

Comments in Opposition to Bill #933 2003-2004 USA_S-1831_70 (1 of 2)

Summary of Comments in Opposition to Bill #933

The following points paraphrase and summarize much of the opposition to Talbot County Council Bill 933:

- 1) The bill was passed to effectively deny growth allocation to the Miles Point III project in St. Michaels.
- 2) The bill removes the decision-making abilities of the affected municipalities when considering development in and around their borders.
- 3) The County did not participate in the Miles Point proceedings since it was first introduced.
- 4) The County, according to its own Zoning Ordinance, was required to make periodic reviews of the growth allocation allotments and did not do so until now.
- 5) The bill is not consistent with State law concerning zoning powers.
- 6) The bill is in conflict with the Critical Area Criteria; specifically COMAR 27.01.02.06(2) which instructs counties to be in coordination with affected municipalities concerning growth allocation.
- 7) The bill creates an adversarial relationship between the towns and the County.
- 8) The bill makes no allowances for pending decisions, as is the case with the Miles Point project.
- 9) The bill is contrary to Smart Growth principles.
- 10) The bill encourages urban sprawl with large lots on septic systems.
- 11) The County should not have the right to veto Town growth allocation that went through a substantial public process, and the retroactive application of Bill 933 to growth allocation already approved should be rejected.
- 12) The bill penalizes jurisdictions that have demonstrated responsible land management.
- 13) The Talbot County Planning Commission gave Bill 933 an unfavorable recommendation to the County Council.
- 14) The bill places the County as the final decision maker for all requests for growth allocations by towns.
- 15) The existing County Code, Chapter 190 Section 190-109 Subsection D can be used to determine the allotment of future growth allocation.
- 16) The County did not coordinate prior to the introduction of Bill 933 with the towns, nor did they willingly coordinate during the public hearing process for the bill.
- 17) The bill may take away a town's ability to grow and may encourage sprawl.
- 18) The supplemental award of growth allocation process can create conflicting or competing interests between the County and the towns.

MAR 24 2004

REQUEST OF THE COUNTY COUNCIL
OF TALBOT COUNTY, MARYLAND

* BEFORE THE
* CRITICAL AREA COMMISSION

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

FOR APPROVAL OF
TALBOT COUNTY BILL NO. 933

* FOR THE CHESAPEAKE AND
* ATLANTIC COASTAL BAYS

* * * * *

**TESTIMONY OF MICHAEL HICKSON
ON BEHALF OF THE COMMISSIONERS OF ST. MICHAELS**

1 Good evening. My name is H. Michael Hickson. I am the Town Attorney for The
2 Commissioners Of St. Michaels, a municipal corporation which is located entirely within Talbot
3 County. I am filing with this testimony a document titled "MEMORANDUM OF LAW IN
4 OPPOSITION TO COUNTY BILL NO. 933," and I am furnishing a copy of that document to
5 counsel for the governmental entities represented here tonight.

6

7 I am here on behalf of The Commissioners Of St. Michaels (the "Town") to oppose
8 Talbot County Bill No. 933 (the "Bill"), and to request that the Critical Area Commission For
9 The Chesapeake And Atlantic Coastal Bays (hereinafter the "Commission") to reject and
10 disapprove the Bill.

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**I.
The Bill Is An Amendment That Fails To Meet
Statutory Requirements For Approval**

17 The Memorandum Of Law submitted tonight on behalf of the Town cites and quotes
18 from the critical area laws and regulations, which state that in order for you to approve an
19 amendment to a County Critical Area Program, you first must find that the County has
20 **cooperated and coordinated with the affected municipalities to establish a process to**
21 **accommodate the growth needs of the municipalities.** Chairman Madden has correctly
22 determined that Talbot County Bill No. 933 is an amendment to the Talbot County Critical Area
23 Program,. Therefore, before you can consider this Bill on any other issues, you first must find
evidence of the fact that it was produced as the result of cooperation and coordination with the

24 affected municipalities to establish a process to accommodate the growth needs of the
25 municipalities. For that reason, I will review some of the history of the County and the towns
26 relating to growth allocation leading up to, and including, the processing of Bill 933.

27

28 The Town is a Maryland municipal corporation whose corporate boundaries are located
29 solely within Talbot County, Maryland. Since 1972 the Town has independently exercised the
30 planning and zoning powers granted to it by Maryland Code, Article 66B (Land Use). Those
31 powers exercised by the Town have resulted in the adoption and amendment of comprehensive
32 plans, and in the enactment, administration and enforcement of zoning and subdivision laws,
33 applied solely to land within the Town. The County has consistently exercised planning and
34 zoning powers over land surrounding the Town that has not been subject to the Town planning
35 and zoning powers. Thus, historically there has been a well-defined division of planning and
36 zoning powers exercised by the Town and the County, separated by their political boundaries.

37

38 Pursuant to the legislative mandate of Section 8-1808 (a) (1), within a timely fashion
39 thereafter, the County and the Talbot towns conferred to identify potential growth areas and to
40 determine a quantity of growth allocation needed in the foreseeable future by each Talbot town.
41 Thereafter, the County and each Talbot town, independently of each other, formulated and
42 submitted its local Program to this Commission for review and approval. According to the
43 County Program, quantities of growth allocation were reserved for each Talbot town, including
44 245 acres of growth allocation reserved for the Town. After this Commission approved the local
45 critical area program for the Town (the "Town Program") it was enacted by the Town by
46 amendments to the Town Comprehensive Plan, to the Town Zoning Ordinance, and to the Town
47 Subdivision Ordinance. Since the establishment of the Town Program it has been implemented
48 solely by the Town, without interference by the County, but subject to the requisite approvals by
49 this Commission. At all times the Town Program has been intended by the Town to function
50 independently of the County, and the county has not interfered.

51

52 The immediate effect of Bill No. 933 is to withdraw all unused growth allocation
53 previously reserved to the towns in the County Program. The longer term effects of the Bill are

54 more far-reaching. The Bill has been determined by the Chairman of the Commission to be an
55 amendment, rather than a refinement, to the County Program. *See* Nat. Res. Art., § 8-1809
56 (Adopting programs; periodic reviews; amendment), Subsection (n). Therefore, the proposed
57 amendment to the County Program is subject to review by the Commission pursuant to Nat. Res.
58 Art., § 8-1809, Subsection (i).

59
60 **A.**

61 **There Has Been No Cooperation Or Coordination By The County**
62 **In Amending The County Program As It Affects The Towns**
63

64 One of the requirements for approval of Bill 933 is that the County cooperate and
65 coordinate with the towns in amending the County Program as it affects the towns. The
66 authority for this requirement is cited in the Town's Memorandum Of Law. I will address that
67 subject.

68
69 No application for the award of growth allocation was submitted to the Town until 1997.
70 At that time The Midland Companies ("Midland") submitted to the Town the first of its five (5)
71 such applications for the award of growth allocation, all involving some or all of the same land in
72 or adjacent to the Town. Seventy-two acres of that land was within the Town and the subject of
73 a 1980 annexation agreement in which specific zoning was agreed to and granted, and certain
74 development was contemplated. Therefore, while the Town had the duty to apply the applicable
75 critical area criteria to any application for growth allocation relating to that land, because of the
76 1980 annexation agreement the Town had less than the normal discretion to deny growth
77 allocation for that land if all criteria were satisfied. Shortly thereafter the Chesapeake Bay
78 Maritime Museum submitted to the Town an application for the award of growth allocation, but
79 that application was ultimately withdrawn. During the period from 1997 through the spring of
80 2002, three of the five Midland applications for the award of growth allocation were submitted to
81 the Town, processed, and denied by the Town. Each of those denials was appealed by Midland
82 through the judicial system, and the Town defended each of its decisions through the judicial
83 process. Further, at the conclusion of that litigation, at the urging of Maryland Conflict
84 Resolution Office ("MACRO"), a branch of the Maryland Attorney General's office, the Town
85 promoted non-binding arbitration between Town citizen representatives and Midland. MACRO

86 funded that arbitration, which resulted in some common ground being reached
87 participants. In the spring of 2003, the Town Commissioners conducted a public workshop with
88 Midland, in which a more specific group of common goals was identified and publicly
89 announced. The entire Midland process cost the Town well in excess of \$1 million, and was
90 highly publicized by frequent news accounts appearing in the local daily newspaper. The point
91 is, that at no during the five years of the Town's expensive and all-consuming disputes with
92 Midland, did the County take any action, publicly or otherwise, to indicate to the Town that
93 County was going to do anything that would relieve the Town of the ability to grant the growth
94 allocation sought by Midland. To the contrary, in March of 2000 the County informed the Town
95 that recent changes to the County's Program did not impact the Town, and that the Town
96 continued to have the sole power, under the County Program, to award the 245 acres of reserved
97 growth allocation. Based on that information, the Town ultimately concluded that it should set
98 about the task of working with Midland toward a formulation of a development plan that was the
99 most satisfactory to the Town, including issues of density, design, and critical area criteria. As
100 long as it appeared to the County that St. Michaels was not going to grant growth allocation to
101 midland, the county was content to let the Town fight the fight and spend its taxpayers' money
102 on expensive processing and litigation.

103

104 In the meantime, in the late spring of 2003 a third applicant, the Strausburgs, submitted
105 their application for the award of growth allocation to the Town, in conjunction with a petition
106 for annexation. The Strausburg development plan involves use of the annexed land substantially
107 the same as specified in the County comprehensive plan. Late in 2003 approximately 20 acres of
108 growth allocation was awarded to the Strausburgs. The Strausburg application and the Town
109 decision relating thereto were forwarded to this Commission, where the award of growth
110 allocation, including a 75 acre perpetual forest conservation easement donated to the Town by
111 the applicant, was reviewed and approved. Since then, all conditions of the Strausburg
112 annexation have been waived, so that the annexation of the Strausburg property to the Town is
113 complete.

114

115 While the Strausburg application and annexation were being processed, the Midland
116 matter was also making progress. The fourth Midland application for growth allocation,
117 involving a proposed project referred to as "Miles Point II", was submitted to the Town in
118 September of 2003. The Miles Point II application included approximately 70 acres of the land
119 that was annexed to the Town in 1980, and 18 acres of land located immediately outside of, but
120 proposed to be annexed into, the Town. The public hearing process for the Miles Point II
121 application by the Town Planning Commission lasted from late September through early
122 November of 2003. It was apparent from comments of some members of the Town Planning
123 Commission during that process that the Miles Point II application was likely to receive a
124 favorable recommendation to the Town Commissioners. On November 24, 2003, the Town
125 Planning Commission issued a written recommendation to the Town Commissioners in favor of
126 awarding growth allocation for the Miles Point II.

