacted as follows:

[d](1) 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 Section 19.14(f).

(2) 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 Ordinance, the Council may also consider:

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

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

(iii) Availability of public facilities;

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

(v) The effect of population change within the immediate area;

(vi) The past, present, and anticipated need for future growth of the County as a whole;

(vii) 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;

(viii) The protection of the public health, safety and welfare.

(3) The fact that an application for a growth allocation district boundary amendment complies with all the specific requirements and purposes set forth in this Ordinance 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.

SECTION TWO: BE IT FURTHER ENACTED by the County Council of Talbot County that this Bill 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. 691 having been published, a public hearing was held on October 13, 1998.

BY THE COUNCIL

Read the third time.

ENACTED: October 27, 1998

By Order Kimberly D. Smallwood Secretary

Bradley - AYE
Kinlock - AYE (BY PHONE)
Andrew - AYE
Anderson - AYE
Higgins - AYE

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

1999 Legislative Session, Legislative Day No. February 16, 1999

Bill No. 699

Introduced by: Mr. Foster

A BILL TO REPEAL AND RE-ENACT WITH AMENDMENTS SECTION 19.14 (c) (iv) [i] OF THE TALBOT COUNTY ZONING ORDINANCE TO PROVIDE FOR SUPPLEMENTAL AWARDS OF GROWTH ALLOCATION IN THE CRITICAL AREA TO MUNICIPAL CORPORATIONS WITHIN TALBOT COUNTY AND TO DELETE THE CURRENT REFERENCE TO MAPS 1, 2, AND 3.

By the Council February 16, 1999

Introduced, read first time, ordered posted, and public hearing scheduled on Wed., March 3, 1999 at 3:30 p.m. at the Talbot County Public Library, West Dover Street, Easton, Maryland 21601.

By Order Kimberly D. Sandthorn
Secretary

E. 2206

SECTION ONE: BE IT ENACTED, by the County Council of Talbot County, that Title 19 - Zoning, of the Talbot County Code, Section 19.14 (c) (iv) [i] be repealed and re-enacted with amendments to provide for supplemental awards of growth allocation in the critical area to municipal corporations within Talbot County. The text of the Zoning Ordinance as repealed and re-enacted with amendments shall read 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.

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).

SECTION TWO: BE IT FURTHER ENACTED that the succeeding paragraphs of Section 19.14 (c) (iv) [i] as they currently exist shall continue unchanged and be maintained in full force and effect.

SECTION THREE: BE IT FURTHER ENACTED that this Bill shall take effect sixty (60) days from the date of its passage and upon approval by the Chesapeake Bay Critical Area Commission.

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 699 having been published, a public hearing was held on Wednesday, March 3, 1999.

BY THE COUNCIL

Read the third time.

ENACTED: March 30, 1999

By Order Kimberly D. Smallhorn
Secretary

Higgins - AYE
Dyott - AYE
Foster - AYE
Spence - AYE
Harrison - AYE

E. 2208

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 Morris
Secretary

E. 2209

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

E. 2210

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 Luisa Morris
Secretary

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

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2001 Legislative Session, Legislative Day No. June 12, 2001

Bill No. 837

Introduced by: Mr. Dyott, Mr. Foster, Mr. Harrison, Mr. Higgins

AN ORDINANCE TO ADOPT THE CODIFICATION AND REVISION OF THE ORDINANCES OF TALBOT COUNTY, MARYLAND; PROVIDING FOR THE MAINTENANCE OF SAID CODE; ESTABLISHING A PENALTY FOR ALTERING OR TAMPERING WITH THE CODE; AND MAKING CERTAIN SUBSTANTIVE CHANGES IN PREVIOUSLY ADOPTED ORDINANCES

By the Council June 12, 2001

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, July 10, 2001 at 1:45 p.m. in the Talbot County Council Meeting Room, Courthouse, 11 North Washington Street, Easton, Maryland.

By Order Theresa Morris
Secretary

E. 2212

AN ORDINANCE TO ADOPT THE CODIFICATION AND REVISION OF THE ORDINANCES OF TALBOT COUNTY, MARYLAND; PROVIDING FOR THE MAINTENANCE OF SAID CODE; ESTABLISHING A PENALTY FOR ALTERING OR TAMPERING WITH THE CODE; AND MAKING CERTAIN SUBSTANTIVE CHANGES IN PREVIOUSLY ADOPTED ORDINANCES

BE IT ENACTED BY the County Council of Talbot County, Maryland, as follows:

§ 1-1. Adoption of Code

The ordinances of Talbot County of a general and permanent nature, adopted by the County Council of Talbot County, as revised, codified and consolidated into chapters and sections by General Code Publishers Corporation and consisting of Chapters 1 through 190, are hereby approved, adopted, ordained and enacted as the "Talbot County Code," hereinafter known and referred to as the "Code".

§ 1-2. Code Supersedes prior inconsistent legislation.

This ordinance and the Code shall supersede all other general and permanent ordinances enacted prior to the enactment of the Code, which are inconsistent with the ordinances included in the Code.

§ 1-3. Effective date.

All provisions of this ordinance shall become effective sixty calendar days after adoption.

§ 1-4. Copy of the Code on file.

A copy of the Code in loose-leaf or post binder form has been filed in the Office of the County Manager and shall remain there for use and examination by the public until final action is taken on this ordinance, and if this ordinance shall be adopted, such copy shall be certified to by the Secretary of Talbot County by impressing thereon the Seal of the County, and such certified copy shall remain on file in the office of the County Manager, to be made available to persons desiring to examine the same during all times when the Code is in effect.

§ 1-5. Amendments to Code.

Any and all additions, amendments or supplements to the Code, when passed and adopted in such form as to indicate the intent of the County Council to make them a part thereof, shall be deemed to be incorporated into such Code so that reference to the "Talbot County Code" shall be understood and intended to include such additions and amendments. Whenever such additions, amendments or supplements to the Code shall be adopted, they shall thereafter be printed and, as provided hereunder, inserted in the loose-leaf or post binder book containing said Code as amendments and supplements thereto.

§ 1-6. Publication and filing.

The County Manager of Talbot County, pursuant to law, shall cause to be published, in the manner required, a notice of the passage of this ordinance in a newspaper of general circulation in the County. Sufficient copies of the Code shall be maintained in the Office of the County Manager for inspection by the public at all times during regular office hours. Publication of such notice, coupled with availability of copies of the Code for inspection by the public, shall be deemed, held and considered to be due and legal publication of all provisions of the Code for all purposes.

§ 1-7. Code book to be kept up-to-date.

It shall be the duty of the County Secretary, or someone authorized and directed by the Secretary, to keep up-to-date the certified copy of the book containing the Code required to be filed in the County Manager's Office for the use of the public. All changes in said Code and all ordinances adopted subsequent to the effective date of this codification which shall be adopted specifically as part of the Code shall, when finally adopted, be included therein by reference until such changes or new ordinances are printed as supplements to said Code books, at which time such supplements shall be inserted therein.

§ 1-8. Sale of the Code book.

Copies of the Code, or any chapter or portion of it, may be purchased from the County Manager or an authorized agent upon the payment of the fee to be set by resolution of the County Council. The County Manager may also arrange for procedures for the periodic supplementation of the Code.

§ 1-9. Altering or tampering with Code; penalties for violation.

It shall be unlawful for anyone to improperly change or amend, by additions or deletions, any part or portion of the Code or to alter or tamper with such Code in any manner whatsoever which will cause the law of Talbot County to be misrepresented thereby. Any violation of this section shall be punishable as a misdemeanor, the penalty for which shall be a fine not to exceed $1,000 or imprisonment for a term not to exceed six months, or both such fine and imprisonment.

§ 1-10. Severability of Code provisions.

Each section of the Code and every part of each section is an independent section or part of a section, and the holding of any section or a part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other section or parts thereof.

§ 1-11. Severability of ordinance provisions.

Each section of this ordinance is an independent section, and the holding of any section or part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof.

§ 1-12. Changes in previously adopted ordinances.

A. In compiling and preparing the ordinances for adoption and revision as part of the Code, certain grammatical changes and other minor changes were made in one or more of said ordinances. It is the intention of the County Council that all such changes be adopted as part of the Code as if the ordinances so changed had been previously formally amended to read as such.

B. Global changes. Throughout the Code "State Department of Health" had been changed to "State Department of Health and Mental Hygiene."

C. In addition, the following changes, amendments or revisions are made herewith, to become effective upon the effective date of this ordinance as set forth in Schedule A attached hereto and made a part hereof (chapter and section number references are to the ordinances as they have been renumbered and appear in the Code).

Schedule A
(As referenced in § 1-12C)

Chapter 5, Agriculture Land Preservation

Section 5-3 is amended to change the statutory reference from "§§ 2-501 through 2-515" to "§ 2-515 et seq."

Chapter 15, Animals

(1) Section 15-7 is amended to change the statutory reference from "Article 27, Sec. 61A" to "Transportation Article, § 20-106."

(2) Section 15-18 is amended to change "shall be fined not less than $25, nor more than $250 for each offense. Each day a violation continues shall be deemed a separate offense." to read: "shall be fined not to exceed $500 or be imprisoned for not to exceed 90 days."

Chapter 21, Board of Appeals Rules of Procedure

Section 21-9A is amended to add the following statutory reference after "Open Public Meetings Law": State Government Article § 10-501 et seq.

Chapter 24, Board, Committees and Commissions

Article I, Public Works Advisory Board

Section 24-1 is amended to delete the following language from the end of the section: "provided, however, that the members of the present Talbot County Sanitary District, Inc., in office on April 5, 1977, shall continue in office as members of the Public Works Advisory Board for the remainder of their term and until their successors are appointed and qualified."

Chapter 34, Cable Television and Communications Systems

Section 34-10C, second to last sentence, is amended by adding the word "are" between "as" and "in" so that the sentence reads: "If the County finds that such transfer, after considering the legal, financial, character, technical and other public interest qualifications of the applicant are satisfactory, the County will transfer and assign the rights and obligations of such franchise as **are** in the public interest."

Chapter 42, Correction, Department of

Section 42-3 is amended to delete the following wording: "The responsibility for the transportation of inmates to and from the courts of law shall remain vested in the Sheriff of Talbot County." The section is further amended to change the reference to "Article 87, § 48" to "CJ § 2-308."

Chapter 46, Court

Article I, Orphan's Court

Section 46-2 is amended to change "in the Circuit Courtroom, Talbot County Courthouse" to "in the Talbot County Courthouse."

Chapter 60, Ethics, Code of

Section 60-7C is amended to change "or imprisonment of up to one (1) year, or both" to "or imprisonment for up to six months."

Chapter 64, Fees

Article I, Health Department Fees

Article I is amended in its entirety to read as follows:

ARTICLE I
Health Department Fees

§ 64-1. Minimum requirements.

The regulations of the Maryland Secretary of the Department of Health and Mental Hygiene (DHMH) and the Maryland Department of the Environment (MDE) shall be the minimum requirements of the Talbot County Board of Health. It is the purpose of this article to supplement those regulations.

§ 64-2. Term defined.

The term "approving authority" where found in the regulations of DHMH and MDE shall in this article mean the Health Officer for Talbot County or her designee.

§ 64-3. Fees for permits.

A. Annual fees for licenses, permits and services shall be required and payable to the Talbot County Health Department for the following:

(1) Food service facilities (licenses, plan review).

(2) Public swimming pools and spas.

(3) Bed-and-breakfast.

(4) Exotic birds.

(5) Sanitary construction (licenses, permits).

(6) Liquid waste hauling.

(7) Soil evaluation (standard, trench, sand mound, pond).

(8) Sewage reserve area (SRA) relocation (new and repeat).

(9) Outdoor burning.

(10) Building.

(11) Plat review.

(12) Well application.

(13) Water sampling.

(14) Rabies vaccination.

B. All licenses and permits mentioned above shall be issued by the Talbot County Health Department to those persons, firms or corporations who demonstrate satisfactory adherence to the regulations.

C. All fees to be charged under this section shall be as established from time to time by motion of the County Council.

§ 64-4. Violations and penalties.

Any person violating these regulations shall be fined not more than $100 for each offense, and each and every day of operation without a permit shall constitute a separate offense. Notice of violation must be in writing. Penalties will be assessed for food service facilities at $25 for each 30 days past due.

Chapter 70, Floodplain Management

Section 70-7, Definitions:

(1) A portion of the definition of "local permitting official" as amended by Bill No. 663 is moved into § 70-5 and shall read as follows:

§ 70-5. Administration.

The Talbot County Office of Planning, Zoning and Building shall be responsible for the administration of this Code.

(2) The definition of "local permitting official" is amended to read as follows:

LOCAL PERMITTING OFFICIAL — The County Planning Officer.

Chapter 73, Forest Conservation

(1) Section 73-3A(4) is amended by changing "public utility rights-of-way licensed under Article 78, § 54A and 54B or § 54-I, Annotated Code of Maryland" to read "public utility rights-of-way for public service companies licensed under the Public Utilities Article of

the Annotated Code of Maryland" and by changing "or land for electric generating stations licensed under Article 78, § 54A and 54B or § 54-I, Annotated Code of Maryland" to read "land for electric generating stations licensed under the Public Utilities Article of the Annotated Code of Maryland."

(2) Section 73-3A(5) is amended by changing "licensed under Article 78, § 54A and 54B or § 54-I, Annotated Code of Maryland" to read "for public utility companies licensed under the Public Utilities Article of the Annotated Code of Maryland."

Chapter 97, Officers and Employees

Article I, County Finance Officer

A new § 97-2 is added to read as follows:

§ 97-2. Office of Finance.

A. The Office of Finance shall be administered by the Director of Finance. He shall be a trained business professional with wide and varied experience in the field of finance.

B. The Director of Finance has the continuing responsibility and duty of overseeing the Office of Finance, and assisting the County Manager in his capacity as Finance Officer in accordance with the provisions of the Charter.

Article III, Defense and Indemnification

Former § 6A-10, When effective, which dealt with the insolvency of Midland Insurance Company and the emergency nature of the ordinance as a result, is deleted.

Chapter 107, Peddling

Chapter 107, adopted 1963, ch. 343, is amended in its entirety to read as follows:

§ 107-1. License required.

A. It shall be unlawful for any person to publicly sell, hawk or peddle any articles of merchandise within the unincorporated boundaries of Talbot County without having first obtained a license from the Talbot County Sheriff, except as exempted herein.

B. In the areas of the County which are incorporated, it is the responsibility of the peddler/hawker to check for licensing requirements within those jurisdictions.

§ 107-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

CHARITABLE ORGANIZATION:

A. Any benevolent, philanthropic, patriotic, not-for-profit, educational, religious or eleemosynary group, association or corporation which qualifies under Section 501 of the Internal Revenue Code as a tax-exempt organization.

B. A fire company which is organized for the prevention and extinguishment of fires.

CONTRIBUTION — The promise or grant of any money, credit, property, financial assistance or any other thing of value, including payments for literature in excess of the fair market value of said literature.

ESTABLISHED PLACE OF BUSINESS — Any building or room licensed for the handling of the products enumerated in this chapter.

INCORPORATED TOWN — Easton, Oxford, St. Michaels, Trappe, Queen Anne.

ITINERANT RETAIL PRODUCE DEALER — Any person without an established place of business within the limits of the County, selling or offering for sale from any cart, wagon, truck, automobile or other vehicle any fruits, vegetables, garden produce, eggs, cheese, game, veal, pork, mutton, lamb, rabbits or poultry.

ITINERANT RETAIL SEAFOOD DEALER — Any person without an established place of business within the limits of the County, selling or offering for sale from any cart, wagon, truck, automobile or other vehicle any seafood or seafood products.

NEWSPAPER — A paper that is distributed and contains news, articles of opinion and advertising. This definition includes community newspapers and pennysavers.

PEDDLER — Any person, either principal or agent, who in/on any public street, road or highway or public place or from any vacant property, whether publicly or privately owned, or by going from place to place or house to house, delivers or distributes advertising material, literature, pamphlets, samples or handbills or sells or offers for sale, barter or exchange any goods, wares, merchandise, service or any other article or thing whatsoever, either in his possession or not in his possession, either for immediate or future delivery.

PERSON — A natural person, corporation, partnership, association, joint-stock company, society or any other entity of any kind.

PRODUCE — Agricultural products, fruits and vegetables.

RESIDENTIAL PREMISES — A house, apartment, condominium, cooperative or mobile home which is used as a dwelling place or domicile by the occupant.

SOLICITOR — Any person, either principal or agent, who, in any public street, road or highway or public place or from any vacant property, whether publicly or privately owned, or by going from place to place or house to house for the following purposes:

A. Sells any goods, wares or merchandise, including magazines and printed matter, or accepts subscriptions or orders therefor.

B. Accepts or requests donations for any charitable purpose.

§ 107-3. Registration requirements.

All persons desiring a permit under the requirements of this chapter shall register with the Talbot County Sheriff and furnish the following information:

A. The name, home address and local address, if any, of the applicant.

B. A physical description of the applicant, setting forth the applicant's age, height, weight and color of hair and eyes, and any other distinguishing physical characteristics of the applicant.

C. The name, address and telephone number for the firm or corporation for whom or through whom orders are to be solicited and cleared.

D. The nature of the goods, wares or merchandise for which orders are to be solicited.

E. A statement as to whether the applicant has been convicted of a felony or misdemeanor and, if so, what.

F. Current verification that the applicant holds a Maryland sales tax identification number.

G. A copy of a valid state motor vehicle operator's license (copy to be attached).

H. If the applicant is unable to meet the criteria of Subsection G above, some other type of identification with picture (copy to be attached).

§ 107-4. Exemptions.

The provisions of this chapter shall not apply to the following:

A. The peddling of farm produce by farmers or persons who produce such goods. The term "farm produce" shall be interpreted to mean only edible farm products.

B. The peddling of seafood or seafood products of any kind which have been taken from waters within the limits of the County.

C. Members of any civic or charitable organization who are registered with the Talbot County Sheriff's Department, when the names of the solicitors have been listed as such members and the organization has provided each person with an approved means of identification of the organization represented.

D. The delivery of food, goods, wares, merchandise, magazines, periodicals, produce, services or commodities previously ordered by the occupant of the premises to which the same is delivered or on which the services are to be performed.

E. Route deliverymen who make deliveries at least once a week to regular customers and whose solicitation is only incidental to their regular deliveries.

F. The delivery of newspapers.

G. School-affiliated groups (i.e., PTA, band boosters, etc.), provided that the organization is associated with a school located in Talbot County.

H. Organized youth teams based in Talbot County (baseball, soccer, basketball, softball, field hockey, etc.).

§ 107-5. Issuance of license; term and display; lost or stolen licenses.

A. Upon furnishing the information required under § 107-3, the applicant shall be issued a license by the Talbot County Sheriff as prescribed by the County Council of Talbot County at the fee established by the Council.

B. A license issued under this chapter shall be good for one year, beginning on January 1 and expiring on December 31 of the same year, unless revoked as provided for in this chapter.

C. Each licensee shall at all times have on his person, while engaged in the purpose licensed under this chapter, the license issued hereunder and shall exhibit the same to any County official or police officer upon request.

D. If a peddler's license is lost or stolen, such shall be reported to the Talbot County Sheriff's Department within 10 days. Upon notification, the Department shall issue a replacement license at a cost to be set by the Common Council in the annual budge process.

§ 107-6. Prohibitions; revocation of license.

A. No permit shall be issued under this chapter to any person under the age of 18 years.

B. It shall be unlawful for any peddler or solicitor in plying his/her trade to enter upon any premises or property or to ring the doorbell or knock upon or enter any building whereon there is painted or otherwise affixed or displayed to the public view any sign containing any or all of the following words: "No Peddlers, No Solicitors, No Agents," or other wording, the purpose of which purports to prohibit peddling or soliciting on the premises.

C. It shall be unlawful to remain in a private residence or on the premises thereof after the owner or the occupant has requested such person to leave.

D. No permit/license shall be transferred from one person to another.

E. A license will be revoked for fraud, misrepresentation or false statements made in the course of carrying on business as a peddler.

F. A license will be revoked for any violation of this chapter.

§ 107-7. Hours of operation.

Within the unincorporated boundaries of Talbot County, soliciting or peddling shall be prohibited before the hour of 9:00 a.m. or after the earlier of 1/2 hour after sunset or 8:00 p.m. Except as otherwise provided, this provision shall not apply to transactions under § 107-4 of this chapter.

§ 107-8. Fees.

All fees shall be established by the Talbot County Council in the annual budget process. Copies of the fee schedule will be available in the County Finance Office and the Talbot County Sheriff's Department.

§ 107-9. Violations and penalties.

Any person who violates any provision of this chapter is guilty of a misdemeanor and shall be subject, upon conviction thereof, to a fine not to exceed $500 or imprisonment not to exceed six months, or both, for each violation. Each violation of this chapter is considered a separate offense.

Chapter 121, Public Landings

Section 121-10, second sentence, is amended by adding the word "not" between "area" and "designated" so that the second sentence reads as follows: "Any person swimming at a public landing in an area **not** designated for swimming by the Administrator does so at his or her own risk."

Chapter 131, Road Naming

Section 131-8 is amended as follows:

(1) Subsection B is amended to read as follows:

B. Civil citation. The Planning Officer or enforcement official may deliver a civil citation to the person(s) believed to be committing an infraction. A citation may be sent by certified mail or by personal service to the persons(s) responsible for such violations or noncompliance. If service of the order is not reasonable or is unsuccessful, then service by posting of the order on the building or land, with a copy mailed via first class mail to the last known address of the property owner or alleged violator, as the case may be, shall suffice. The citation shall serve as notification that a civil violation has been committed and a monetary fine has been assessed that is due and payable to the County within 10 calendar days from the date of its issuance. A copy of the citation shall be retained by the Planning Officer and shall bear certification attesting to the truth of the matter set forth. The citation shall contain:

(1) The name and address of the person charged;

(2) The nature of the violation;

(3) The location where, and date the violation occurred;

(4) The amount of the fine assessed;

(5) The manner, location, and time in which the fine may be paid; and

(6) The person's right to elect to stand trial for the violation.

(2) A new Subsection C is added to read as follows:

C. Proceedings. In a proceeding before the District Court, the violation shall be prosecuted in the same manner and to the same extent as set forth in municipal infractions in Article 23A, § 3(b)(7) through (15), Annotated Code of Maryland, as amended from time to time and which is incorporated by reference herein. The County Attorney is authorized to prosecute a violation of this chapter, enter a nolle prosequi or place such cases on the stet docket.

(3) Subsection E is amended by deleting "and any architect, builder, contractor, agent" preceding "or any other person."

Chapter 134, Roads and Bridges

Section 134-17C(4) is amended by adding "or imprisonment for up to six months, or both."

Chapter 148, Sewer System

(1) Section 148-3 is amended by deleting the words "On or before June 1, 1980, and" and "thereafter" at the beginning of the section so that the section reads, in part as follows: "From time to time, as required, the County Engineer shall prepare and submit to the County Council, etc."

(2) Section 148-4 is amended to change "Office of Finance" to "Department of Finance."

(3) Section 148-18 is amended to delete the following wording from the text and its accompanying footnote: "provided, however, that the Council may, prior to enactment of the FY-1981 budget, pass an interim ordinance to establish initial rates."

(4) Section 148-19D is amended to change "Department of Finance" to "Office of Finance."

(5) Section 148-24 is amended by changing the statutory reference from "§ 427A of Article 43 of the Annotated Code of Maryland (1957 Edition, as amended and supplemented)" to "§ 9-704 of the Environmental Article of the Annotated Code of Maryland."

Chapter 152, Shared Sanitary Facilities

Section 152-2 is amended to delete the following language: "The enactment of this regulation shall, upon its effective date, replace inclusive Subtitles 14-14.05-.09, Title 14 of the Talbot County Code, pertaining to Privately Owned Community Sewer Systems; and Legislative Bill No. 384, March 27, 1990, pertaining to Prohibition of Shared Sanitary Facilities in Talbot County; in their entirety, which shall then become null and void."

Chapter 155, Sheriff

(1) A new § 155-1 is added to read as follows:

§ 155-1. Budget requests for funding.

The Sheriff shall submit to the County Council annual budget requests to fund operation of the Talbot County Sheriff's Department. The budget requests shall be in a form acceptable to the County Manager and the Council, shall contain such supporting or additional information as may be requested, and shall be submitted on the timetable required of department heads of County government. All funding for operation of the Sheriff's Department shall be retained under the direct control of the Finance Officer, who shall be responsible for disbursement of same.

(2) Section 155-2 is amended to read as follows:

§ 155-2. Disbursement and accounting of fees collected.

All fees and charges in civil and criminal cases to which the Sheriff is entitled by law shall be collected for and paid to the Finance Officer. Fees collected by the Sheriff shall be remitted to the Finance Officer at least monthly, together with an itemized account of all such fees in a form acceptable to the Finance Officer, indicating their source and amount and such other information as may be required. In addition, the Finance Office shall collect and receive all funds which represent payments due or owing to the Sheriff's Department from the Clerk of the Circuit Court for Talbot County and from the Clerk of the District Court of Maryland for Talbot County in accordance with any administrative or accounting requirements established by the respective courts. In the absence of any such administrative or accounting requirements, these fees shall be remitted monthly.

(3) Former Section 16-2, Account of expenses, is deleted.

Chapter 164, Stormwater Management

(1) Section 164-1B is amended to update the statutory reference from § 8-11A-02 of the Natural Resources Article to the Environmental Article, § 4-201 et seq.