127

128 During the late stages of the Miles Point II proceedings at the Town Planning
129 Commission, after it was apparent that the Miles Point II application for growth allocation was
130 receiving far more favorable comments and reaction than previous applications, Bill 933 publicly
131 appeared for the first time on Friday, November 14, 2003, only as a title in a County website.
132 Upon inquiry by the Town to the County, copies of the Bill were not available, and no details on
133 its content were provided. At a public meeting of the County council on November 18, with the
134 Bill still unavailable to the public, the County Council introduced the Bill and referred it to the
135 County Planning Commission for a public hearing. At that time it was stated that Bill 933 was
136 necessary for the County to have enough growth allocation to award supplemental allocation to
137 the Town Easton. Three days later, the County Council held a hastily convened workshop in
138 which the members of the County Council chided the Commissioners of St. Michaels for
139 entertaining the Midland Growth Allocation request and voted unanimously to urge the
140 Commissioners to deny the Midland application.

141

142 Although the towns knew nothing about it until the last week, records of the Critical Area
143 Commission staff document the following contacts have occurred from Talbot County,
144 indicating that the County produced a Bill in the nature of what we are reviewing tonight, or at

145 least had thought enough about it enough to know there was going to be such a Bill, without any
146 contact or participation by the towns. Those records indicate the following contacts:

147 October 29, 2003 The County Manager called this Commission's Executive Director
148 and informed him that the Bill would be introduced on November 18 or 25, that
149 there would be a public hearing on December 16 or 23, that the Bill would be
150 voted on in late December or early January, and that the bill would be to this
151 Commission in January.

152 November 19, 2003 County councilman Carroll called this Commission's Executive
153 Director about growth allocation regarding Midlands and Easton, and suggested a
154 conference with the County Attorney.

155 November 24, 2003 There was a conference call with the County Manager.

156 November 24, 2003 There was a meeting about growth allocation between several
157 Commission staff members and County Councilman Carroll, the County
158 Manager, the County Attorney, and the County Planner. They discussed taking
159 all growth allocation from the towns.

160
161 On December 1, 2003, a letter was sent from the Talbot County Council to Senator
162 Madden, urging the Commission to deny any award of growth allocation the Town of St.
163 Michaels might make to Midland, citing lack of sewer capacity. The County letter does not
164 mention the scheduled sewer plant expansion and upgrade, but cites the outdated plants statistics
165 relating to the current sewer treatment plant.

166
167 On December 2, 2003, the County Planning Commission conducted a public hearing on
168 the Bill. At that hearing representatives of three of the towns appeared and testified against the
169 Bill, urging that before any such legislation should be introduced that there should be some
170 dialog between the County and the towns, in which the perceived problem and possible solutions
171 are revealed and discussed, to get input from the towns. The Talbot County Planning
172 Commission recommended to the County Council that Bill 933 be withdrawn, as it is
173 unnecessary, and urged the Council to talk to the towns about a compromise in the distribution of
174 Growth Allocation acreage. The County Planning Commission also noted that the language of

175 the Bill was incorrect, and that the County does have sufficient acreage to award supplemental
176 growth allocation to Easton without taking it from the other towns.

177

178 On December 16, 2003, the County Council conducted a public hearing on a revised
179 version of the Bill. The revised version, revealed to the public for the first time at that hearing,
180 had a different name, different rationale and numerous changes to the text compared to the
181 version reviewed by the County Planning Commission. The County Council voted to declare
182 that the revised version did not contain any substantive changes from the version previously
183 introduced by the County Council and heard by the County Planning Commission. At that
184 hearing town representatives appeared and requested a dialogue with the County Council and
185 Planning Commission to discuss the problem and find a better solution. At that same meeting
186 the County Council voted to deny the Town's request that the County expressly relinquish
187 County's five-year zoning control, pursuant to Maryland Code, Article 23A, Section 9 (c), over
188 the 18 acres recently annexed to the Town, and which was part of the Miles Point II application
189 for growth allocation. The fact that the Miles Point II application included 18 acres newly
190 annexed to the Town made the Miles Point II application subject to the condition that the land be
191 rezoned to a classification that is inconsistent with the existing County comprehensive plan with
192 the County's express consent. The fact that the County council refused to give that consent
193 made it legally impossible for the Town to rezone that newly annexed land for five years.
194 Therefore, Midland withdrew the Miles Point II application.

195

196 On December 23, 2003, the County Council voted to enact the Bill, to take effect 60 days
197 after its enactment; that is, February 22, 2004. After the enactment of Bill 933 by the County
198 Midland promptly submitted its fifth application to the Town for the award of growth allocation.
199 The fifth application ("Miles Point III") included only acreage from the Miles Point II
200 application that was annexed to the Town in 1980. Thus, all of the land that was the subject of
201 the Miles Point III application had been within the Town for 24 years, and was the subject of the
202 1980 annexation agreement. The Miles Point III application has since been the subject of a
203 public hearing by the Town Planning Commission, resulting in a favorable recommendation to

204 the Town Commissioners. The Town Commissioners issued their approval of the Miles Point III
205 application by written decision dated February 19, 2003.

206

207 Except for the public hearings conducted by the County Planning Commission and by the
208 County Council that are required by law to enact any County laws of this nature, no officer,
209 appointee or employee of the County has made any contact with the Talbot towns to inform the
210 towns that the County Council perceived a problem with the County Program, to inform the
211 towns of the nature of the perceived problem, to inform the towns as to how the County proposed
212 to address the perceived problem, or to solicit suggestions from the towns for a solution to the
213 perceived problem. **No meeting or discussion between any County representative and any of**
214 **the towns relating to Bill 933, or any of the proposed changes in the County Program, has**
215 **ever been suggested or participated in by any County representative before these Bills were**
216 **enacted by the County.**

217

218 It appears from these events that when the County determined that a Midland application
219 for growth allocation might be approved by St. Michaels, then the County quickly produced this
220 legislation to take control of the growth allocation so that St. Michaels could not grant growth
221 allocation without the County's consent.

222

223 **All of the above actions of the County regarding growth allocation and the proposed**
224 **amendment of the County Program can only be characterized as the antithesis of the**
225 **coordination and cooperation required by the critical area laws and regulations in the**
226 **amendment of a county program.**

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B.

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Bill 933 Does Not Accommodate Growth Needs Of The Affected Municipalities

231 Another requirement for approval is that Bill 933 accommodate growth needs of the
232 affected municipalities. The authority for this requirement is cited in the Town's Memorandum
233 Of Law. I will address that subject.

234

235 Several years ago the Talbot County Code was amended to provide that when a town has
236 exhausted the amount of growth allocation originally reserved to that town according to the
237 Talbot County critical area program (the "County Program") as originally enacted and approved
238 by the Commission, that town must thereafter seek supplemental growth allocation from the
239 Talbot County Council (the "County Council") for any additional growth allocation that is to be
240 awarded by that town. Instead of making a common pool of growth allocation available to all
241 the towns and the County, for each jurisdiction to use by independently judging the applications
242 that come to that jurisdiction, according to Bill 933 the County Council will sit as an independent
243 judge of all applications for growth allocation within the towns, and effectively have the veto
244 power if a town votes to award growth allocation. According to the County Program, the County
245 Council is required to apply the County Comprehensive Plan and County criteria, and has the
246 complete discretion to deny an application for growth allocation relating to land within a town
247 even if all criteria are met. If the County Council participates in the judgment of whether growth
248 allocation is granted within a town, there is no requirement that the County consider the town's
249 comprehensive plan, laws or criteria for the award of the growth, and the County Council has the
250 power to deny growth allocation despite the decision by the town government. Therefore, based
251 on the significant area of St. Michaels and Oxford located within the critical area, and to a lesser
252 extent in other towns, the County would effectively exercise planning and zoning control over
253 land within the municipalities.

254

255 Bill No. 933, which repeals a number of current provisions in the County Code that
256 constitute a part of the County Program, has the practical effect of withdrawing, or taking back,
257 from the Talbot towns all of the unused growth allocation that was previously reserved to them
258 by the County Program. Therefore, according to the Bill, all future applications for growth
259 allocation involving land within a town would follow the procedures established for the award of
260 supplemental growth allocation. Under the County Program, when seeking supplemental growth
261 allocation from the Talbot County (the "County"), both the town governing body and the County
262 Council sit in judgment of the application for growth allocation, with each body making its
263 decision independently of the other. The County Council would apply some criteria contained in
264 the County Program that is not contained in the town criteria, such as compatibility with the

265 County comprehensive plan. According to the County Program, if either governmental body
266 fails to approve an application for supplemental growth allocation, then that application is
267 considered denied.

268
269 In St. Michaels, over 68 percent of the land currently within the Town is located in the
270 critical area, and over 84 percent of the undeveloped land within the Town is located in the
271 critical area. The Town estimates that well more than one-half of the land within the Town of
272 Oxford is located within the critical area. Therefore, in St. Michaels and in Oxford the
273 withdrawal of all unused growth allocation from those towns would have the effect of
274 immediately transferring ultimate planning and zoning authority over a significant part of those
275 towns from the respective town governments to the County government.

276
277 According to the County Program, the process for the awarding of supplemental growth
278 allocation by the County Council is discretionary even when all criteria are met. Therefore, the
279 supplemental growth allocation process gives the County Council a "seat at the table" to
280 negotiate with any applicant for supplemental growth allocation within a town for benefits to the
281 County in exchange for the award by the County of supplemental growth allocation. This could
282 cause the County, and the town in which supplemental growth allocation is being sought, to have
283 conflicting or competing interests, which would affect on whether an application receives
284 approval.

285
286 Further, according to revised language of Bill 933, unused growth allocation would
287 include that growth allocation previously awarded by the towns in cases where the recipient has
288 not obtained "vested rights" in the growth allocation by actually commencing substantial
289 construction of improvements on the land pursuant to the development plan that was the subject
290 of the application for growth allocation. The requirement of vested rights is obviously aimed at
291 the growth allocation awarded to the Strausburg property, being mentioned in the Bill and being
292 the only case in which growth allocation was awarded but unused at that time.

293

294 Based on the above facts, it cannot reasonably be said that the intent of the County
295 or the effects of Bill 933 will be to accommodate growth needs of the affected municipalities
296 based on: (1) the lack of communication by the County with the towns in drafting and
297 processing Bill 933; (2) the manner in which the County has both (a) withheld assistance to
298 St. Michaels in its time of need with Midland, and (b) worked behind the scene against the
299 direction in which St. Michaels is now moving with growth allocation for Midland; (3) the
300 total withdrawal of all reserved growth allocation from the towns, which requires the towns
301 to seek supplemental growth allocation from the County on a case-by-case basis; (4) the
302 failure of the supplemental growth allocation procedures of the County Program to require
303 that the County Council address town criteria and needs; (5) the purely discretionary
304 power given to the County Council in the supplemental growth allocation procedures of the
305 County Program; and (6) the ultimate control over planning and zoning within the towns
306 given to the County Council in the supplemental growth allocation procedures of the
307 County Program. Therefore, Bill No. 933 lacks a second essential requirement for
308 approval by this commission under the State critical area laws and regulations.

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II.

311

The Bill Illegally Takes Planning And Zoning Powers From The Towns

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The County is apparently relying on State critical area law as its authority or excuse to take from the towns, and to exercise, planning and zoning power within the towns. Article 66B, Section 7.05 simply means that if there is a conflict between Article 66B and the critical areas law, either directly in the language or as the result of the way the critical area law is being applied, that Article 66B prevails over the critical area law.