(2) Section 164-13B is amended to update the statutory reference from § 8-9A-01 et seq. of the Natural Resources Article to the Environmental Article, § 5-801 et seq.

(3) Section 164-15B(4) is amended to update the statutory reference from Natural Resources Article of the Annotated Code of Maryland, § 8-803(b) to Environmental Article of the Annotated Code of Maryland, § 5-501 et seq.

(4) Section 164-15C(4) is amended to update the statutory reference from § 8-803 of the Natural Resources Article of the Annotated Code of Maryland to § 5-503 of the Environmental Article of the Annotated Code of Maryland.

Chapter 168, Subdivision Regulations

Section 168-6 is amended to add "December 10, 1994" in the blank after "made effective as of."

Chapter 172, Taxation

Article I, Real Property Tax Exemption

Section 172-3 is amended to change the statutory reference from "Article 81" to "Tax-General and Tax-Property Articles" of the Annotated Code of Maryland.

Article II, Public Accommodations Tax

Former Section 10A-11, Increase in surety bond of Finance Officer, is deleted.

Article IV, Real Property Tax Credits for Commercial and Industrial Businesses

Section 172-23A is amended by changing the statutory reference from 9-322(c)(3) to 9-322(d) of the Tax-Property Article.

Chapter 190, Zoning

(1) Section 190-14, the definition of "sewage disposal plant," Subsection A, is amended to change "Article 96A, Section 2(g) of the Annotated Code of Maryland" to § 8-101 of the Natural Resources Article of the Annotated Code of Maryland."

(2) Section 190-27D is amended to change the internal references reading "Section 19.4(b)(1) and Section 19.4(d)(1)" to "Section 19.6(b)(1) and Section 19.6(d)(1)" (now §§ 190-28A and 190-30A).

(3) Section 190-82E is amended to change the reference to Subsection (b). The reference should be to the noise level restriction table (now Subsection D).

(4) Section 190-109D(9) is amended to included the amendment adopted as Bill No. 762 (4-25-2000) which originally amended Section 19-14(c)(iv)(c)[i] but should have amended 19-14(c)(iv)(i) [now § 190-109D(8)].

(5) Section 190-109D is amended to delete the reference to Subsection (iii) in Subsections (11) and (14).

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 837 having been published, a public hearing was held on Tuesday, July 10, 2001, at 1:45 p.m. in the County Council Meeting Room, Courthouse, 11 North Washington Street, Easton, Maryland.

BY THE COUNCIL

Read the third time.

ENACTED: July 24, 2001

By Order _____ Secretary

Dyott -	AYE
Foster -	AYE
Harrison -	AYE
Higgins -	AYE
Spence -	AYE

TALBOT COUNTY
ZONING ORDINANCE

ORIGINAL LANGUAGE EFFECTIVE on June 22, 1991 Before any amendments

Introduced By
The Talbot County Council

March 26, 1991

E. 2228

[3] The Planning Officer shall refer all such amendments to the Planning Commission for their review and subsequent recommendations.

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

[e] After receiving the recommendations of the Planning Officer and Planning Commission concerning a proposal for an amendment to the Zoning Ordinance text, 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 their determination.

[f] 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 section 19.14(f).

[g] 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.

(iv) Growth Allocation District Boundary Amendments in Critical Area

[a] 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.

[b] An application for a growth allocation district boundary amendment shall be filed in the Planning Office on the prescribed application form with the accompanying filing fee, where applicable. Each application shall include a proposed site plan and/or subdivision plat that meets the applicable design standards in Section 19.10 of this ordinance. 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:

[1] Create lots or parcels that maximize the opportunities for clustered development that protect habitat and agricultural resources;

[2] Locate structures so as to minimize impact on habitat protection areas and agricultural areas;

[3] Provide a minimally disturbed buffer along the shoreline;

[4] Minimize soil erosion and runoff;

[5] Maximize protection of eroding shorelines;

[6] Have minimal effect on stormwater, floodplain and stream character;

[7] Minimize impacts on non-tidal wetlands;

[8] Maximize protection of plant and wildlife habitats, particularly for threatened and endangered species, plant and wildlife common to the Chesapeake Bay Region, and anadromous fish propagation waters; and

[9] Maximize protection of forests.

[c] The application shall first be referred by the Council to the Planning Officer for an investigation and recommendation.

[1] The Planning Officer shall cause such investigation to be made as he deems necessary.

[2] The Planning Officer may hold such informal public hearings as he deems appropriate.

[3] The Planning Officer shall refer all such amendments to the Planning Commission for their review and subsequent recommendations.

[4] The Planning Officer shall submit his recommendation, the recommendation of the Planning Commission and any pertinent

information to the County Council within sixty (60) days of application filing.

[d] 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 Section 19.14(f).

[e] 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.

[f] 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.

[g] All requests 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 both by the County Council and the Critical Area Commission shall take effect sixty (60) days after approval by the Commission. A request denied by the Commission may be reconsidered by the County Council. Such a request shall be revised by the applicant to address the reasons for 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.

[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 for growth allocation requests for property outside of the towns and outside of areas shown as possible annexation areas (See maps 1, 2 and 3).

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).

[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 and/or commercial zoning districts shall be considered. Of the 128 acres, twenty-four (24) acres is reserved for the Town of Easton, fourty-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).

[k] The number of reserved areas allocated among the towns for rezoning in Sections 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] No overall acreage limit is established for growth allocation requests from the Rural Residential or Town Residential districts to the

Town Residential or Village Center districts, to establish less than twenty (20) contiguous acres of the Limited Commercial, General Commercial, and/or Limited Industrial districts, or to town zoning districts established for the Limited Development Area of the Critical Area. There are no acreage limits on growth allocation requests where the current and proposed zoning districts include only Limited Commercial, General Commercial, and/or Limited Industrial Districts that already cover twenty (20) or more contiguous acres, or town zoning districts established for the Intensely Developed Area of the Critical Area.

[n] Specific annexations 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 & 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 & 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 & 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 & 3, however the total acres reserved per town shall not be

exceeded.

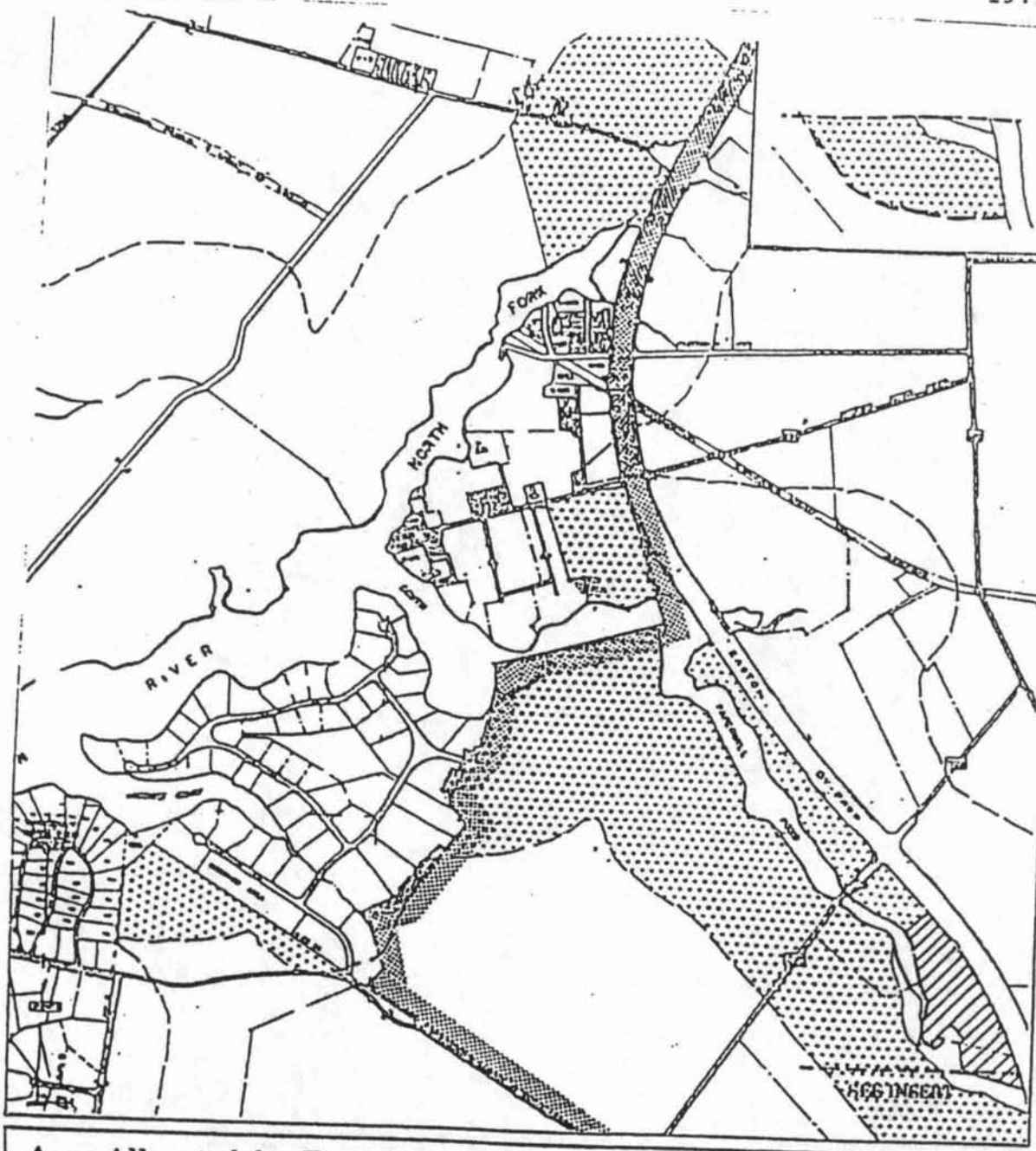
[q] When considering growth allocation requests from the Rural Conservation District, priority shall be given based on the district requested in the following order: Village Center, Town Residential, Rural Residential, Limited Commercial, General Commercial, Limited Industrial. When considering growth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

[t] A growth allocation request to establish a total area of twenty (20) or more contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial zoning districts (including contiguous areas of existing commercial or industrial zoning districts) should not be approved unless the proposed development activity is water dependent, will have substantial economic benefit to Talbot County, and can not be located within the limits of an incorporated town. Such a request should be located within or adjacent to a Village Center, Limited Commercial, General Commercial or Limited Industrial Districts. For purposes of this section, adjacency means at least twenty-five (25) of the perimeter land boundary of the subject parcel is in common with the referenced zoning district(s). Land boundaries shall be measured at the centerline of any rights-of-way. Such a request should be located so as not to conflict with the character and purpose of the Rural Conservation District.



Area Allocated for Town Development

TOWN OF EASTON

Talbot County, Maryland

RCA for Annexation or Rezoning

LDA for Rezoning

Map No 1

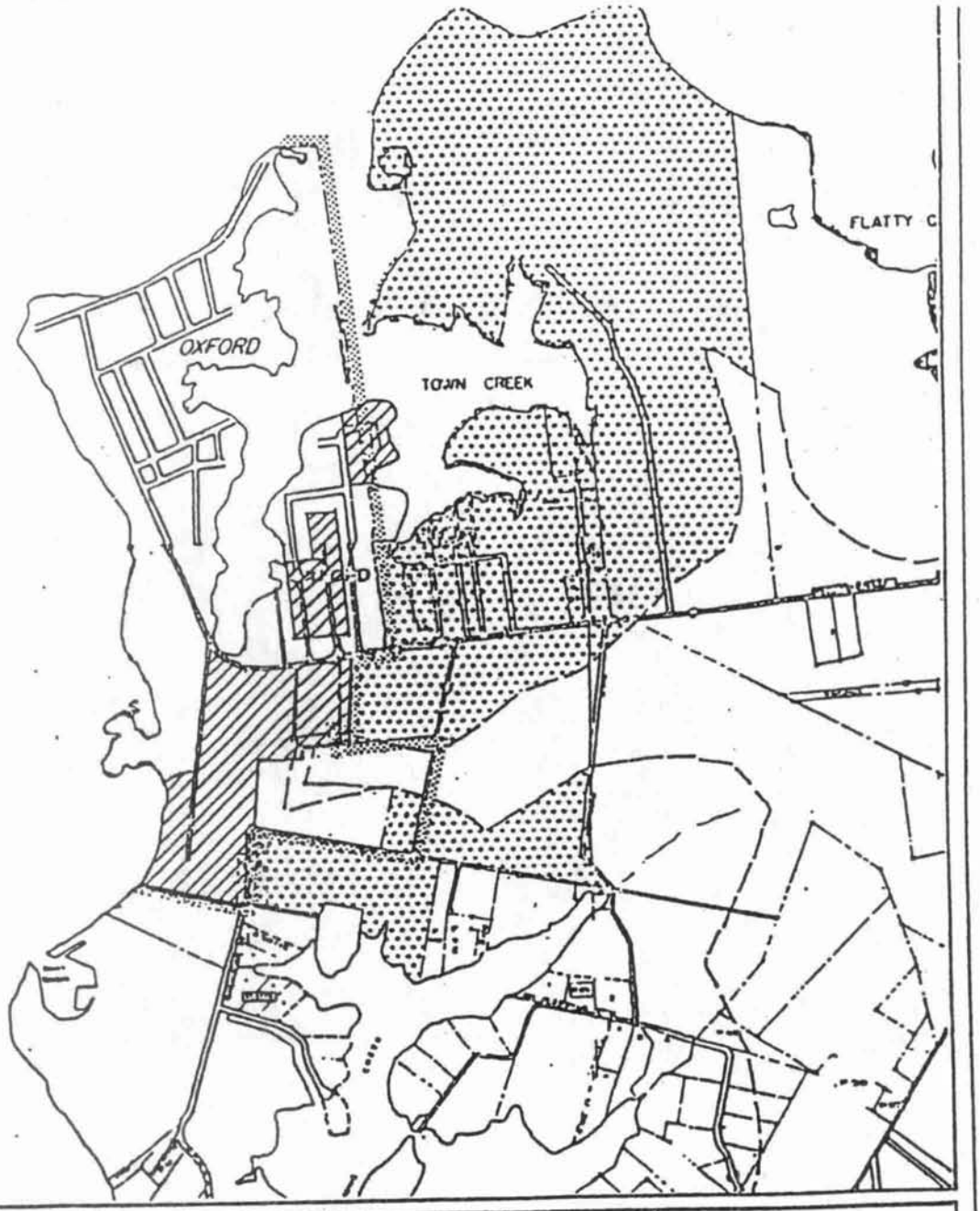
N

miles

1 0 2 4 6

Wiles Dailey Pronske

Reston Va Sarasota, Fla.