By its language Bill 933 indicates that it is intended as a vehicle for the County to take planning and zoning powers from the towns. The second from the last "whereas" clause of the Bill states:

WHEREAS, growth in and around the towns affects not only the particular town, but also the County as a whole, and the County should, therefore, have some ability to protect the County's legitimate interests as they are affected by development in the critical area, as contemplated by State law when it gave this

326 control to the counties under the Chesapeake Bay Critical Area Protection
327 Program, § 8-1801, *et seq.*, Md. Ann. Code. . . .
328

329 There is nothing in the Chesapeake Bay Critical Area Protection Program of the Natural
330 Resources Article to indicate that growth allocation was intended by the Legislature to shift the
331 power of planning and zoning within the municipalities of the State from those municipalities to
332 the counties. Even if that was the stated intent in the critical area law, that law is pre-empted by
333 Article 66B.

334
335 Under State law, the zoning authority within municipal is granted exclusively to
336 municipalities by Maryland Code, Article 66B. Any State or local law contrary to the
337 proposition that planning and zoning powers within a municipality are within the exclusive
338 control of such municipality is addressed in Article 66B, Section 7.05, which states as follows:

339 Except as otherwise provided in this article, *any law or ordinance that is*
340 *inconsistent with or contrary to the provisions of this article is repealed to the extent of*
341 *the inconsistency.* [Emphasis added.]
342

343 Therefore, to the extent that Bill 933, or any of the County Program, is used to take
344 planning and zoning powers from the towns within their own territory, Bill 933 and the County
345 Program are illegal and unenforceable. Therefore, you should not approve Bill 933.

346
347 **III.**
348 **Bill No. 933 Makes The Award Of Growth Allocation Within Towns More Difficult**
349 **Than The Award Of Growth Allocation Outside Of Towns**
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351 In addition the critical area laws and regulations that indicate that growth should occur in
352 and around municipalities, other Maryland laws and State policies promote growth and
353 development within and around municipalities. Article 66B indicates that in rural areas, such as
354 Talbot County, growth should be directed to municipalities. In that regard Maryland Code,
355 Article 66B, Section 1.01 (*Visions*), states, in part:

356 In addition to the requirements of § 3.05(c) of this article, *a commission*
357 *shall implement the following visions* through the [comprehensive] plan
358 described in § 3.05 of this article:

- 359 (3) *In rural areas, growth is directed to existing population centers*
360 *and resource areas are protected.*

361 [Emphasis added.]

362
363 The Smart Growth initiatives, adopted by the previous State administration, promoted the
364 idea that growth and development should occur in and around municipalities and villages to
365 make the construction and operation of infrastructure more economical and to preserve
366 agricultural and natural resources. The Talbot County Council adopted the Smart Growth
367 concepts in its recent decision approving supplementary growth allocation for the Easton Village
368 project. (See copy of the Talbot County Council's Easton Village decision attached to the Town
369 Memorandum Of Law.)

370
371 The policy that growth and development should occur within or around established
372 municipalities and villages, on October 8, 2003, Governor Ehrlich issued Executive Order
373 2003.33, announcing the Maryland Priority Places Strategy, which Order states, in part:

- 374 A. Established. There shall be a *Maryland Priority Places Strategy*. The
375 Strategy shall be developed and *implemented by the Maryland*
376 *Department of Planning*.
- 377 B. Purpose. The Strategy shall be to identify specific State actions that will
378 be undertaken and definitive procedures that will be instituted *to*
379 *accomplish the following objectives:*
- 380 (1) *Achieve the established goals of State planning policy and local*
381 *comprehensive plans for development, economic growth,*
382 *community revitalization, and resource conservation;*
- 383 (2) Accomplish these diverse goals through mutually supportive
384 means; and
- 385 (3) *Promote fiscal responsibility of State government to achieve the*
386 *best "public return" on State investments in these goals.*
- 387 C. The Maryland Priority Places Strategy shall be *based on:*
- 388 (1) *The eight statewide visions* [contained in Art. 66B, § 1.01
389 (Visions)] *of State Planning Policy for Economic Growth,*
390 *Resource Protection and Planning established in the Economic*
391 *Growth, Resource Protection and Planning Act of 1992;*
- 392 (2) *The Priority Funding Areas Act of 1997* [codified in the Maryland
393 Code, State Finance And Procurement Art., Division I (State
394 Finance), Title 5 (State Planning), Subtitle 7b (Priority Funding
395 Areas)]; *and*
- 396 (3) Existing State and *local planning requirements, comprehensive*
397 *plans, regulations, powers, and processes.*
- 398 D. *The Maryland Department of Planning shall implement the Maryland*
399 *Priority Places Strategy by developing initiatives to accomplish the*
400 *following:*

- 401 (1) Ensure that State programs, regulations and procedures, and funds
402 are used strategically to achieve the goals of local comprehensive
403 plans and State planning policy and *provide for the infrastructure*
404 *necessary to support planned growth;*
405 (2) Better enforce existing laws, regulations and procedures that are
406 designed to ensure mutually supportive public investments and
407 actions;
408 (3) *Streamline State regulations and procedures to make quality,*
409 *well designed growth easier to build inside Priority Funding*
410 *Areas;*
411 (4) Identify key plans and functions of State government that affect
412 growth and development and make appropriate changes to those
413 plans and functions to better support the goals of the Maryland
414 Priority Places Strategy;
415 (5) *Encourage resource protection and production outside of the*
416 *Priority Funding Areas* for environmental protection, recreation,
417 tourism, forestry, and agricultural purposes; and
418 (6) Enhance existing brownfield cleanup and redevelopment, transit
419 oriented development, and community revitalization efforts.
420 [*Emphasis added.*]
421

422 County Bill No. 933 and the County Program are contrary to the above-referenced State
423 laws and policies because they immediately require weighing of evidence, interpretation of
424 criteria, and approval by two governmental bodies, making complication and/or denial more
425 likely.
426

427 In short, the effects of Bill 933 are neither necessary nor appropriate to accommodate
428 growth within the Talbot towns. Moreover the Bill frustrates other Maryland laws and policies.
429

430 IV.

431 **Bill No. 933 Was Enacted For Purposes Unrelated To The Critical Area Laws**

432 As a condition of the award of growth allocation for Easton Village the County Council
433 exacted from the developer an "offer" to pay \$1± million, or to perform work worth an
434 equivalent amount, for off-site improvements to Glebe Road. That exaction may lack the
435 essential nexus to the impacts of the Easton Village project upon the County, and/or that may
436 lack the roughly proportionality thereto, required by the United State Supreme Court in cases on
437 that subject. In any event, that exaction has no relationship to the criteria for the award of
438 growth allocation. Given the fact that Bill No. 933 reserves for the County Council the
439

440 discretion to deny any request for the award of supplementary growth allocation despite the fact
441 that all criteria therefore are met, Bill No. 933 lacks the reasonable necessity for the protection of
442 the public health, welfare and safety. Such unbridled discretion in the County Program leads to
443 the possibility that Bill No. 933 is intended as a vehicle for the County to make more exactions
444 similar to that in the case of Easton Village, which are unrelated to the purposes of the State
445 critical area laws.

446
447 **V.**

448 **There Is No Demonstrated Need For Bill No. 933 To Be Operative**
449 **Prior To Commission Approval Or To Require Exercising The Award**
450

451 Bill 933 is worded such that it is intended to take effect 60 days after its passage by the
452 County council, and to negate any award of growth allocation awarded by a town and approved
453 by this Commission if no construction has begun pursuant to such award and approval of growth
454 allocation before the effective date of Bill No. 933. The Town urges that the award of growth
455 allocation by the Town for the Strausburg property is a valuable asset for the Town, and should
456 not hinge on the start of construction at any time other than as provided in the decision of the
457 town awarding growth allocation. Therefore, even if the Commission determines to approve Bill
458 No. 933, other than to control the Town's prior annexation, planning and zoning decisions
459 relating to the Strausburg annexation and award of growth allocation, there is no demonstrated
460 need for it to take effect before it is approved by the Commission, or to in effect negate prior
461 awards of growth allocation. Further, the requirement of substantial construction to vest rights in
462 an award of growth allocation will only promote immediate construction when that may not
463 necessarily be desirable in each case. Moreover, the County has ignored the power of
464 municipalities to contractually grant vested rights by means of a development rights and
465 responsibilities agreement pursuant to the power granted by Maryland Code, Art. 66B, § 13.01.

466
467 **VI.**

468 **A Proposed Solution**
469

470 The Commissioner Of St. Michaels fully recognize that this may not be the arena to
471 propose a solution to a problem that is not the Commission's duty or the Town's duty to cure.
472 However, in an effort to save the local jurisdictions from what may be a continuing dispute, the

473 Town offers the following proposal, including the condition that by accepting this solution no
474 party thereto is waiving or acknowledging any interpretation or rights as far as the power to
475 control growth allocation is concerned.

476 The towns would raise no objection to Talbot County "taking back" into a
477 common pool the unused remainder of the growth allocation acreage originally
478 reserved for the towns in the County Local Program, provided that the County
479 Program is amended by legislation which provides as follows:

- 480 a. The unused remainder of the reserved growth allocation acreage is held
481 in a common pool that would be available to all towns, and after the
482 County's other growth allocation acreage is exhausted, the common pool
483 growth allocation acreage would also be available to the County;
- 484 b. Except during the five-year regarding an annexation during which the
485 County does not otherwise relinquish the zoning control provided by
486 Article 23A, Section 9 (c), the decision of whether to grant growth
487 allocation within the town, or regarding land which is the subject of a
488 petition for annexation to the Town, will be made as it has been, solely by
489 the towns but subject to approval by the Critical Area Commission,
490 without any participation in the decision-making process by the County;
491 and
- 492 c. The requirement of substantial construction for vesting be eliminated
493 from the determination of when growth allocation acreage is used. In the
494 alternative, include in the definition a reasonable amount of time period
495 within which the applicant must either start construction of the project or
496 to sign a development rights and responsibilities agreement with the
497 town. This would need worded so that the Strausburgs have a reasonable
498 time to preserve their growth allocation.

499 The Town believes that this proposal would meet the County's legitimate concerns and preserve
500 the towns' rights.

501

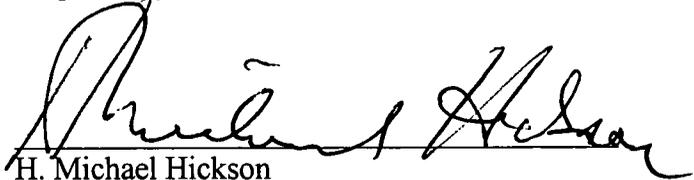
502

503

CONCLUSION

504 For each of the reasons stated above, any one of which would be legally and factually
505 sufficient to do so, The Commissioners Of St. Michaels urge that the Critical Area Commission
506 For The Chesapeake And Atlantic Coastal Bays DISAPPROVE of Talbot County Bill No. 933 in
507 its entirety. Failing that, the Town urges that the effect of the amendments not be applied
508 retrospectively or requiring substantial construction to vest rights in the award of growth allocation.

Respectfully submitted,



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TOWN OF ST. MICHAELS
PERCENT OF TOWN LAND, SUBDIVIDABLE LAND, IN THE CRITICAL AREA
1/13/04

Description of Land Area	Total Town Acreage (includes river bottoms) (in acres)	Town Acreage (exclusive of river bottom) (in acres)	Town Land in Critical Area (in acres)	Town Land in Critical Area (by %)	Total Undeveloped Subdividable Land In Town (in acres)	Undeveloped Subdividable Land In Critical Area (in acres)	Undeveloped Subdividable Land In Critical Area (by %)
Town as of 2001	529.000	529.000	351.907	66.52%	85.4	83.2	97.4%
Strausburg Property (exclusive of Broad Creek Bottom annexed and Route 33)	136.391	136.391	100.988	74%	136.391	100.988	74%
Md. Route 33 annexed w/Strausburg land	8.395	8.395	0	0	N/A	N/A	N/A
State owned wetlands annexed w/Strausburg	0.823	0.823	0.823	100%	N/A	N/A	N/A
Bed of Broad Creek annexed with Strausburg	13.275		0	0	N/A	N/A	N/A
Huntman Property (exclusive of Miles River Bottom annexed)	17.156	17.156	17.156	100%	17.156	17.156	100%
Bed of Miles River annexed with Huntman	24.910		0	0	N/A	N/A	N/A
TOTAL	729.905	691.765	470.874	68.068%	238.9	201.35	84.3%

CRITICAL AREA COMMISSION

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CHESAPEAKE BAY
CRITICAL AREA COMMISSION

REQUEST OF THE COUNTY COUNCIL
OF TALBOT COUNTY, MARYLAND

* BEFORE THE
* CRITICAL AREA COMMISSION

FOR APPROVAL OF
TALBOT COUNTY BILL NO. 933

* FOR THE CHESAPEAKE AND
* ATLANTIC COASTAL BAYS

* * * * *

MEMORANDUM OF LAW IN OPPOSITION TO COUNTY BILL NO. 933

The Commissioners Of St. Michaels (the "Town"), a municipal corporation located entirely within Talbot County, by its attorney, H. Michael Hickson, respectfully files this Memorandum Of Law in opposition to Talbot County Bill No. 933, in addition to the written testimony filed and the oral comments made on behalf of the Town at the panel hearing of the Critical Area Commission For The Chesapeake And Atlantic Coastal Bays (hereinafter the "Commission"). In addition to the prepared written testimony to be filed herewith, the Town relies on the oral comments of its representatives at the hearing in support hereof. The Town hereby respectfully requests that the Commission DENY approval sought by Talbot County for its Bill No. 933. The applicable law, and the reasons why Talbot County Bill No. 933 should be denied, are discussed herein.

**I.
FACTUAL BACKGROUND**

The Commissioners Of St. Michaels (hereinafter the "Town") is a Maryland municipal corporation whose corporate boundaries are located solely within Talbot County, Maryland. Since 1972 the Town has independently exercised the planning and zoning powers granted to it by Maryland Code, Article 66B (Land Use). Those powers exercised by the Town have resulted in the adoption and amendment of comprehensive plans, and in the enactment, administration and enforcement of zoning and subdivision laws, applied solely to land within the Town.¹ The County has consistently exercised planning and zoning powers over land surrounding the Town that has not been subject to the Town planning and zoning powers.

¹ The Town exercised planning and zoning powers over an extra-territorial area within the County pursuant to a State law until that law was declared invalid. See *Gordon v. Commissioners of St. Michaels*, 278 Md. 128, 359 A.2d 543 (1976).

The Critical Area laws were first enacted by the State in 1984. Natural Resources Art., Section 8-1801 (Legislative findings), (a) (9) recognizes that there is "a critical and substantial State interest for the benefit of current and future generations in fostering more sensitive development activity *in a consistent and uniform manner along shoreline areas* of the Chesapeake . . . [Bay] and [its] tributaries so as to minimize damage to water quality and natural habitats." [*Emphasis added.*] Natural Resources Article, Section 8-1801, Subsection (b), states:

- (b) **It is the purpose of the General Assembly in enacting this subtitle:**
- (1) To establish a Resource Protection Program for the Chesapeake and the Atlantic Coastal Bays and their tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize damage to water quality and natural habitats; and
 - (2) **To implement the Resource Protection Program on a cooperative basis between the State and affected local governments**, with local governments *establishing and implementing their programs in a consistent and uniform manner* subject to State criteria and oversight. [*Emphasis added.*]

The Critical Area laws empowered the Commission to adopt criteria for local programs, but limited the ability of the Commission to make substantive changes in such criteria that has previously been adopted. Those limitations are to prevent substantive amendments to the criteria by the Commission that would frustrate compliance therewith by the local governments and thereby "upset the *cooperative endeavor* between the State and the local governments that is *at the heart of the legislation.*" [*Emphasis added.*] 73 Opinions of the Attorney General (1988) [Opinion No. 88-001]; and 72 Opinions of the Attorney General (3), (3) (1987) [Opinion No. 87-016, at 5]. See Nat. Res. Art., § 8-1801 (b) (2).

Following the theme of cooperation to accomplish the purposes of the Critical Area laws established by Section 8-1801, (b) (2), the Commission adopted a regulation, designated as COMAR 27.01.02.06 A, which states, in part:

Location and Extent of Future Intensely Developed and Limited Development Areas.

- A. **Intensely developed and limited development areas may be increased subject to these guidelines:**
- (2) When planning future expansion of intensely developed and limited development areas, *counties, in coordination with affected municipalities, shall establish a process to*

accommodate the growth needs of the municipalities.
[*Emphasis added.*]

Maryland Code, Natural Resources Article, Section 8-1808, (Program development, implementation and approval), Subsection (a) (1), states:

- (a) (1) It is the intent of this subtitle that *each local jurisdiction shall have primary responsibility for developing and implementing a program*, subject to review and approval by the Commission.
[*Emphasis added.*]

Pursuant to the legislative mandate of Section 8-1808 (a) (1), within a timely fashion thereafter, the County and the Talbot towns conferred to identify potential growth areas and to determine a quantity of growth allocation needed in the foreseeable future by each Talbot town. Thereafter, the County and each Talbot town, independently of each other, formulated and submitted its local Program to this Commission for review and approval. According to the County Program, quantities of growth allocation were reserved for each Talbot town, including 245 acres of growth allocation reserved for the Town. After this Commission approved the local critical area program for the Town (the "Town Program") it was enacted by the Town by amendments to the Town Comprehensive Plan, to the Town Zoning Ordinance, and to the Town Subdivision Ordinance. Since the establishment of the Town Program it has been implemented solely by the Town, without interference by the County, but subject to the requisite approvals by this Commission. At all times the Town Program has been intended by the Town to function independently of the County, and the county has not interfered.

The immediate effect of Bill No. 933 is to withdraw all unused growth allocation previously reserved to the towns in the County Program. The longer term effects of the Bill are more far-reaching. The Bill has been determined by the Chairman of the Commission to be an amendment, rather than a refinement, to the County Program. *See Nat. Res. Art., § 8-1809 (Adopting programs; periodic reviews; amendment), Subsection (n).* Therefore, the proposed amendment to the County Program is subject to review by the Commission pursuant to Nat. Res. Art., § 8-1809, Subsection (i).

A.
There Has Been No Cooperation Or Coordination By The County

In Amending The County Program As It Affects The Towns

No application for the award of growth allocation was submitted to the Town until 1997. At that time The Midland Companies ("Midland") submitted to the Town the first of its five (5) such applications for the award of growth allocation, all involving some or all of the same land. Seventy-two acres of that land was within the Town and the subject of a 1980 annexation agreement in which specific zoning was agreed to and granted, and certain development was contemplated. Therefore, while the Town had the duty to apply the applicable critical area criteria to any application for growth allocation relating to that land, because of the 1980 annexation agreement the Town had less than the normal discretion to deny growth allocation for that land if all criteria were satisfied. Shortly thereafter the Chesapeake Bay Maritime Museum submitted to the Town an application for the award of growth allocation, but that application was ultimately withdrawn. During the period from 1997 through the spring of 2002, three of the five Midland applications for the award of growth allocation were submitted to the Town, processed, and denied by the Town. Each of those denials was appealed by Midland through the judicial system, and the Town defended each of its decisions through the judicial process. Further, at the conclusion of that litigation, at the urging of Maryland Conflict Resolution Office ("MACRO"), a branch of the Maryland Attorney General's office, the Town promoted non-binding arbitration between Town citizen representatives and Midland. MACRO funded that arbitration, which resulted in some common ground being reached by the participants. In the spring of 2003, the Town Commissioners conducted a public workshop with Midland, in which a more specific group of common goals was identified and publicly announced. The entire Midland process cost the Town well in excess of \$1 million, and was highly publicized by frequent news accounts appearing in the local daily newspaper. The point is, that at no during the five years of the Town's expensive and all-consuming disputes with Midland, did the County take any action, publicly or otherwise, to indicate to the Town that County was going to do anything that would relieve the Town of the ability to grant the growth allocation sought by Midland. To the contrary, in March of 2000 the County informed the Town that recent changes to the County's Program did not impact the Town, and that the Town continued to have the sole power, under the County Program, to award the 245 acres of reserved growth allocation. Based on that information, the Town ultimately concluded that it should set about the task of working with

Midland toward a formulation of a development plan that was the most satisfactory to the Town, including issues of density, design, and critical area criteria.

In the meantime, in the late spring of 2003 a third applicant, the Strausburgs, submitted their application for the award of growth allocation to the Town, in conjunction with a petition for annexation. The Strausburg development plan involves use of the annexed land substantially the same as specified in the County comprehensive plan. Late in 2003 approximately 20 acres of growth allocation was awarded to the Strausburgs. The Strausburg application and the Town decision relating thereto were forwarded to this Commission, where the award of growth allocation, including a 75 acre perpetual forest conservation easement donated to the Town by the applicant, was reviewed and approved. Since then, all conditions of the Strausburg annexation have been waived, so that the annexation of the Strausburg property to the Town is complete.

While the Strausburg application and annexation were being processed, the Midland matter was also making progress. The fourth Midland application for growth allocation, involving a proposed project referred to as "Miles Point II", was submitted to the Town in September of 2003. The Miles Point II application included approximately 70 acres of the land that was annexed to the Town in 1980, and 18 acres of land located immediately outside of, but proposed to be annexed into, the Town. The public hearing process for the Miles Point II application by the Town Planning Commission lasted from late September through early November of 2003. It was apparent from comments of some members of the Town Planning Commission during that process that the Miles Point II application was likely to receive a favorable recommendation to the Town Commissioners. On November 24, 2003, the Town Planning Commission issued a written recommendation to the Town Commissioners in favor of awarding growth allocation for the Miles Point II.