Area Allocated for Town Development

TOWN OF OXFORD

Talbot County, Maryland

RCA for Annexation or Rezoning

LDA for Rezoning

Map No

N

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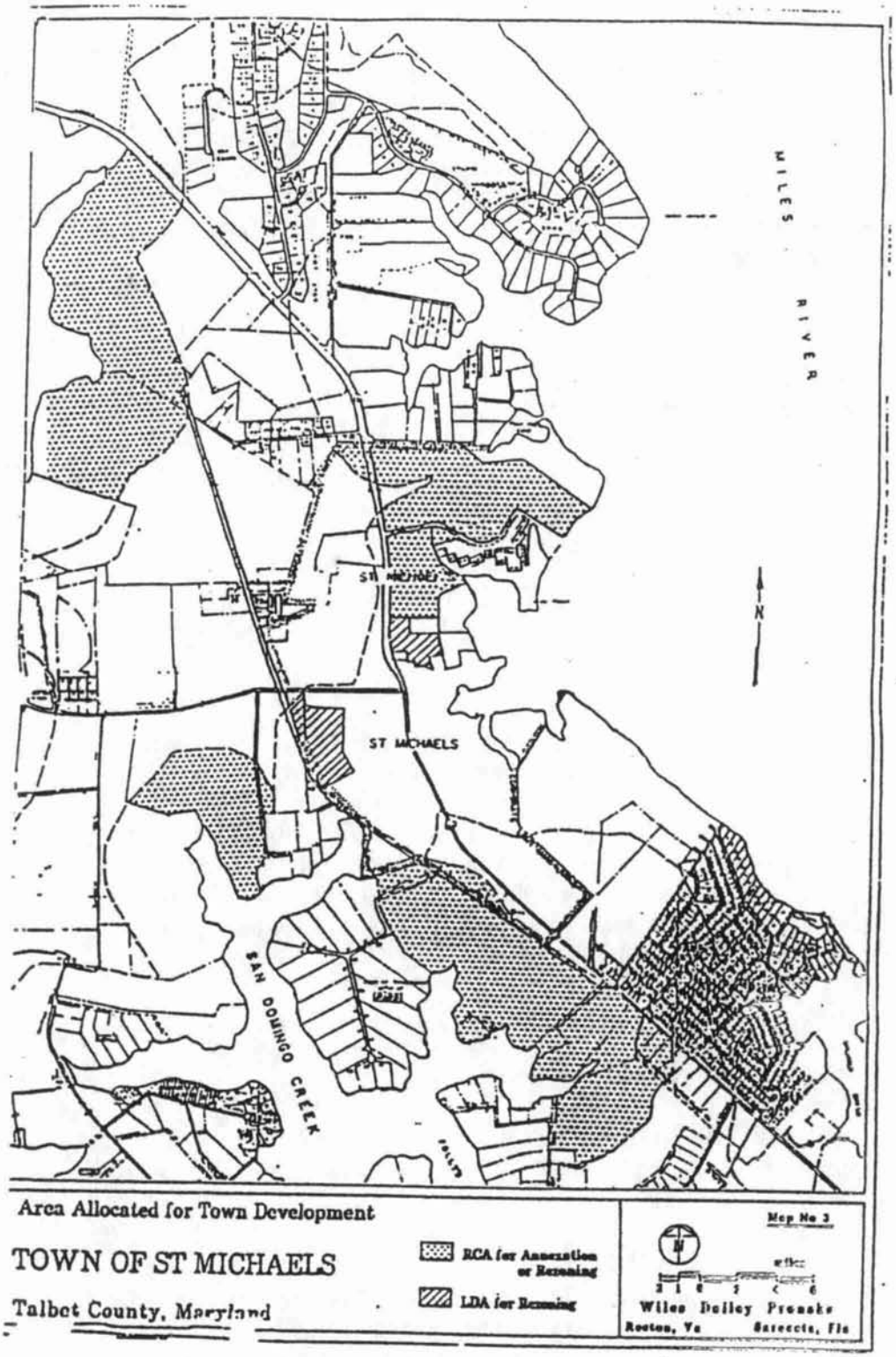
1 0 2 4 6

Wiles Dailey Pronske

Reston Va. Sarasota, Fla.


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

E. 2239

CIRCUIT COURT
TALBOT COUNTY
MARYLAND

2006 MAR 27 PM 3 20

THE CIRCUIT COURT FOR TALBOT COUNTY

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

: : : : :

JUDGMENT

As used in this Judgment:

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

Bill 933 means the proposal titled "A Bill to Review and Reallocate the Number of Reserved Acres of Growth Allocation Allocated among the Towns for Rezoning to Comply with the Chesapeake Bay Critical Area Commission Four-Year Review Requirement.", which was adopted by the Talbot County Council and forwarded for approval to the Critical Area Commission.

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

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

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

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

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

a-in a consistent and uniform manner and .

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

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

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

b-in coordination with each other; and

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

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

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

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

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

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

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

The costs of this proceeding shall be paid by plaintiff.

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

March 23, 2006

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2012 MAR 27 PM 2:20

THE CIRCUIT COURT FOR TALBOT COUNTY

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

: : : : :

MEMORANDUM

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

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

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

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

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

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

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

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

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

PART I. ALLOTMENT OF GROWTH ALLOCATION

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

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

After establishing development areas on the basis of existing uses, each local jurisdiction is given a "growth allocation" consisting of a "number of acres of land in the Chesapeake Bay Critical Area . . . that a local jurisdiction may use to create new intensely developed areas and new limited development areas." NR § 8-1802 (10). The growth allocation is "calculated based on 5 percent of the total resource conservation area in a local jurisdiction . . . at the time of the original approval of the local jurisdiction's program by the Commission, not including tidal wetlands or land owned by the federal government." NR § 8-1808.1; CAC regulation 27.01.02.06 A(1).

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

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

Initial allotment of growth allocation between Talbot County and its municipalities

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

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

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

> Not more than 1,213 acres[4] of the Critical Areas of the County, including all land lying within the Critical Area within incorporated towns, shall be reclassified from the Rural Conservation (RC) District (or town zoning districts established for the Resource Conservation Area of the Critical Area) to any other zoning district. Of these 1,213 acres, 155 acres is reserved for the Town of Easton, 195 acres is reserved for the Town of Oxford, 245 acres is reserved for the Town of St. Michaels for growth allocation associated with annexations, and 618 acres is reserved for the County.

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

[4] See footnote 3.

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

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

By TA § 190-109 D(16), fully quoted *infra* page 26, "The location of growth allocation requests within Towns or growth allocation requests associated with annexation requests is not limited to the areas shown in Maps 1, 2 and 3, however, the total acres reserved per town shall not be exceeded." TA § 190-109 D(14) provides that the County will not act upon a request for rezoning of any portion of an area shown on a map, but outside of a Town "until an annexation request for the property has been denied by the town or until 12 months after an annexation request for the property has been submitted to the town, whichever occurs first." *Infra*, page 26 .

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

Subsequent events affecting allotment

As chronicled in the CAC staff report, by 2004:

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

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

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

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

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

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

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

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

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

PART II COUNTY COUNCIL BILL 933

The genesis of Bill 933

Bill 933 was introduced by three members of the Talbot County Council on November 18, 2003, and is titled "A Bill to Review and Reallocate the Number of Reserved Acres of Growth Allocation Allocated among the Towns for Rezoning to Comply with the

Chesapeake Bay Critical Area Commission Four-Year Review Requirement."

The CAC staff report accurately summarizes its provisions:

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

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

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

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

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

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

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

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

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

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

Preamble [6], page 31, proffers a high-flown and ultimately somewhat tentative thought that "the process created by the 1989 zoning ordinance is both redundant and inconsistent *or potentially inconsistent* with the Comprehensive Planning Process; the Comprehensive Planning Process required by Art. 66B, Md. Ann. Code, more appropriately accomplishes planning for growth areas around Towns [emphasis supplied]." If an answer to this purported problem is to be found, it certainly does not appear in the Bill to which it is attached. Bill 933 is a single-purpose measure; it eliminates provisions which allot growth area to the Towns. It corrects no redundancy; and even a superficial reading shows that the provisions removed were not redundant to each other or to any other provision of the local critical area program. It is perhaps for those reasons that the suggestion slows to a virtual halt by its qualification "or potentially inconsistent."

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

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

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

[13]-[15]

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

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

- Although not so constrained by the critical area statute, the only way "to trigger release of the withheld 50% of the County's growth allocation" lies in TA § 190-109 D (9) (b), which provides that "When 1,092 acres (90% percent of 1,213 acres) has been approved for growth allocation by the towns and/or the County, then the County shall request permission from the Maryland Critical Area Commission to double the maximum number of acres to 2,426 acres." Preamble [12]

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

This sinister specter, which occupies more than 50% of the items in the Preamble, is a pure apparition. First and foremost, it fails to ascribe true meaning to the fact that both the County and CAC have already recognized that, in law and fact, 595 acres of the growth allocation available in the entire critical area of Talbot County had been allotted to the Towns. What this quite simply means is that the remaining 618 acres were originally allotted to the County.[8] In its paraphrase of NR § 8-1808.1 (c)(5), Preamble [9] loses what we believe to be its true meaning: "if the county is unable to utilize a portion of the growth *allocated to the county* . . . within or adjacent to existing intensely developed or limited development areas *as demonstrated in the local plan approved by the Commission*, then that portion of the allocated expansion which cannot be so located may be located in the resource conservation area in addition to the expansion [otherwise] allocated in . . . this subsection

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

[emphasis supplied]."

It is puzzling that the County has tied its own hands by the restrictions imposed upon itself by TA § 190-109 D(9)(c): "When 1,092 acres (90% percent of 1,213 acres) has been approved for growth allocation by the towns and/or the County, then the County shall request permission from the Maryland Critical Area Commission to double the maximum number of acres that may be reclassified from the Rural Conservation District (or comparable town districts) from 1,213 to 2,426 acres. Upon Critical Area Commission approval, the County shall reserve acreage for each town."[9]

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

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

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

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

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

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

Background unmentioned in Bill 933

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

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

Later, at a hearing before a CAC panel on March 24, 2004, a former chairman of that Commission, then testifying on behalf of the County, observed that, in considering the Miles Point project, the St. Michaels Commissioners "ran out of steam and consequently the Town voted to grant the growth allocation to this project. Fortunately, the County of Talbot, in the form of a County Council, came galloping to the rescue and said this matter should not proceed in this fashion, and consequently they instituted a bill to recover unused growth allocation from all municipalities in the County of Talbot." These observations by a person who was uniquely familiar with critical area law and testifying on behalf of the County cannot be regarded as other than a statement of the actual purpose of Bill 933.

We believe that the motives of Bill 933 are transparent.

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

PART III. DETERMINATION BY CAC

After adoption by the County Council, Bill 933 was sent to CAC for approval required by both NR § 8-1809 (I) of the critical area statute and the *Talbot County Zoning Ordinance*. On May 5, 2004, "Upon the recommendation of the panel of Commission members who conducted a public hearing . . . and further upon consideration of the Panel's Report and its Supplement . . ., statements made by members of the public who attended the Commission's meeting, and discussion among the Commission members, the Commission voted to deny approval of County Bill #933 as an amendment to Talbot County's local Critical Area program."