During the late stages of the Miles Point II proceedings at the Town Planning Commission, after it was apparent that the Miles Point II application for growth allocation was receiving far more favorable comments and reaction than previous applications, Bill 933 publicly appeared for the first time on Friday, November 14, 2003, only as a title in a County website.

Upon inquiry by the Town to the County, copies of the Bill were not available, and no details on its content were provided. At a public meeting of the County council on November 18, with the Bill still unavailable to the public, the County Council introduced the Bill and referred it to the County Planning Commission for a public hearing. At that time it was stated that Bill 933 was necessary for the County to have enough growth allocation to award supplemental allocation to the Town Easton. Three days later, the County Council held a hastily convened workshop in which the members of the County Council chided the Commissioners of St. Michaels for entertaining the Midland Growth Allocation request and voted unanimously to urge the Commissioners to deny the Midland application.

Although the towns knew nothing about it until the last week, records of the Critical Area Commission staff document the following contacts have occurred from Talbot County, indicating that the County produced a Bill in the nature of what we are reviewing tonight, or at least had thought enough about it enough to know there was going to be such a Bill, without any contact or participation by the towns. Those records indicate the following contacts:

October 29, 2003 The County Manager called this Commission's Executive Director and informed him that the Bill would be introduced on November 18 or 25, that there would be a public hearing on December 16 or 23, that the Bill would be voted on in late December or early January, and that the bill would be to this Commission in January.

November 19, 2003 County councilman Carroll called this Commission's Executive Director about growth allocation regarding Midlands and Easton, and suggested a conference with the County Attorney.

November 24, 2003 There was a conference call with the County Manager.

November 24, 2003 There was a meeting about growth allocation between several Commission staff members and County Councilman Carroll, the County Manager, the County Attorney, and the County Planner. They discussed taking all growth allocation from the towns.

On December 1, 2003, a letter was sent from the Talbot County Council to Senator Madden, urging the Commission to deny any award of growth allocation the Town of St.

Michaels might make to Midland, citing lack of sewer capacity. The County letter does not mention the scheduled sewer plant expansion and upgrade, but cites the outdated plants statistics relating to the current sewer treatment plant.

On December 2, 2003, the County Planning Commission conducted a public hearing on the Bill. At that hearing representatives of three of the towns appeared and testified against the Bill, urging that before any such legislation should be introduced that there should be some dialog between the County and the towns, in which the perceived problem and possible solutions are revealed and discussed, to get input from the towns. The Talbot County Planning Commission recommended to the County Council that Bill 933 be withdrawn, as it is unnecessary, and urged the Council to talk to the towns about a compromise in the distribution of Growth Allocation acreage. The County Planning Commission also noted that the language of the Bill was incorrect, and that the County does have sufficient acreage to award supplemental growth allocation to Easton without taking it from the other towns.

On December 16, 2003, the County Council conducted a public hearing on a revised version of the Bill. The revised version, revealed to the public for the first time at that hearing, had a different name, different rationale and numerous changes to the text compared to the version reviewed by the County Planning Commission. The County Council voted to declare that the revised version did not contain any substantive changes from the version previously introduced by the County Council and heard by the County Planning Commission. At that hearing town representatives appeared and requested a dialogue with the County Council and Planning Commission to discuss the problem and find a better solution. At that same meeting the County Council voted to deny the Town's request that the County expressly relinquish County's five-year zoning control, pursuant to Maryland Code, Article 23A, Section 9 (c), over the 18 acres recently annexed to the Town, and which was part of the Miles Point II application for growth allocation. The fact that the Miles Point II application included 18 acres newly annexed to the Town made the Miles Point II application subject to the condition that the land be rezoned to a classification that is inconsistent with the existing County comprehensive plan with the County's express consent. The fact that the County council refused to give that consent

made it legally impossible for the Town to rezone that newly annexed land for five years. Therefore, Midland withdrew the Miles Point II application.

On December 23, 2003, the County Council voted to enact the Bill, to take effect 60 days after its enactment; that is, February 22, 2004. After the enactment of Bill 933 by the County Midland promptly submitted its fifth application to the Town for the award of growth allocation. The fifth application ("Miles Point III") included only acreage from the Miles Point II application that was annexed to the Town in 1980. Thus, all of the land that was the subject of the Miles Point III application had been within the Town for 24 years, and was the subject of the 1980 annexation agreement. The Miles Point III application has since been the subject of a public hearing by the Town Planning Commission, resulting in a favorable recommendation to the Town Commissioners. The Town Commissioners issued their approval of the Miles Point III application by written decision dated February 19, 2003.

Except for the public hearings conducted by the County Planning Commission and by the County Council that are required by law to enact any County laws of this nature, no officer, appointee or employee of the County has made any contact with the Talbot towns to inform the towns that the County Council perceived a problem with the County Program, to inform the towns of the nature of the perceived problem, to inform the towns as to how the County proposed to address the perceived problem, or to solicit suggestions from the towns for a solution to the perceived problem. **No meeting or discussion between any County representative and any of the towns relating to Bill 933, or any of the proposed changes in the County Program, has ever been suggested or participated in by any County representative before these Bills were enacted by the County.**

It appears from these events that when the County determined that a Midland application for growth allocation might be approved by St. Michaels, then the County quickly produced this legislation to take control of the growth allocation so that St. Michaels could not grant growth allocation without the County's consent.

All of the above actions of the County regarding growth allocation and the proposed amendment of the County Program can only be characterized as the antithesis of the coordination and cooperation required by the Critical area laws and regulations in the amendment of a county program.

B.

Bill 933 Does Not Accommodate Growth Needs Of The Affected Municipalities

Several years ago the Talbot County Code was amended to provide that when a town has exhausted the amount of growth allocation originally reserved to that town according to the Talbot County critical area program (the "County Program") as originally enacted and approved by the Commission, that town must thereafter seek supplemental growth allocation from the Talbot County Council (the "County Council") for any additional growth allocation that is to be awarded by that town. Instead of making a common pool of growth allocation available to all the towns and the County, for each jurisdiction to use by independently judging the applications that come to that jurisdiction, according to Bill 933 the County Council will sit as an independent judge of all applications for growth allocation within the towns, and effectively have the veto power if a town votes to award growth allocation. According to the County Program, the County Council is required to apply the County Comprehensive Plan and County criteria, and has the complete discretion to deny an application for growth allocation relating to land within a town even if all criteria are met. If the County Council participates in the judgment of whether growth allocation is granted within a town, there is no requirement that the County consider the town's comprehensive plan, laws or criteria for the award of the growth, and the County Council has the power to deny growth allocation despite the decision by the town government. Therefore, based on the significant area of St. Michaels and Oxford located within the critical area, and to a lesser extent in other towns, the County would effectively exercise planning and zoning control over land within the municipalities.

Bill No. 933, which repeals a number of current provisions in the County Code that constitute a part of the County Program, has the practical effect of withdrawing, or taking back, from the Talbot towns all of the unused growth allocation that was previously reserved to them by the County Program. Therefore, according to the Bill, all future applications for growth

allocation involving land within a town would follow the procedures established for the award of supplemental growth allocation. Under the County Program, when seeking supplemental growth allocation from the Talbot County (the "County"), both the town governing body and the County Council sit in judgment of the application for growth allocation, with each body making its decision independently of the other. The County Council would apply some criteria contained in the County Program that is not contained in the town criteria, such as compatibility with the County comprehensive plan. According to the County Program, if either governmental body fails to approve an application for supplemental growth allocation, then that application is considered denied.

In St. Michaels, over 68 percent of the land currently within the Town is located in the critical area, and over 84 percent of the undeveloped land within the Town is located in the critical area. The Town estimates that well more than one-half of the land within the Town of Oxford is located within the critical area. Therefore, in St. Michaels and in Oxford the withdrawal of all unused growth allocation from those towns would have the effect of immediately transferring ultimate planning and zoning authority over a significant part of those towns from the respective town governments to the County government.

According to the County Program, the process for the awarding of supplemental growth allocation by the County Council is discretionary even when all criteria are met. Therefore, the supplemental growth allocation process gives the County Council a "seat at the table" to negotiate with any applicant for supplemental growth allocation within a town for benefits to the County in exchange for the award by the County of supplemental growth allocation. This could cause the County, and the town in which supplemental growth allocation is being sought, to have conflicting or competing interests, which would affect on whether an application receives approval.

Further, according to revised language of Bill 933, unused growth allocation would include that growth allocation previously awarded by the towns in cases where the recipient has not obtained "vested rights" in the growth allocation by actually commencing substantial construction of improvements on the land pursuant to the development plan that was the subject

of the application for growth allocation. The requirement of vested rights is obviously aimed at the growth allocation awarded to the Strausburg property, being mentioned in the Bill and being the only case in which growth allocation was awarded but unused at that time.

Based on the above facts, it cannot reasonably be said that the intent of the County or the effects of Bill 933 will be to accommodate growth needs of the affected municipalities based on: (1) the lack of communication by the County with the towns in drafting and processing Bill 933; (2) the manner in which the County has both (a) withheld assistance to St. Michaels in its time of need with Midland, and (b) worked behind the scene against the direction in which St. Michaels is now moving with growth allocation for Midland; (3) the total withdrawal of all reserved growth allocation from the towns, which requires the towns to seek supplemental growth allocation from the County on a case-by-case basis; (4) the failure of the supplemental growth allocation procedures of the County Program to require that the County Council address town criteria and needs; (5) the purely discretionary power given to the County Council in the supplemental growth allocation procedures of the County Program; and (6) the ultimate control over planning and zoning within the towns given to the County Council in the supplemental growth allocation procedures of the County Program. Therefore, Bill No. 933 lacks a second essential requirement for approval by this commission under the State critical area laws and regulations.

II. ARGUMENT

A.

The Bill Is An Amendment That Fails To Meet The Statutory Standard

Natural Resources Article, Section 8-1809, Subsection (j), states:

- (j) The Commission shall approve programs and *program amendments that meet:*
 - (1) The *standards set forth in § 8-1808(b)* (1) through (3) of this subtitle; and
 - (2) The *criteria adopted by the Commission* under § 8-1808 of this subtitle. [*Emphasis added.*]

Therefore, the reasonable implication of Section 8-1809 (j) is that an amendment to a local program cannot be approved unless it meets such standards and criteria. *Guardian Life Ins. Co. of America v. Insurance Com'r of State of Md.*, 293 Md. 629, 446 A.2d 1140 (1982).

One requirement for approving the amendments effected by Bill 933, according to Natural Resources Article, Section 8-1809, Subsection (j), is satisfying the standards set forth in Natural Resources Article, Section 8-1808 (Program development, implementation and approval), Subsection (b), which states, in part:

(b) A program shall consist of those elements which are *necessary or appropriate*:

(3) *To establish land use policies* for development in the Chesapeake Bay Critical Area . . . *which accommodate growth* and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts. [*Emphasis added.*]

As will be discussed subsequently in this Memorandum, the County lacks the power to lawfully enact any planning, zoning or subdivision laws that would be effective within the Talbot towns because those powers are granted by law to the municipalities by Maryland Code, Article 66B. Further, the Bill would have the effect of taking away from the Talbot towns the power that they now have to use the growth allocation that is presently reserved to them according to the County Program. Presently, with respect to applications for unused reserved growth allocation involving land that has been annexed to the town for more than five years, the dual approval process, involving the County and the town in which the subject land is located, does not apply. Therefore, because a recommendation for supplemental growth allocation would not need to be sought from the County Planning Commission, and because a majority of the County Council would not have to vote to award supplemental growth allocation, it is now easier to obtain growth allocation within a town than it would be if the Bill is approved by the Commission. Therefore, it cannot reasonably be said that the Bill would accommodate growth. On the contrary, the Bill would make obtaining growth allocation, which is a requirement for growth in the critical area, more difficult than it is now.

Another requirement for approving the amendments effected by Bill 933, according to Natural Resources Article, Section 8-1809, Subsection (j), is satisfying the criteria adopted by the Commission under Nat. Res. Art. § 8-1808. One such criterion is set forth in COMAR

("Code of Maryland Regulations") 27.01.02.06 A (2), which requires that intensely developed and limited development areas may be increased pursuant to a process "*to accommodate the growth needs of the municipalities*" established by the County "*in coordination with affected municipalities*". [Emphasis added.]

The County Program, as proposed to be amended by the Bill, does not meet the growth needs of the Town. Moreover, to this date the County has not made any inquiry of the Town seeking to learn about its growth needs.

According to the way in which Bill 933 was developed by the County, without the knowledge or input of the most affected towns, one cannot reasonably conclude that the terms of the Bill were arrived at by any coordination by the County with the affected towns. See this Memorandum Of Law, Section I (Factual Background). Suddenly changing a basic component of the County Program, without consultation or input, thereby placing the towns under the absolute control of the County, indicates the antithesis of "*the cooperative endeavor* between the State and the local governments that is *at the heart of the legislation*," described in 73 Opinions of the Attorney General (1988) [Opinion No. 88-001]; and 72 Opinions of the Attorney General (3), (3) (1987) [Opinion No. 87-016, at 5].

As discussed above, Nat. Res. Art, § 8-1801 (b) (2), strives for "*local governments establishing and implementing their programs in a consistent and uniform manner.*" The sudden changes in its program at this time, and the effects of those changes on the programs of the Talbot towns, hardly promote consistency or uniformity among local programs.

Moreover, there is no evidence to indicate that the growth needs of the towns have been addressed. On the contrary, after a costly five-year legal struggle by the Town with Midland, it appears that the County only sprang into action by enacting the Bill after it appeared that the Miles Point II application would be approved by the Town. The Bill had the effect of thwarting approval of the Miles Point II application, which would have permitted environmentally responsible growth within the Town. Similar to the history of the Easton Village project, recently approved by the County Council for 156 acres of supplemental growth allocation, the

proposed Miles Point project has been universally been spoken of with disfavor in public by the County Council. Therefore, one could reasonably conclude that the only thing that could cure such a negative attitude about the proposed Miles Point project, and lead to the award of supplemental growth allocation for that project by the County, would be a healthy dose of money paid by the developer to the County. The amount of money paid to or for the County is not the appropriate measure of what development projects are worthy of growth allocation within a town.

The County has shown, by its actions and its inactions, that there has been no coordination or cooperation by the County with the Towns in arriving at Bill 933.

An administrative agency is governed by the enabling statutes that created it. *Department of Economic and Employment Development v. Lilley*, 106 Md.App. 744, 666 A.2d 921 (1995). Generally, an administrative agency is required to follow its own procedures or regulations. Regulations validly prescribed by a government administrator are binding upon him even when the administrative action is discretionary in nature. *Pollock v. Patuxent Inst. Bd. of Review*, 374 Md. 463, 823 A.2d 626 (Md. 2003).

Since the Commission is controlled by Natural Resources Article, Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program), and is bound to follow the regulations it has adopted, it is respectfully suggested that in its review of County Bill No. 933 it is incumbent upon the Commission, in exercise of its oversight responsibilities, to investigate and to determine whether, and to what extent, there has been, and will be, "implement[ed] . . . on a cooperative basis between the . . . affected local governments", "with local governments establishing and implementing their programs in a consistent and uniform manner", "in coordination with affected municipalities", resulting in the establish[ment of] a process to accommodate the growth needs of the municipalities." The County has refused to engage in any meaningful dialog with the Towns relating to Bill No. 933, and clearly, Bill No. 933 would add a layer of criteria and a layer of administrators that are, based on the State laws, regulations and oversight already put in place by the Legislature, unnecessary. In other words, according to the Legislature, a municipality is quite capable, with the oversight of the Commission, of

establishing and administering its own program within its jurisdictional territory to accomplish the goals of the Chesapeake Bay Critical Area Protection Program interference by the County.

Based on the failure of the Bill to satisfy the criteria for approval pursuant to Natural Resources Article, Section 8-1809, Subsection (j), and based on the unnecessary and counterproductive effect of the Bill on the purposes of the State Program, approval of the Bill should be denied by the Commission. That should be the end of the matter, but in case it isn't, the Bill violates other State laws and policies.

B.

The Bill Illegally Takes Planning And Zoning Powers From The Towns

As discussed above in Section II, A, of this Memorandum, there are some powers within municipalities, such as planning and zoning, that are granted exclusively to those municipalities. The Maryland Constitution, Article XI-E (Municipal Corporations), § 3 (Power of home rule), says:

Any such municipal corporation, now existing or hereafter created, shall have the power and authority, (a) to amend or repeal an existing charter or local laws relating to the incorporation, organization, government, or affairs of said municipal corporation heretofore enacted by the General Assembly of Maryland, and (b) to adopt a new charter, and to amend or repeal any charter adopted under the provisions of this Article.

In *Campbell v. Mayor and Aldermen of the City of Annapolis*, 44 Md.App. 525, 532, 409 A.2d 1111 (1980), the court said:

One of the objectives of home rule was to assure Maryland municipalities the power of self-government. . . . The intent of Article XI-E was specifically to grant Maryland municipalities the *power to control their own local affairs*, and was *designed to permit local legislation to be enacted solely by those directly affected*. . . . [*Emphasis added.*]

Maryland Code, Art. 23A (Municipal Corporations), Section 9 (Definitions), Subsection (c), Part (1), states:

(1) A municipal corporation which is subject to the provisions of Article XI-E of the Maryland Constitution may not amend its charter or exercise its powers of annexation, incorporation or repeal of charter as to affect or impair in any respect the powers relating to sanitation, including sewer, water and similar facilities, and zoning, of the Washington Suburban Sanitary Commission or of the

Maryland-National Capital Park and Planning Commission. Except that where any area is annexed to a municipality authorized to have and having then a planning and zoning authority, *the municipality shall have exclusive jurisdiction over planning and zoning and subdivision control within the area annexed*; provided nothing in this exception shall be construed or interpreted to grant planning and zoning authority or subdivision control to a municipality not authorized to exercise that authority at the time of such annexation; and further *provided, that no municipality annexing land may for a period of five years following annexation, place that land in a zoning classification which permits a land use substantially different from the use for the land specified in the current and duly adopted master plan or plans or if there is no adopted or approved master plan, the adopted or approved general plan or plans of the county or agency having planning and zoning jurisdiction over the land prior to its annexation without the express approval of the board of county commissioners or county council of the county in which the municipality is located.* [Emphasis added.]

Therefore, it is clear that except during the initial five-year period after an annexation, as provided in Maryland Code, Art. 23A, § 9 (c), a county has no planning or zoning authority over land within a Maryland municipality.

Maryland Code, Art. 23A (Municipal Corporations), § 2 (Express Powers), states, in pertinent part:

(a) *The legislative body of every incorporated municipality in this State, except Baltimore City, by whatever name known, shall have general power to pass such ordinances not contrary to the Constitution of Maryland, public general law, or, except as provided in § 2B of this article, public local law as they may deem necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality;* but nothing in this article shall be construed to authorize the legislative body of any incorporated municipality to pass any ordinance which is inconsistent or in conflict with any ordinance, rule or regulation passed, ordained or adopted by the Maryland-National Capital Park and Planning Commission and the Washington Suburban Sanitary Commission, and nothing in this article shall be taken or construed to affect, change, modify, limit or restrict in any manner any of the corporate powers of the Mayor and City Council of Baltimore which it now has or which hereafter may be granted to it.

(b) *In addition* to, but not in substitution of, the powers which have been, or may hereafter be, granted to it, *such legislative body also shall have the following express ordinance-making powers:*

(30) To provide reasonable *zoning regulations* [Emphasis added.]

Exclusive planning powers are granted to municipalities by Maryland Code, Art. 66B, Section 3.01 (Grant of power), which states:

- (a) A **local jurisdiction** may enact, adopt, amend, and execute a plan as provided in this article and create by ordinance a planning commission with the powers and duties set forth in this article.
- (b) A **municipal corporation may** be included as part of a county plan under this article *if*:
 - (1) The **legislative body of the municipal corporation**, by a resolution directed to the legislative body of the county in which the municipal corporation is located, **indicates the intention to participate** in the county plan; **and**
 - (2) The legislative body of the county approves the resolution. [**Emphasis added.**]

Article 66B, Section 1.00 (Definitions), includes the following definitions applicable to the above statute:

- (f) (1) "Local legislative body" means the elected body of a political subdivision.
- (2) "Local legislative body" includes:
 - (i) A board of county commissioners;
 - (ii) A county council; **or**
 - (iii) **A governing body of a municipal corporation.**
- (g) "Local jurisdiction" means a county **or** municipal corporation and the territory within which its powers may be exercised. [**Emphasis added.**]

Thus, a municipality is not included in a county comprehensive plan unless the governing body of the municipality elects to do so.

Under State law, the zoning authority within municipal is granted exclusively to municipalities by Maryland Code, Article 66B, Section 4.01 (Grant of powers; statement of policy; construction of powers), which states:

- (a) (1) **It is the policy of this State that:**
 - (i) The orderly development and use of land and structures requires comprehensive regulation through the implementation of **planning and zoning controls**; and
 - (ii) **Planning and zoning controls shall be implemented by local government.** [**Emphasis added.**]

Note that the term "local government" is not plural, indicating that planning and zoning within the same jurisdiction cannot be controlled by more than one local government. Moreover, the language of Article 66B, Section 1.00 (Definitions), indicates that the term "local government"

means a county *or* a municipality, not a county *and* a municipality.

Maryland Code, Article 66B, Section 4.04 (Method of procedure) states, in part:

- (a) *A local legislative body* shall provide for the manner in which its regulations and restrictions and the boundaries of its districts shall be determined, established, enforced, and periodically amended or repealed. [*Emphasis added.*]

Further, Article 66B, Section 4.05 (Amendment, repeal and reclassification), states, in pertinent part:

- (a) (1) Zoning regulations, restrictions, and boundaries may periodically be amended or repealed.
- (2) (i) Where the purpose and effect of the proposed amendment is to change the zoning classification, *the local legislative body* shall make findings of fact [*Emphasis added.*]

These provisions of Article 66B clearly indicate that only one legislative body is intended to control the zoning within a town, and the term "local legislative body" is defined to include the legislative body for a town.