The two-fold basis for the decision was contained in a letter dated May 14, 2004. We shall discuss them separately.

Interference with existing projects

The first of CAC's reasons for disapproval was that "Accepting Bill 933 would negate at least one previous Commission action approving a local program change. This is the refinement to the St. Michaels program for the Strausburg growth allocation approved in October 2003."

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

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

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

[11] The staff report also referred to (a) "the Miles Point III application, which the Town approved for 70.92 acres of growth allocation in January 2004," which had been submitted to CAC and was then being considered by it and (b) "the Cooke's Hope Project in Easton" for which the Town of Easton had used a combination of the original "reserved" growth allocation acreage and some supplemental growth allocation that it received from the County under the process of Bill 762 (the measure which, as seen *supra*, page 5) created the "supplemental" growth allocation process.. That had been reviewed through the County's supplemental growth allocation process and sent to CAC for approval, but had not yet been acted upon.

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

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

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

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

Creation of conflicts among critical area programs

CAC gave this additional reason for its disapproval:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The County's incorrect premises

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

That flaw lies in the notion advanced in Preamble [21] of Bill 933, fully quoted *infra*, page 33 that "the original intent of the State law governing growth allocation . . . gave the County the authority to determine, within the limits imposed by State law and regulations, how that growth allocation would be utilized, and reallocated among the Towns and the County, project by project." The assertion is repeated in Preamble [19].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART IV. DILIGENCE OF CAC

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

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

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

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

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

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

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

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

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

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

March 23, 2006

APPENDIX A

Talbot County Zoning Ordinance
Chapter 190: ZONING
ARTICLE XIV Administration

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

§ 190-109. **Amendments.**

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

A. **Amendments to the Zoning Ordinance Text . . . .**

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

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

(1) Amendments to the Critical Area provisions in any section of this Chapter 190, Zoning, shall be consistent with Maryland State Critical Area Law and shall be referred to the Chesapeake Bay Critical Area Commission for their review and approval in accordance with § 190-109D(7) of this chapter. Any such request shall not result in permitting uses that would adversely affect any wildlife or plant habitats as a result of the uses' intrinsic nature and potential impact. Specifically, such requests shall not be granted if they would allow the following development or redevelopment activities in the Critical Area:

(a) Non-maritime heavy industry;

(b) Transportation facilities and utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters (utility transmission facilities do not include power plants);

(c) Permanent sludge handling, storage, and disposal facilities with the

exception of those facilities associated with current wastewater treatment operations in Talbot County, and excepting the agricultural or horticultural land applications of sludge (with Maryland state approvals and approved application methods and rates) outside of the shoreline development buffer;

(d) Any development activity that would be detrimental to water quality or fish, wildlife or plant habitats identified in this chapter;

(e) Solid or hazardous waste collection or disposal facilities;

(f) Sanitary landfills; and

(g) Septage storage or holding facilities excepting those facilities on the site of a Talbot County Wastewater Treatment Plant.

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

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

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

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

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

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

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

(5) After receiving the recommendations of the Planning Officer and Planning Commission concerning a proposal for an amendment to the text of this chapter, the Council shall determine whether or not the proposal is suitable

to warrant the introduction of legislation. The Council may conduct any informal hearings they deem appropriate in making its determination.

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

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

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

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

(2) An application for a growth allocation district boundary amendment shall be filed in the Planning Office on the prescribed application form with the accompanying filing fee, where applicable. Each application shall include a proposed site plan and/or subdivision plat that meets the applicable design standards in [section 19.10 pf this ordinance] Articles X and XII of this chapter. Each application request should make the maximum effort to meet the intent of the Critical Area policies and the applicable design standards. The request should:

(a) Create lots or parcels that maximize the opportunities for clustered development that protect habitat and agricultural resources;

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

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

(d) Minimize soil erosion and runoff;

(e) Maximize protection of eroding shorelines;

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

(g) Minimize impacts on nontidal wetlands;

(h) Maximize protection of plant and wildlife habitats, particularly for threatened and endangered species, plant and wildlife common to the Chesapeake Bay Region, and anadromous fish propagation waters; and

(I) Maximize protection of forests.

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

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

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

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

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

(4) Introduction of bill; considerations.

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

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

[1] Consistency with the purposes and intent of the Talbot County Comprehensive Plan;

[2] Compatibility with existing and proposed development and land use

in the surrounding area;

[3] Availability of public facilities;

[4] The effects on present and future transportation patterns;

[5] The effect of population change within the immediate area;

[6] The past, present, and anticipated need for future growth of the County as a whole;

[7] The location, nature, and timing of the proposed growth allocation in relation to the public interest in ordered, efficient, and productive development and land use;

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

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

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

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

(7) Critical Area Commission approval.

(a) All requests approved by the County Council shall be submitted by the County to the Maryland Critical Area Commission for approval as an amendment to the County's Critical Area Program. By state law, the Commission has 90 days to act on a request. If no action is taken in 90 days, the request will be considered approved. A request approved by the County Council shall take effect 60 days after adoption by the Council, and upon approval by the Critical Area Commission.

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

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

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

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

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

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

(b) When 1,092 acres (90% percent of 1,213 acres) has been approved for growth allocation by the towns and/or the County, then the County shall request permission from the Maryland Critical Area Commission to double the maximum number of acres that may be reclassified from the

Rural Conservation District (or comparable town districts) from 1,213 to 2,426 acres. Upon Critical Area Commission approval, the County shall reserve acreage for each town.

(c) If the Commission approves the doubling of the number of acres that may be rezoned under this subsection, the County will have its full allocation of 2,554 acres for growth as specified in the County's Critical Area Plan, that is 1,213 acres (original limit) + 1,213 acres (potential additional limit) + 128 acres (amount reserved in Subsection D(10) below = 2,554 acres). The Maryland Critical Area law does not allow for the full 2,426-acre allocation (1,213 + 1,213) at the time of the establishment of this section (August 13, 1989).

(d) Upon request for supplemental growth allocation by any municipal corporation within the County, the County Council may transfer growth allocation to the municipal corporation and may impose such conditions, restrictions, and limitations upon the use of any such supplemental growth allocation, if any, as the Council may consider appropriate. All such requests shall comply with the following requirements:

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

[2] Staff and Planning Commission review. The planning staff and the Planning Commission shall review the application in accordance with the procedures set forth in § 190-109D(9)(d)[1] through [4], except that municipal and county staff reports shall be forwarded to the Planning Commissions of both jurisdictions, and the planning staff shall schedule a joint hearing on the application before the Planning Commissions of both jurisdictions. The designated Chairperson of each Planning Commission shall co-chair the hearing. Each Planning Commission shall vote separately and make its recommendations to its respective council or commission. Each Planning Commission shall provide a copy of its recommendations to the other jurisdiction.

[3] Council review. The county and municipal councils or commissions

shall hold a joint hearing on the application, co-chaired by the designated Chairperson of each council or commission which may be coordinated jointly with the Critical Area Commission. The county and municipal councils or commissions shall make their respective decisions separately as independent entities. The County Council shall evaluate the application in accordance with § 190-109D(4).

[4] Amendments to approved projects. Any amendment to an approved project shall be subject to County Council review and approval for a period of five years following the date of initial approval.

(10) Reclassification of land within incorporated towns.

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

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

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

(12) In any one rezoning review cycle, not more than 100 acres should be approved by the County for reclassification from the Rural Conservation District to any other zoning district. Not more than 20 acres should be

reclassified from the Rural Residential, Town Residential, or Village Center Districts or area of less than 20 contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial Districts to establish a total area of 20 or more contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial Districts (including contiguous areas of existing Commercial or Industrial Zoning Districts).

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

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

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

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

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

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

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

(19) A growth allocation request to establish a total area of less than 20 contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial Zoning Districts (including contiguous areas of existing commercial or industrial Zoning Districts) shall be adjacent to the Town Residential, Village Center, Limited Commercial, General Commercial, or Limited Industrial District. Such requests should not be adjacent to the Rural Residential District. For purposes of this section, adjacency means at least 25% of the perimeter land boundary of the subject parcel is in common with the referenced zoning district(s). Land boundaries shall be measured at the center line of any rights-of-way.

(20) A growth allocation request to establish a total area of 20 or more contiguous acres of Limited Commercial, General Commercial, and/or Limited Industrial Zoning Districts (including contiguous areas of existing commercial or industrial zoning districts) should not be approved unless the proposed development activity is water-dependent, will have substantial economic benefit to Talbot County, and cannot be located within the limits of an incorporated town. Such a request should be located within or adjacent to a Village Center, Limited Commercial, General Commercial or Limited Industrial Districts. For purposes of this section, adjacency means at least 25% of the perimeter land boundary of the subject parcel is in common with the referenced zoning district(s). Land boundaries shall be measured at the

center line of any rights-of-way. Such a request should be located so as not to conflict with the character and purpose of the Rural Conservative District.

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

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

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

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

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

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

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

(g) After receiving the recommendation of the Planning Officer and the Planning Commission concerning a proposal for growth allocation associated with a use expansion in the Rural Conservation RC Zone, the Council shall hold a public hearing in order that interested parties and

citizens shall have an opportunity to be heard. The Council shall provide public notice of such hearing in accordance with the provisions set forth in § 190-112 of this chapter.

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

[1] Consistency with the purposes and intent of the Talbot County Comprehensive Plan;

[2] Compatibility with existing and proposed development and land use in the surrounding area;

[3] Availability of public facilities;

[4] The effects on present and future transportation patterns;

[5] The effect of population change within the immediate area;

[6] The past, present, and anticipated need for future growth of the County as a whole;

[7] The location, and nature of the proposed use and/or expansion of the use; and

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

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

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

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

area.

(l) All requests approved by the County Council shall be submitted by the County to the Maryland Critical Area Commission for approval as an amendment to the County's Critical Area Program. By state law, the Commission has 90 days to act on a request. If no action is taken in 90 days, the request will be considered approved. A request approved by the County Council shall take effect 60 days after adoption by the Council, and upon approval by the Critical Area Commission.

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

APPENDIX B

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

BILL 933

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[19] WHEREAS, growth in and around the towns affects not only the particular town, but also the County as a whole, and the County should. therefore, have some ability to protect the County's legitimate interests as they are affected by development in the critical area, as contemplated by State law when it gave this control to the counties under the Chesapeake Bay Critical Area Protection Program, § 8-1801, et. seq., Md. Ann. Code; and

[20] WHEREAS, § 8-1809 (g), Natural Resources Art., Md. Ann. Code, requires that Talbot 'County review its entire critical area program and propose any necessary amendments to. its entire program, including local zoning maps, at least every 4 years beginning in 1993 and every 4 years thereafter; and

[21] WHEREAS, Talbot County is currently near completion of such a 4-year review, and as part Of that process desires to make the following amendments to the County's critical area program to better reflect the original intent of the State law governing growth allocation, which calculated growth allocation for Talbot County as 5% of the resource conservation area in the County, and gave the County the authority to determine, within the limits imposed by State law and regulations, how that growth allocation would be utilized, and reallocated among the Towns and the County,

project by project.

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that Chapter 190, Talbot County Code, "Zoning" shall be and is hereby amended as set forth herein.

Maps 1, 2, and 3, attached, are hereby repealed.-

§ 190-109 D (9)

(a) Not more than 1,213 acres of the Critical Areas of the County, including all land lying within the Critical Area within incorporated towns, shall be reclassified from the Rural Conservation (RC) District (or town zoning districts established for the Resource Conservation Area of the Critical Area) to any other zoning district. ~~Of these 1,213 acres, 155 acres is reserved for the Town of Easton, 195 acres is reserved for the Town of Oxford, 245 acres is reserved for the Town of St. Michaels for growth allocation associated with annexations, and 618 acres is reserved for the County.~~

* * *

§ 190-109 D (10) Reclassification of land within incorporated towns.

(a) Not more than 128 acres of the Critical Area of the County, including lands within the incorporated towns, shall be reclassified from a Limited Development Area (LDA) to an Intensely Developed Area (IDA). For purposes of this section, LDA Zoning Districts include Rural Residential (RR), Town Residential (TR) and Village Center (VC) or areas of less than 20 contiguous acres of Limited Commercial (LC), General Commercial (GC) or Limited Industrial (LI). Town zoning districts include all districts classified as LDA. The requested IDA classification shall include areas of 20 or more contiguous acres of LC, GC, LI or town zoning districts established for the IDA of the Critical Area.

(b) ~~In determining whether the twenty-acre threshold has been reached, the contiguous areas of existing commercial and/or industrial zoning districts, whether located in the Critical Area or Non-Critical Area, shall be considered. Of the 128 acres, 24 acres is reserved for the Town of Easton, 44 acres for the Town of Oxford, 24 acres for the Town of St. Michaels for growth allocation or growth allocation associated with annexations, and 36 acres for the County for growth allocation for property outside of the towns and outside of areas shown as possible annexation areas. (See Maps 1, 2 and 3.)~~ EN.

§ 190-109 (D)(11)

~~The number of reserved areas allocated among the towns for rezoning in § 190-109D(9) and (10) should be reviewed by the County and Towns by June 1, 1993 for possible reallocation and at least every four years thereafter.~~

§ 190-109 (D)(14)

~~Specific annexation requests for property included in the acres reserved for the towns in § 190-109D(9) and (10) above and as shown in Maps 1, 2, and 3, shall be reviewed by the County for consistency with the County Comprehensive Plan and shall be subject to all current ordinances regulating annexations. The County shall not act on rezoning requests adjacent to the towns as shown on Map 1, 2, and 3 until an annexation request for the property has been denied by the town or until 12 months after an annexation request for the property has been submitted to the town, whichever occurs first. If the County approves a rezoning request not associated with an annexation request for property adjacent to the towns as shown on Maps 1, 2 and 3, then the acreage of the property rezoned shall be subtracted from the acres reserved for the Town for annexation in § 190-109D(9) and (10).~~

§ 190-109 (D)(15)

~~Growth allocation requests for property that has been annexed within five years of the request shall be reviewed by the County for consistency with the County Comprehensive Plan. Growth allocation request(s) for property that has been in the town for more than five years prior to the request does not require review by the County; however, the towns shall inform the County of such reclassification to ensure that the total reserved acres, listed above, are not exceeded.~~

§ 190-109 (D)(16)

~~The location of growth allocation requests within Towns or growth allocation requests associated with annexation requests is not limited to the areas shown in Maps 1, 2 and 3, however, the total acres reserved per town shall not be exceeded.~~

SECTION 2. Effective Date and Severability; legislative intent.

1. Vested Rights: Effective Date of Zoning Text Amendments

This ordinance shall apply to the total growth allocation acreage allocated to the County under § 8-1808.1 (b) Natural Resources Article, Annotated Code of Maryland that

remains unutilized on the effective date of this ordinance.

(a) For purposes of this subsection, the term "unutilized" includes the total growth allocation acreage allocated to the County under State law, less growth allocation acreage that (1) has been previously allocated by any town or the County; and, (2) prior to the effective date of this ordinance, has resulted in actual physical commencement of some significant and, visible construction; (3) which has been undertaken in good faith, with the intention to carry it through to completion; and, (4) which has occurred pursuant to a validly issued building permit.

(b) For purposes of this subsection, growth allocation acreage allocated to the County does not include growth allocation allocated to the towns under § 8-1808.1 (b) (5% of the total resource conservation area in the town at the time of original approval of the town's critical area program by the Critical Area Commission).

(c) For purposes of this subsection, County growth allocation acreage that has been previously allocated by any town shall first be counted as part of that town's allocation under § 8-1808.1 (b) and, to the extent the town's allocation has been exceeded, growth allocation that has been utilized prior to the effective date of this ordinance shall be deducted against the County's remaining growth allocation. Growth allocation awarded by any town that remains unutilized on the effective date of this ordinance shall revert to the County. Growth allocation awarded by the County, prior to or after the effective date of this ordinance, shall be deducted from the total growth allocation acreage allocated to the County under § 8-1808.1 (b).

2. Severability.

The County Council intends that, if a Court issues a final decision holding that any part of this ordinance, or the application thereof to any person or circumstance, is unconstitutional or invalid, the remaining provisions hereof and the application thereof to all other persons and circumstances remain in full effect.

SECTION THREE: BE IT FURTHER ENACTED, that this ordinance shall take effect sixty (60) days from the date of its passage.

APPENDIX C

19.14

Area Allocated for Town Development

TOWN OF EASTON

Talbot County, Maryland

RCA for Annexation or Rezoning

LDA for Rezoning

Map No 1

N

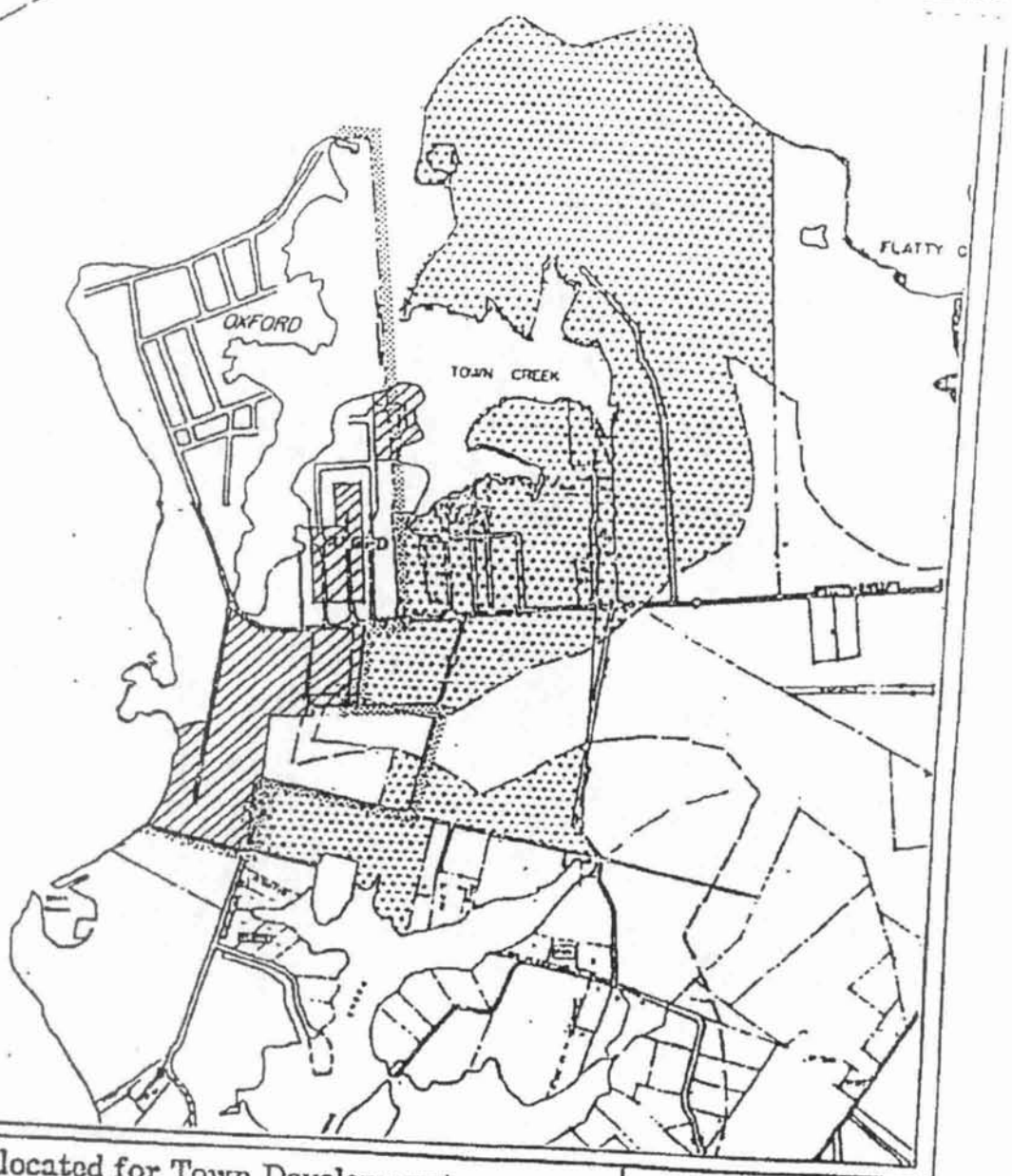
miles

1 0 2 4 6

Wiles Dailey Pronske

Keston Va Sarasota, Fla.

19.14



Area Allocated for Town Development

TOWN OF OXFORD

Talbot County, Maryland

RCA for Annexation or Rezoning

LDA for Rezoning

Map No

N

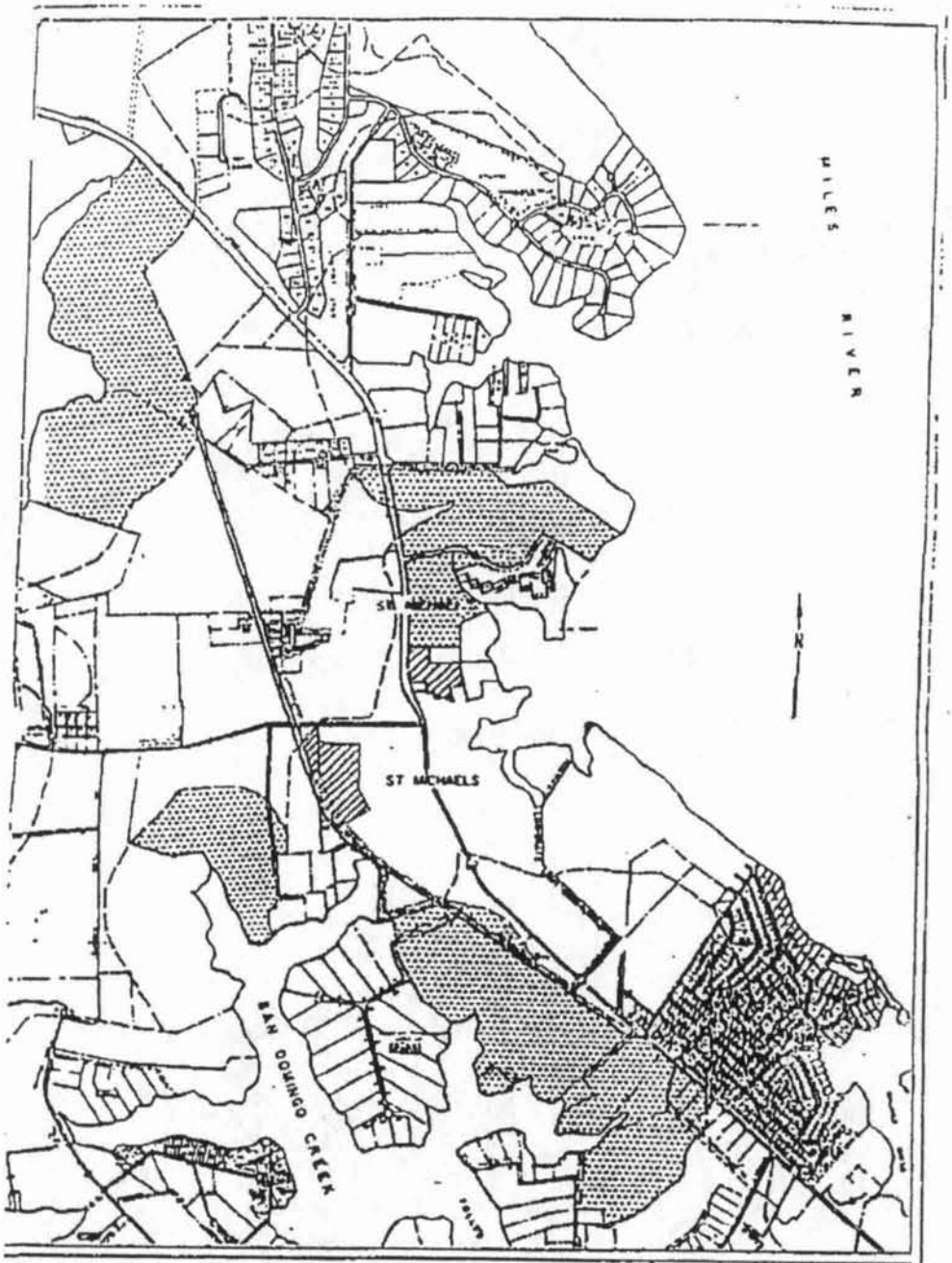
miles

0 2 4 6

Wiles Dailey Pronske

Reston Va Sarasota, Fla.

14 - 24



Area Allocated for Town Development

TOWN OF ST MICHAELS

Talbot County, Maryland

RCA for Annexation or Rezoning

LDA for Rezoning

Map No 3

Wilco Dailey Pennoke

Reston, Va Sarasota, Fla

E. 2281

324-231

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2006 APR 13 PM 12 31

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND	:	
Plaintiff	:	
vs.	:	Civil Action No. 2-C-04-005095 DJ
DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION FOR THE CHESAPEAKE: AND ATLANTIC COASTAL BAYS, et al.	:	
Defendants	:	
	:	

NOTICE OF APPEAL

Talbot County, Maryland, Plaintiff, by and through MICHAEL L. PULLEN, Talbot County Attorney, and BRYANT, KARPINSKI, COLARESI & KARP, DANIEL KARP and VICTORIA M. SHEARER, its attorneys, hereby file an appeal from the judgment and order of the Court filed on March 27, 2006 in the above-captioned matter.