Any law contrary to the proposition that planning and zoning powers within a municipality are within the exclusive control of such municipality is addressed in Article 66B, Section 7.05 (Repeal of inconsistent laws), which states, in pertinent part, as follows:

Except as otherwise provided in this article, *any law or ordinance that is inconsistent with or contrary to the provisions of this article is repealed to the extent of the inconsistency.* [*Emphasis added.*]

A local government ordinance which conflicts with a public general law enacted by the General Assembly is preempted and thus is invalid. *See, e.g., Boulden v. Mayor*, 311 Md. 411, 415-417, 535 A.2d 477, 479-480 (1988). A local ordinance is pre-empted by conflict when it prohibits an activity which is intended to be permitted by state law, or permits an activity which is intended to be prohibited by state law. *Boulden v. Mayor, supra*. By reason of the fact that in St. Michaels and Oxford are practically surrounded by water, most of there is in the critical area. The effect of Bill No. 933 would be to immediately remove all growth allocation reserve from those towns. Therefore, as to all land of St. Michaels and Oxford in the critical area, Bill 933 would place the ultimate planning and zoning powers in the County Council. The County has taken its authority to establish a local program under the Critical Area laws, and it has used that

authority to craft Bill 933 in such a way that in conflicts with Article 66B. Not all local laws establishing local programs conflict with Article 66B. Because Bill No. 933, as written creates a conflict with Article 66B, and because it is a local ordinance, the bill is pre-empted by Article 66B. Moreover, even if it were not a local law, Article 66B, Section 7.05 settles all conflicts in favor of Article 66B. The Court of Appeals has held that, in implementing its express powers, the council of a charter home rule county is empowered to enact countywide legislation effective in all municipal corporations within the county. *Town of Forest Heights v. Frank*, 291 Md. 331, 341-46, 435 A.2d 425 (1981). When the county has so acted, its legislation prevails over conflicting municipal enactments, unless the General Assembly prescribes differently by public general law. *Town of Forest Heights v. Frank, supra* at 350-51. In this instance, Article 66B, Section 7.05, a public general law, clearly indicates that that the planning and zoning power within their borders, granted to municipalities by Article 66B, prevails over other laws.

Given the fact that the County was not interested in seeking or listening to the concerns of the towns before enacting Bill 933, one could conclude that the Bill is more intended as a vehicle for the County to grab planning and zoning powers from the Towns than to address legitimate growth allocation concerns. That conclusion is reinforced by the second from the last "whereas" clause of the Bill, which states:

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

There is nothing in the Chesapeake Bay Critical Area Protection Program of the Natural Resources Article to indicate that growth allocation was intended by the Legislature to shift the power of planning and zoning within the municipalities of the State from those municipalities to the counties.

C.

Bill No. 933 Makes The Award Of Growth Allocation Within Towns More Difficult Than The Award Of Growth Allocation Outside Of Towns

The critical area laws are not the only Maryland laws and State policies that promote growth and development within municipalities. Article 66B indicates that in rural areas, such as

Talbot County, growth should be directed to municipalities. In that regard Maryland Code, Article 66B, Section 1.01 (*Visions*), states, in part:

In addition to the requirements of § 3.05(c) of this article, ***a commission shall implement the following visions*** through the [comprehensive] plan described in § 3.05 of this article:

- (3) ***In rural areas, growth is directed to existing population centers*** and resource areas are protected.
[Emphasis added.]

The Smart Growth initiatives, adopted by the previous State administration, promoted the idea that growth and development should occur in and around municipalities and villages to make the construction and operation of infrastructure more economical and to preserve agricultural and natural resources. The Talbot County Council adopted the Smart Growth concepts in its recent decision approving supplementary growth allocation for the Easton Village project. (Copy of the Talbot County Council's Easton Village decision attached.)

The policy that growth and development should occur within or around established municipalities and villages, on October 8, 2003, Governor Ehrlich issued Executive Order 2003.33, announcing the Maryland Priority Places Strategy, which Order states, in part:

- A. Established. There shall be a ***Maryland Priority Places Strategy***. The Strategy shall be developed and ***implemented by the Maryland Department of Planning***.
- B. Purpose. The Strategy shall be to identify specific State actions that will be undertaken and definitive procedures that will be instituted ***to accomplish the following objectives***:
 - (1) ***Achieve the established goals of State planning policy and local comprehensive plans for development, economic growth, community revitalization, and resource conservation;***
 - (2) Accomplish these diverse goals through mutually supportive means; and
 - (3) ***Promote fiscal responsibility of State government to achieve the best "public return" on State investments in these goals.***
- C. The Maryland Priority Places Strategy shall be ***based on***:
 - (1) ***The eight statewide visions*** [contained in Art. 66B, § 1.01 (Visions)] ***of State Planning Policy for Economic Growth, Resource Protection and Planning established in the Economic Growth, Resource Protection and Planning Act of 1992;***
 - (2) ***The Priority Funding Areas Act of 1997*** [codified in the Maryland Code, State Finance And Procurement Art., Division I (State Finance), Title 5 (State Planning), Subtitle 7b (Priority Funding Areas)]; ***and***

- (3) Existing State and *local planning requirements, comprehensive plans, regulations, powers, and processes.*
- D. *The Maryland Department of Planning shall implement the Maryland Priority Places Strategy by developing initiatives to accomplish the following:*
- (1) Ensure that State programs, regulations and procedures, and funds are used strategically to achieve the goals of local comprehensive plans and State planning policy and *provide for the infrastructure necessary to support planned growth;*
 - (2) Better enforce existing laws, regulations and procedures that are designed to ensure mutually supportive public investments and actions;
 - (3) *Streamline State regulations and procedures to make quality, well designed growth easier to build inside Priority Funding Areas;*
 - (4) Identify key plans and functions of State government that affect growth and development and make appropriate changes to those plans and functions to better support the goals of the Maryland Priority Places Strategy;
 - (5) *Encourage resource protection and production outside of the Priority Funding Areas* for environmental protection, recreation, tourism, forestry, and agricultural purposes; and
 - (6) Enhance existing brownfield cleanup and redevelopment, transit oriented development, and community revitalization efforts.
- [*Emphasis added.*]

County Bill No. 933 and the County Program are contrary to the above-referenced State laws and policies because they immediately require weighing of evidence, interpretation of criteria, and approval by two governmental bodies, making complication and/or denial more likely.

The best illustration of this point is the written decision of the Talbot County Council approving supplemental growth allocation for the Easton Village project. Many of the criteria addressed by the County Council are also required to be addressed by the Town Commissioners of St. Michaels according to Town laws. It is conceivable that with regard to any such issue involving a record containing the same facts, that there will be substantial evidence supporting both sides of the same issue, and that the Town Commissioners could reach one conclusion while the County Council reaches the opposite conclusion on the same issue. Such a situation would create a legal quagmire if the owner of the affected land were to seek judicial review. In addition, there are criteria imposed by the County Code that are not imposed by the Town, and

which would not be an issue if not injected by the County into the supplementary growth allocation process. This includes such issues as compatibility with the County comprehensive plan. No other development within the Town of St. Michaels is required to meet such a standard. Further, the compatibility of a proposed development with existing and proposed development and land use in the surrounding area is not limited to areas within the Town. It stands to reason that development within a municipality would be more dense than development outside of the Town. Measuring the compatibility of development against County standards is an unnecessary, and at best duplicitous, requirement that lends nothing to a process that is intended to permit environmentally responsible development within municipalities. At worst, Bill No. 933 establishes a process that is ripe for: (1) legally cumbersome, arbitrary and capricious results; (2) treatment of property owners in violation of their due process and equal protection rights; and (3) administration by decision-makers who are not elected or appointed by the electorate of, or live within, the town in which the affected land is located. As it is in conflict with Maryland Executive Order 2003.33, County Bill No. 933 should not be approved by the Critical Area Commission For The Chesapeake And Atlantic Coastal Bays.

In short, the effects of Bill 933 are neither necessary nor appropriate to accommodate growth within the Talbot towns. Moreover the Bill frustrates other Maryland laws and policies.

D.

Programs Of A Town And The County Are Not Intended To Be Combined

Maryland Code, Natural Resources Article, Section 8-1808 (Program development, implementation and approval), provides, in part:

- (a) (1) It is the intent of this subtitle that *each local jurisdiction* shall have *primary* responsibility for developing and implementing *a program*, subject to review and approval by the Commission. [Emphasis added.]

Maryland Code, Natural Resources Article, Section 8-1802 (Definitions; persons covered), Subsection (a), Part (11), defines the term "local jurisdiction" as "a county, *or a municipal corporation with planning and zoning powers*, in which any part of the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area, as defined in this subtitle, is located." [Emphasis added.] Note that the word "or" does not have the same meaning as "and".

The language of Section 8-1802, Subsection (a), Part (11), is uncomplicated, in that it is referring to a local jurisdiction as either a county or a municipality, but not both a county and a municipality, relating to the application of development and implementation of a program affecting the same area.

Maryland Code, Natural Resources Article, Section 8-1802 (Definitions; persons covered), Subsection (a), Part (12) (i), defines the term "Program" to mean "the critical area protection program of a local jurisdiction." All municipal corporations within Talbot County have planning and zoning powers. St. Michaels, Oxford and Easton each have their own critical area protection program, as defined by Maryland Code, Natural Resources Article, Section 8-1802 (Definitions; persons covered), Subsection (a), Part (12) (i).

Thus, the term "program" is intended to refer to the critical area protection program of a county or a municipality; not a combined critical area protection program of more than one jurisdiction. Moreover, when the program of a town or a county is approved by the Commission, that program is reviewed, and is approved or fails, on its own; not in combination with the program of another local jurisdiction. The County Program was reviewed and approved by the Commission independently of the Talbot town programs. Each Talbot town program was reviewed and approved by the Commission independently of the County Program. The language of the Natural Resources Article, Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program), is clear that it does not contemplate the combination of local programs.

However, if local programs are intended to be implemented in combination, as is now contemplated by Talbot County with the enactment of Bill 933, then it is incumbent upon the Commission to review the County Program in conjunction with each town program, to determine whether, when administered in combination, they are compatible with the goals and objectives of the State critical area laws and regulations, and that they are not contrary to, or in conflict with, each other and/or other State land use laws or policies.