Respectfully submitted,

OFFICE OF THE TALBOT COUNTY ATTORNEY

BY: _____

MICHAEL L. PULLEN
Talbot County Attorney
11 N. Washington Street
Easton, Maryland 21601
(410) 770-8093

BRYANT, KARPINSKI, COLARESI
& KARP

BY: Daniel Karp/MP
DANIEL KARP

Victoria Shearer/MP
VICTORIA M. SHEARER
Suite 1850
120 E. Baltimore Street
Baltimore MD 21202
Attorneys for Plaintiff, Talbot County
(410)727-5000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of April 2006, a copy of the foregoing Notice of Appeal was mailed first-class, postage prepaid to:

H. Michael Hickson, Esquire
Banks, Nason & Hicks, P.A.
113 S. Baptist Street
P.O. Box 44
Salisbury, Maryland 21803-0044

Marianne D. Mason, Esquire
Joseph Gill, Esquire
J. Joseph Curran, Jr., Attorney General
Maryland Department of Natural Resources
480 Taylor Avenue, C-4
Annapolis, Maryland 21401

David R. Thompson, Esquire
Brynja M. Booth, Esquire
Cowdrey, Thompson & Karsten, P.A.
130 N. Washington Street
Easton, Maryland 21601

Daniel Karp, Esquire
Victoria M. Shearer, Esquire
Bryant, Karpinski, Colaresi & Karp, P.A.
120 East Baltimore Street
Suite 1850
Baltimore, Maryland 21202

Richard A. DeTar, Esquire
Miles & Stockbridge
101 Bay Street
Easton, Maryland 21601

Plaintiff Talbot County, Maryland

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

* * * * * * * * * * * * * *

NOTICE OF CROSS-APPEAL

The Town of Oxford ("Oxford"), Defendant/Counter-Plaintiff, by its attorneys, David R. Thompson, Brynja M. Booth and Cowdrey, Thompson & Karsten, pursuant to Maryland Rule 8-202(e) files this Notice of Cross Appeal from the judgment and order of the Court filed on March 27, 2006 in the above-captioned matter[1].

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2006 APR 24 PM 2 40

David R. Thompson, BMB

David R. Thompson
Brynja M. Booth
Cowdrey, Thompson & Karsten,
A Professional Corporation
P.O. Box 1747
Easton, MD 21601
(410) 822-6800
Attorneys for the Town of Oxford

[1] Oxford files this Notice of Cross-Appeal in an abundance of caution even though Oxford contends that the judgment and order entered on April 27, 2006 is not a final, appealable judgment and order under the Maryland Rules. Oxford expressly reserves all rights with respect to this issue.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April, 2006, a copy of the foregoing Notice of Cross-Appeal was sent first class mail, postage prepaid to:

Daniel Karp, Esquire
Victoria Shearer, Esquire
Allen, Karpinski, Bryant & Karp, P.A.
Suite 1540
100 E. Pratt Street
Baltimore, Maryland 21202-1089
Attorney for Talbot County, MD

Joseph Gill, Esquire
Paul J. Cueuzzella, Esquire
Marianne D. Mason, Esquire
Assistant Attorneys General
Maryland Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
Attorneys for Maryland Department of Natural Resources

H. Michael Hickson, Esquire
Jesse Hammock, Esquire
Banks, Nason & Hickson, P.A.
113 S. Baptist Street
P.O. Box 44
Salisbury, Maryland 21803-0044
Attorneys for the Town of St. Michaels

Michael L. Pullen, Esquire
Talbot County Office of Law
Courthouse
11 N. Washington Street
Easton, Maryland 21601
Attorney for Talbot County

Richard A. DeTar, Esquire
Demetrios G. Kaouris, Esquire
Miles & Stockbridge, P.C.
101 Bay Street
Easton, Maryland 21601
Attorneys for The Midland Companies, Inc.
And Miles Point Properties, LLC

David R. Thompson, BMB
David R. Thompson

TALBOT COUNTY, MARYLAND,	*	CIVIL CASE NO. 20-C-04-005095DJ
Plaintiff,	*	
Vs.	*	IN THE
DEPARTMENT OF NATURAL RESOURCES, et al.	*	
Defendants.	*	CIRCUIT COURT

* * * * * * * *

THE COMMISSIONERS OF ST. MICHAELS et al.	*	FOR
Counter-Plaintiffs,	*	
Vs.	*	TALBOT COUNTY
TALBOT COUNTY, MARYLAND,	*	
Counter-Defendant.	*	STATE OF MARYLAND

* * * * * * * * * * * * * *

NOTICE OF CROSS-APPEAL

The Commissioners Of St. Michaels ("St. Michaels"), Defendant and Counter-Plaintiff, by its attorney, H. Michael Hickson, hereby notes a cross-appeal to the Court of Special Appeals from the judgment and order of the Court filed on March 27, 2006 in the above-captioned action.[1]

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

[1] St. Michaels files this Notice of Appeal in an abundance of caution even though St. Michaels respectfully submits that the judgment and order of the Court of March 27, 2006 is not a final, appealable judgment and order consistent with the Maryland Rules, including, but not limited to, Maryland Rule 2-602. St. Michaels expressly reserves all rights with regard to this issue.

Respectfully submitted,

H. Michael Hickson, BMB

H. Michael Hickson
Banks, Nason & Hickson, P.A.
113 S. Baptist Street
P.O. Box 44
Salisbury, Maryland 21803-0044
Telephone: 410-546-4644
Attorney for The Commissioners Of St. Michaels,
Defendant and Counter-Plaintiff

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of April, 2006, that an exact copy of the foregoing Notice of Cross-Appeal was sent by first class mail, postage prepaid to:

Daniel Karp, Esquire
Victoria M. Shearer, Esquire
Allen, Karpinski, Bryant & Karp, P.A.
Suite 1540
100 E. Pratt Street
Baltimore, Maryland 21202-1089
Attorney for Talbot County, MD

Michael L. Pullen, Esquire
11 N. Washington Street
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Attorney for Talbot County

Richard A. DeTar, Esquire
Miles & Stockbridge, P.C.
101 Bay Street
Easton, Maryland 21601
Attorney for Miles Point, LLC
and The Midland Companies, Inc.

Joseph P. Gill, Esquire
Marianne D. Mason, Esquire
Assistant Attorneys General
Maryland Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
Attorneys for Maryland Department of Natural Resources

David R. Thompson, Esquire
Brynja M. Booth, Esquire
Cowdrey, Thompson & Karsten, P.A.
130 N. Washington Street
Easton, Maryland 21601
Attorneys for Town of Oxford

H. Michael Hickson, BMB
H. Michael Hickson, Esq.

Law Offices Of
BANKS, NASON
& HICKSON
Professional Assoc.
113 S. Baptist Street
P.O. Box 44
Salisbury, MD
21803-0044

TALBOT COUNTY, MARYLAND	*	IN THE
Appellant	*	COURT OF SPECIAL APPEALS
v.	*	OF MARYLAND
MARYLAND DEPARTMENT OF NATURAL RESOURCES,	*	No. 418
CRITICAL AREA COMMISSION et al.	*	September Term, 2006
Appellees	*	(CC #20-C-04-005095)

* * * * * * * * * * * * *

ORDER

On June 11, 2004, appellant's counsel filed an action for declaratory relief in the Circuit Court for Talbot County. The Town of Oxford, the Commissioners of St. Michaels, Miles Point Properties, LLC, and the Midland Companies, Inc. were allowed to intervene. The two towns (Oxford and St. Michaels) counterclaimed for declaratory relief. Cross-summary judgment motions were filed. On March 27, 2006, the circuit court docketed the March 23, 2006 opinion thereon by the Hon. John W. Sause, Jr., retired, specially assigned. An appeal by appellant was filed on April 13, 2006, and cross-appeals by the towns of Oxford and St. Michaels were filed on April 24, 2006. A Prehearing Conference via telephone was held among counsel and the undersigned judge.

The judgment section of the circuit court's March 23, 2006 opinion declares appellant's rights but does not unambiguously declare the rights of the Town of Oxford, the Commissioners of St. Michaels, Miles Point Properties, LLC and Midland Companies, Inc. On June 21, 2006, counsel for the Town of Oxford filed a "Motion to Dismiss Appeal" in this Court, and appellant's response thereto was filed on June 30, 2006.

The judgment of March 27, 2006 is non-final under Md. Rule 2-602, and is not certified under subsection (b) thereof, and thus, is not yet appealable. Another valid contention is that, without an

R.J.G. 7.5.06

explicit declaration of the rights of four other parties (*i.e.*, the two towns, Miles Point Properties, LLC and Midland Companies, Inc.), the judgment does not conform to the principle that a trial court should declare in writing the rights of all parties who properly seek declaratory relief. *Griffin v. Anne Arundel County*, 25 Md. App. 115, 137, *cert. denied*, 275 Md. 749 (1975); *Secure Financial Service, Inc. v. Popular Leasing USA, Inc.*, 391 Md. 274, 281 (2006) ("[W]hen entering a declaratory judgment, the court must, in a separate document, state in writing its declaration of the rights of the parties, along with any other order that is intended to be part of the judgment.").

It is, therefore, this 7th day of July, 2006, by the Court of Special Appeals,

ORDERED, pursuant to Maryland Rule 8-206(d), that the matter proceed as follows without a further Prehearing Conference; and, it is further,

ORDERED, pursuant to Maryland Rule 8-602(a)(1), that the appellee Town of Oxford's "Motion to Dismiss Appeal" is hereby granted. The April 13, 2006 appeal of Talbot County, Maryland, and the April 24, 2006 cross-appeals of the Town of Oxford and the Commissioners of St. Michaels, are premature and hereby dismissed without prejudice to the right to note an appeal from a final judgment or other appealable collateral order; and it is further,

ORDERED that the matter is remanded to the Circuit Court for Talbot County for further proceedings upon the counterclaims for declaratory judgment filed by the Town of Oxford and of the Commissioners of St. Michaels including, without limitation, a declaration of the respective rights of the Town of Oxford, the Commissioners of St. Michaels, Miles Point Properties, LLC, and Midland Companies, Inc.

Each party to bear its own costs to date in this Court in the above-captioned matter.

James R. Eyler

James R. Eyler, Judge

MANDATE

Court of Special Appeals

Maryland Relay Service
1-800-735-2258
TT/VOICE

No. 00418, September Term, 2006

Talbot County, Maryland et al.
vs.
Department of Natural Resources,
Critical Area Commission et al.

JUDGMENT: June 21, 2006: Motion to Dismiss Appeal filed by counsel for the appellee.
June 30, 2006: Response to Motion to Dismiss Appeal filed by counsel for the appellant.
-July 7, 2006: Order of Court pursuant to Maryland Rule 8-206(d), that the matter proceed as follows without a further Prehearing Conference; Further Ordered, pursuant to Maryland Rule 8-602(a)(1), that the appellee Town of Oxford's "Motion to Dismiss Appeal" is hereby granted. The 4/13/06 appeal of Talbot Co., and 4/24/06 cross-appeals of Town of Oxford and Commissioners of St. Michaels, are premature and hereby dismissed without prejudice to the right to note an appeal from a final judgment or other appealable collateral order; Further Ordered that the matter is remanded to the Circuit Court for Talbot County for further proceedings upon the counterclaims for declaratory judgment filed by the Town of Oxford and of the Commissioners of St. Michaels including, without limitation, a declaration of the respective rights of the Town of Oxford, the Commissioners of St. Michaels, Miles Point Properties, LLC, and Midland Companies, Inc. Each party to bear its own costs to date in this Court in the above-captioned matter.

August 07, 2006: Mandate issued.

From the Circuit Court: for **TALBOT COUNTY**
002C04005095

STATE OF MARYLAND, Sct:

E. 2292

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this **seventh** *day of* **August** **2006**

Leslie D. Gradet
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

324-231

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2006 AUG 3 AM 11 36

THE CIRCUIT COURT FOR TALBOT COUNTY

TALBOT COUNTY MARYLAND	:	
v.	:	Civil # 2-C-04-005095 D
:	:	
DEPT. OF NATURAL RESOURCES	:	
CRITICAL AREA COMMISSION, et al	:	

: : : : :

MEMORANDUM

The Court has received the Order of the Court of Special Appeals, dated July 7, 2006.

The purpose of this Memorandum is to advise the parties of our determinations that compliance with the Order involves only supplementation of the Judgment of March 23, 2006; that no further hearing is required; and that the Court will supply a supplemental memorandum and amended Judgment in the near future.

John W. Sause, Jr.
Chief Judge (ret)
Sitting by Designation

August 2, 2006

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND

THE CIRCUIT COURT FOR TALBOT COUNTY

2006 AUG 14 PM 2 43

TALBOT COUNTY MARYLAND	:	
v.	:	**Civil # 2-C-04-005095 D**
DEPT. OF NATURAL RESOURCES CRITICAL AREA COMMISSION, et al	:	

: : : : :

SUPPLEMENTAL MEMORANDUM

This action has been returned by the Court of Special Appeals based upon findings that the Judgment of this Court does not "unambiguously declare the rights of the . . . [defendants]" and thus is "non-final under Md. Rule 2-602 . . . [because] without explicit declaration of the rights of four parties . . . the judgment does not conform to the principle that a trial court should declare in writing the rights of all parties who properly seek declaratory relief."

Rule 2-305 requires that a complaint contain "a demand for judgment for relief sought." The requests for relief in the counterclaims of the municipalities were identical, being that we "determine and adjudicate the rights and liabilities of the parties with respect to County Bill No. 933." We apologize for the plain errors in not expanding upon the statement in paragraph 1 of the former Judgment and of assuming that our findings and declaration that Bill 933 had been disapproved by the Critical Area Commission involved the inevitable and only result that no one, including the parties, had any rights or responsibilities with respect to Bill 933. A full statement of that proposition has been added to the Judgment which accompanies this Memorandum.

The Order of the Court of Special Appeals also directs "further proceedings upon the counterclaims for declaratory judgment filed by the Town of Oxford and of the Commissioners of St. Michaels including, without limitation, a declaration of the respective rights of the Town of Oxford, the Commissioners of St. Michaels, Miles Point Properties, LLC and Midland Companies, Inc." Out of an abundance of caution, we interpret this to mean that consideration should be given not only to rights and responsibilities relating to Bill 933, but also to the broader and more general question involving rights and responsibilities

of the parties with respect to distribution and use of growth allocation.[1]

We believe that the hearing already held and the Memorandum of March 23, 2006, are sufficient to permit a statement of those rights and responsibilities without further hearing or argument. Those matters are also included in the accompanying Judgment. If any party disagrees with proceeding in this manner, it would seem best in the interests of time and economy that it be first addressed by a motion to alter or amend the judgment in accordance with Rule 2-534.

John W. Sause, Jr.
Chief Judge (ret)
Sitting by Designation

August 14, 2006

[1] It should be noted, however, that Miles Point Properties, LLC, and Midland Companies, Inc., have not filed a counterclaim or otherwise requested declaratory relief.

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND

THE CIRCUIT COURT FOR TALBOT COUNTY

2006 AUG 14 PM 2 43

TALBOT COUNTY MARYLAND	:	
v.	:	**Civil # 2-C-04-005095 D**
DEPT. OF NATURAL RESOURCES CRITICAL AREA COMMISSION, et al	:	

: : : : :

JUDGMENT

For reasons stated in the Memorandum filed on March 23, 2006, the Order of the Court of Special Appeals dated, July 7, 2006, and the Supplemental Memorandum filed herewith, the Judgment dated March 23, 2006, is **VACATED** and, in lieu thereof, the Court **FINDS AND DECLARES** that:

As used in this Judgment:

critical area statute means Title 8, Subtitle 18, of the Natural Resources Article of the *Code*, specific provisions of which are herein cited as "NR §.

growth allocation and *program* have the meanings contained in paragraphs (10) and (14) of NR § 8-1802 (a).

Bill 933 means the proposal titled "A Bill to Review and Reallocate the Number of Reserved Acres of Growth Allocation Allocated among the Towns for Rezoning to Comply with the Chesapeake Bay Critical Area Commission Four-Year Review Requirement.", which was adopted by the Talbot County Council and forwarded for approval to the Critical Area Commission.

local jurisdictions refers to Talbot County and all municipal corporations within its borders with planning and zoning powers, in which any part of the Chesapeake Bay Critical Area is located. *Cf.* NR § 8-1802 (a)(13).

Propriety of Critical Area Commission action

1. Under NR § 8-1806, the Critical Area Commission "has all powers necessary for carrying out the purposes of this subtitle" and thus not only the right, but also the duty to do so. One of those purposes is that contained in NR § 8-1801: "the purpose . . . [t]o implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight."

2. The local jurisdictions are also required to observe the purpose stated in NR § 8-1801 and establish and implement local critical area programs:

a-in a consistent and uniform manner and .

b-consistent with the critical area statute and criteria adopted by the Critical Area Commission.

3. Criteria adopted by the Critical Area Commission in accordance with specific authority granted by NR § 8-1806 provide that local critical area programs are to be adopted and implemented::

a-in a manner which reflects consideration of cumulative impacts of regulated activities;

b-in coordination with each other; and

c-by action in coordination with each other when planning future expansion of intensely developed and limited development areas.

4. The Critical Area Commission has a duty and the authority under NR § 8-1809 (j). to withhold approval from proposed program amendments that do not meet the criteria adopted by the Commission and correctly decided that Bill 933 did not meet those criteria.

5. The Critical Area Commission acted correctly and within its authority under NR § 8-1806 to ensure that local programs are implemented in a consistent and uniform manner and under NR § 8-1809 (j) when it refused to approve Bill 933 as a proposed amendment to the Talbot County critical area program for the reason that it would negate valid action previously taken by the Commission.

6. The Critical Area Commission acted correctly and within its authority under NR § 8-1806 to ensure that local programs are implemented in a consistent and uniform manner and under NR § 8-1809 (j) when it refused to approve Bill 933 as a proposed amend-

ment to the Talbot County critical area program for the reason that it would create conflicts between the County program and several approved municipal programs.

7. There is insufficient proof to support a finding that the Critical Area Commission failed to act within the period for consideration and final action provided in NR § 8-1809 (m); and credible proof indicates that it complied with the statute in that respect.

Specific rights and duties with respect to Bill 933

8. Notwithstanding that the County otherwise had full authority to amend the *Talbot County Code*, its authority with respect to matters relating to the critical area program involved only the right to "propose" an amendment . NR § 8-1809 (h). As further stated in NR § 8-1809 (i), "A program may not be amended except with the approval of the Commission." The short of the matter is that Bill 933 was not in any sense an actual amendment of the program – or final action of any other sort. Bill 933, representing a proposal which was rejected by the only body having authority to grant final aapproval, has neither force or effect nor any other present significance, legal or factual. For all intents and purposes, it is nonexistent. Accordingly, none of the parties to this action has any rights and responsibilities with respect to Bill 933.

General rights and responsibilities of local jurisdictions

9. The critical area statute and criteria adopted by the Critical Area Commission, referred to in paragraphs 1, 2 and 3 of this Judgment, contemplate that growth allocation is to be shared by the local jurisdictions.

10. An individual local jurisdiction has no primary or superior right to determine the manner of distribution or use of growth allocation or to control or supervise the use of growth allocation by another local jurisdiction.

11. Accordingly, the portion of the critical area program of each local jurisdiction which relates to distribution of growth allocation must be established on a cooperative basis by all local jurisdictions (NR § 8-1801) and in a manner which is coordinated (COMAR 27.01.10.01), consistent and uniform (COMAR 27.01.02.06). In other words, growth allocation is to be distributed on the basis of an overall plan for distribution which is a synthesis of the individual programs adopted by the local jurisdictions.

12. While admitting that formulation of such a plan may not be a simple exercise, we reject the notion that responsible public officials are unable or unwilling to apply the common sense and good will necessary to meet the challenge. A point of departure

might lie in ascertaining the amount of growth allocation to which each local jurisdiction would be entitled if assigned in the same proportion that the critical area in that local jurisdiction bears to the critical area in all local jurisdictions. The suggestion of course does not have the imprimatur of law, but it certainly illustrates the plain need for cooperation and an overall comprehensive plan in order to avoid the absurd result of having the common pool of growth allocation dominated or gobbled up by a single local jurisdiction.

13. The program of each local jurisdiction, its consistency with the plan referred to in paragraph 11 of this Judgment and the proper cumulative effect of all local programs are ultimately subject to review and approval by the Critical Area Commission as set forth in paragraphs 1 through 6 of this Judgment.

Rights of other intervening defendants

14. The findings and declarations contained in paragraph 8 of this Judgment, are applicable to interveners Miles Point Properties, LLC and Midland Companies, Inc.

15. Miles Point Properties, LLC, and Midland Companies, Inc., have none of the rights and responsibilities applicable to local jurisdictions, as set forth in paragraphs 9 through 13 of this Judgment, including, in particular, the plan referred to in paragraph 11 for the reasons that:

a-Those rights or responsibilities involve only the performance of a statutory duty of the local jurisdictions to apportion growth allocation, which is a wholly governmental function and

b-No special right or interest has been acquired by reason of their participation in growth allocation proceedings in the Town of St. Michaels, as the local jurisdictions have a continuing right to change or amend any law or ordinance. As stated in *O'Donnell v. Bassler*, 289 Md. 501, 508, a court "must apply the law in effect at the time a case is decided, provided that its application does not affect intervening vested rights." In the latter regard:

> Generally, in order to obtain a vested right in an existing zoning use that will be protected against a subsequent change in a zoning ordinance prohibiting that use, the owner must initially obtain a valid permit. Additionally, in reliance upon the valid permit, the owner must make a substantial beginning in construction and in committing the land to the permitted use before the change in the zoning ordinance has occurred. *Steuart Petroleum Co. v. Board of County Comm'rs of St. Mary's County*, 276 Md. 435, 442-44 . . .; *County Council for Montgomery County*

v. District Land Corp., 274 Md. 691, 707 . . . .

On the basis of the facts present in this action, Miles Point Properties, LLC, and Midland Companies, Inc., have neither obtained a permit, nor made any substantial beginning in construction.

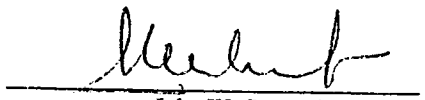
16. The findings and declarations contained in paragraph 15 of this Judgment are not intended to, and do not, affect the rights of Miles Point Properties, LLC, and Midland Companies, Inc., to exercise the same rights as any other interested citizen to attend and participate in any hearing relating to the adoption or amendment of a critical area program.

Other dispositions

17. Rule 2-305 requires that a complaint contain "a demand for judgment for relief sought." Between paragraphs 70 and 71, plaintiffs' second amended complaint contains a caption which reads "Count V Mandamus and Certiorari." No other reference is made to those causes of action; and, except for a general request for an order directing the Critical Area Commission to "adopt" Bill 933 [1]), the complaint requests only declaratory relief. We are left to wonder as to the existence of the special allegations necessary to entertain those extraordinary causes of action.

18. For the reasons set forth in paragraph 17, issuance of writs of mandamus or certiorari are **DENIED**.

19. The costs of this proceeding shall be paid by plaintiff.



John W. Sause, Jr.
Chief Judge (ret)
Sitting by Designation

August 14, 2006

[1] Which, in the context of plaintiffs' specific requests for relief, can only be read as a request to issue an injunction as supplementary relief in accordance with § 3-412 of the Maryland Uniform Declaratory Judgments Act.

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

TALBOT COUNTY, MARYLAND	:	
Plaintiff	:	
vs.	:	Civil Action No. 2-C-04-005095 DJ
DEPARTMENT OF NATURAL RESOURCES CRITICAL AREA COMMISSION FOR THE CHESAPEAKE: AND ATLANTIC COASTAL BAYS, et al.	:	
Defendants	:	

NOTICE OF APPEAL

Talbot County, Maryland, Plaintiff, by and through MICHAEL L. PULLEN, Talbot County Attorney, and KARPINSKI, COLARESI & KARP, DANIEL KARP and VICTORIA M. SHEARER, its attorneys, hereby files an appeal from the Supplemental Memorandum and Final Judgment of the court dated August 14, 2006.

OFFICE OF THE TALBOT COUNTY ATTORNEY

BY: Michael Pullen /vs

MICHAEL L. PULLEN
Talbot County Attorney
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KARPINSKI, COLARESI
& KARP

BY: Daniel Karp/vs
DANIEL KARP

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of September 2006, a copy of the foregoing Notice of Appeal was sent by first-class, postage prepaid to:

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Victoria Shearer
Plaintiff Talbot County, Maryland

TALBOT COUNTY, MARYLAND	*	IN THE
Plaintiff	*	CIRCUIT COURT
v.	*	FOR
DEPARTMENT OF NATURAL RESOURCES, et al.	*	TALBOT COUNTY,
	*	MARYLAND
Defendants	*	Case No. 20-C-04-005095DJ

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2006 SEP 11 PM 2 08

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NOTICE OF CROSS-APPEAL

The Town of Oxford ("Oxford"), Defendant/Counter-Plaintiff, by its attorneys, David R. Thompson, Brynja M. Booth and Cowdrey, Thompson & Karsten, pursuant to Maryland Rule 8-202(e) files this Notice of Cross Appeal from the Supplemental Memorandum and Final Judgment of the Court dated August 14, 2006 in the above-captioned matter.

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Brynja M. Booth
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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September, 2006, a copy of the foregoing Notice of Cross-Appeal was sent first class mail, postage prepaid to:

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