E.
In Light Of Existing Town Programs, Bill No. 933 Is Unnecessary
And Therefore Violates Substantive Due Process

Substantive due process, as applied in Maryland, requires that where a subordinate agency of the State, such as a municipal corporation, acts directly in the exercise of the police power, a limitation upon its right to exercise the power is that it must act *impartially*, that any interference by it with the unrestricted use of private property must be *reasonably necessary* to the public welfare, and consistent with the prohibitions of the Constitution" [*Emphasis added.*] *Mayor of Pocomoke City v. Standard Oil Co.*, 162 Md. 368, 376-77, 159 A. 902 (1932). The validity of legislative and governmental acts imposing building and use restrictions upon real property must be reasonably necessary for the adequate protection of the public welfare, safety, health, comfort, or morals. Maryland courts employ a heightened level of scrutiny - something over and above the "minimum rationality" test required under the federal constitution. Although almost any zoning ordinance could be said to be rationally related to a legitimate governmental interest, the "substantial relationship" test is not so yielding. *Levinson v. Montgomery County*, 95 Md.App. 307, 319-21, 620 A.2d 961 (1993).

Talbot County, by Bill No. 933, proposes to establish a second layer of regulation and administration over land within the critical area in municipalities, as if to say that the regulation and administration established and carried on by the towns, pursuant to State law, is not sufficient. Yet, there is nothing to indicate that the towns have failed to adequately establish and implement their own programs. Therefore, the application of additional County standards and discretion to land within towns is inappropriate and is not reasonably necessary. On the contrary, if the County is only concerned that towns will "hoard" growth allocation, then all the County needs do is establish a common bank of growth allocation that can be drawn upon by all Talbot towns and the County, subject to the criteria of the local program under which the growth allocation is being awarded. The function of the Commission is to act as an overseer. By injecting itself into the growth allocation process involving the towns the County Council is in effect saying that it has no confidence in the towns or in this Commission to follow the law and exercise sound judgment.

F.

Bill No. 933 Was Enacted For Purposes Unrelated To The Critical Area Laws

As a condition of the award of growth allocation for Easton Village the County Council exacted from the developer an "offer" to pay \$1± million, or to perform work worth an equivalent amount, for off-site improvements to Glebe Road. That exaction may lack the essential nexus to the impacts of the Easton Village project upon the County, and/or that may lack the roughly proportionality thereto, required by *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994); and by *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 841, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987). See *City of Annapolis v. Waterman*, 357 Md. 484, 745 A.2d 1000 (2000). In any event, that exaction has no relationship to the criteria for the award of growth allocation. Given the fact that Bill No. 933 reserves for the County Council the discretion to deny any request for the award of supplementary growth allocation despite the fact that all criteria therefore are met, Bill No. 933 lacks the reasonable necessity for the protection of the public health, welfare and safety. Such unbridled discretion in the County Program leads to the possibility that Bill No. 933 is intended as a vehicle for the County to make more exactions similar to that in the case of Easton Village, which are unrelated to the purposes of the State critical area laws.

G.

There Is No Demonstrated Need For Bill No. 933 To Be Operative Prior To Commission Approval Or To Require Exercising The Award

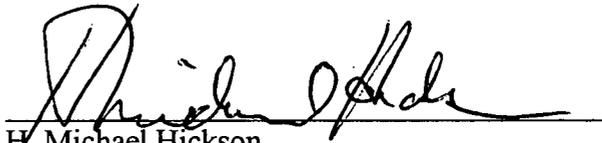
Bill 933 is worded such that it is intended to take effect 60 days after its passage by the County council, and to negate any award of growth allocation awarded by a town and approved by this Commission if no construction has begun pursuant to such award and approval of growth allocation before the effective date of Bill no. 933. The Town urges that the award of growth allocation by the Town for the Strausburg property is a valuable asset for the Town, and should not hinge on the start of construction at any time other than as provided in the decision of the town awarding growth allocation. Therefore, even if the Commission determines to approve Bill No. 933, there is no demonstrated need for it to take effect before it is approved by the Commission, or to in effect negate prior awards of growth allocation. Further, the requirement of substantial construction to vest rights in an award of growth allocation will only promote immediate construction when that may not necessarily be desirable in each case. Moreover, the County has ignored the power of municipalities to contractually grant vested rights by means of

a development rights and responsibilities agreement pursuant to the power granted by Maryland Code, Art. 66B, § 13.01.

III. CONCLUSION

For each of the reasons stated above, any one of which would be legally and factually sufficient to do so, The Commissioners Of St. Michaels urge that the Critical Area Commission For The Chesapeake And Atlantic Coastal Bays DISAPPROVE of Talbot County Bill No. 933 in its entirety. Failing that, the Town urges that the effect of the amendments not be applied retrospectively or requiring substantial construction to vest rights in the award of growth allocation.

Respectfully submitted,



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Telephone: 410-546-4644
Attorney for:
The Commissioners of St. Michaels

Attachment: Talbot County Council decision approving supplemental growth allocation for Easton Village project.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of March, 2004, an exact a copy of the foregoing MEMORANDUM OF LAW IN OPPOSITION TO COUNTY BILL NO. 933 was delivered to the following:

Marianne D. Mason
Assistant Attorney General
For The Department Of Natural Resources

Michael L. Pullen
Talbot County Attorney

David R. Thompson
Attorney for the Towns of Oxford and Trappe

Christopher B. Kehoe
Attorney for the Town of Easton



H. Michael Hickson

Town Memorandum Of Law In Opposition To County Bill No. 933.doc

IN THE MATTER OF : BEFORE THE
THE APPLICATION OF : TALBOT COUNTY COUNCIL
THE TOWN OF EASTON, AND :
ELM STREET DEVELOPMENT, LC :
BILL NO. 925 :

FINDINGS OF FACT

The Talbot County Council ("County Council") held on December 9, 2003, a public hearing on the application of the Town of Easton and Elm Street Development Company, LC (the "Town" and "Applicant" respectively) for an award of growth allocation to the Town of Easton to convert Lot No. 16 of the Ratcliffe Manor Planned Unit Development, (the "Subject Property" or the "Property") from Resource Conservation Area (RCA) to Limited Development Area (LDA) and Intense Development Area (IDA) in order to construct thereon a planned unit development to be know as "Easton Village." The Applicant is the contract purchaser of the Property and the developer of the Easton Village development (the "Development")

Procedural History

The Subject Property is a 357± acre parcel of land located on the south side of St. Michael's Road and on the west bank of the Tred Avon River in the Town of Easton, described as a portion of Parcels 58 and 126 on Talbot County Tax Map Number 34. The Subject Property is more particularly shown on a plat entitled "Ratcliffe Subdivision PUD," dated May 19, 1999 as revised May 25, 1999, prepared by Stagg Design, Inc. (the "Ratcliffe PUD"). The specifics of the proposed development are set out on a series of four drawings¹ which are collectively referred to as the "Development Plans." The Ratcliffe PUD plat and Development Plans are part of the record.

The drawings are titled: "SITE ANALYSIS EASTON VILLAGE ON THE TRED AVON"; "PUD DEVELOPMENT PLAN EASTON VILLAGE ON THE TRED AVON"; "PHASING PLAN EASTON VILLAGE ON THE TRED AVON" and "GROWTH ALLOCATION PLAN EASTON VILLAGE ON THE TRED AVON." All are dated May 9, 2003 and all were prepared by Lane Engineering, Inc.

In 2001, the Applicant filed an application to amend Ordinance No. 410. In that application, the Applicant proposed to construct 340 dwelling units on Lot No. 16. The application generated a great deal of public concern and the application was denied by the Town Council for the Town of Easton (the "Town Council") in written Findings of Fact dated June 3, 2002. While the Town Council unanimously agreed that the Applicant had met the minimum criteria necessary to warrant approval, it nonetheless determined that granting the application was not in the best interests of the Town and its citizens at the time. Therefore the County Council never had to reach a decision on whether to grant Chesapeake Bay Critical Area Growth Allocation to the Town for use at Easton Village.

Following denial by the Town Council, the Applicant conducted a series of meetings with public interest groups, concerned citizens and public officials to make its proposal more acceptable to Town and County officials and the public. Once that process was completed, the Applicant filed a second application. There are several differences between the two applications including a reduction in the number of proposed units, better facilities for public access to the water, and a more comprehensive approach to providing affordable housing both within and outside of Easton Village.

On August 11, 2003 the Town and County Council held a public hearing to take public comment on the Easton Village development. At that public hearing, the Applicant's case was presented by its attorney, Joseph A. Stevens, Esquire. As part of his presentation, Mr. Stevens incorporated by reference the record developed as part of the February, 2002 application (the original application). At its regularly scheduled meeting on August 18, 2003, the Town Council developed a consensus concerning the applications and on October 9, 2003 Town Ordinance 461 became effective granting PUD and growth allocation approval to Easton Village.

The final step in the process is for the Talbot County Council to award 156 acres of supplemental growth allocation to the Town in accordance with Talbot County Code §190-109 D.(9)(d) to be used for the Easton Village development. Specifically, §190-109 D.(2) provides criteria for the County Council to consider and evaluate when awarding growth allocation, and §190-109 D. (9)(d)[3] provides that the Council shall evaluate the application in accordance with § 190-109 D.(4). The County Council has considered the record in this matter (such record being all the information submitted to both the Town and the County by the Applicant and the public through the various review processes and at the public hearings held on December 9, 2003, August 11, 2003 and February 12, 2002) and as a result of its evaluation of said evidence and information, makes the following findings:

§190-109D.(4)(b)[1] Consistency with the purposes and intent of the Comprehensive Plan.

Because Easton Village is located within the incorporated Town of Easton and, as such, is within a designated County and Town growth area, the request for growth allocation is consistent with the Talbot County Comprehensive Plan as demonstrated by the following excerpts from the plan:

- Page 4-2, Land Use Policy: *"The majority of future development (residential, commercial and industrial) within the County should be concentrated in suitable areas. Such areas include locations in and adjacent to existing towns and village centers where adequate public facilities and services exist or can be more cost-effectively provided to support development."*
- Page 4-4: *"The incorporated towns are logical locations for future residential, commercial, and industrial growth and development. Growth in the incorporated towns will prevent the outward sprawl of development and keep new growth within existing centers where adequate public facilities and services such as sewer, water, schools, government offices, police and fire protection, etc. can be efficiently provided. In addition, the impact upon the county road system will be minimized insofar as residents will be located physically close to the jobs, businesses and services they require."*
- Page 4-5: Land Use Map: *The site is located within the incorporated Town of Easton and should be designated as "Incorporated Town" on the County's Land Use Plan.*
- Page 4-13: *"The basic intent of the Land Use Plan is to channel most of the County's future residential, commercial and industrial growth into and around existing development centers and to conserve open space within rural areas of the County."*

Easton Village is located near the intersection of two traffic arterials serving Talbot County (MD RT. 33 and MD RT. 322). Proposed off-site traffic improvements, as described in more detail in the conditions set out in the Town's Findings of Fact which are incorporated in Town Ordinance No. 461, are to be funded and/or constructed by the developer. These allow the development to comply with the following excerpts from the Comprehensive Plan:

- Page 5-2, Transportation Policy: *"The County should not permit development that would create a traffic or safety hazard on roads serving the development unless the developer agrees to make or fund necessary improvements to the off-site access roadway."*

Page 5-3, Transportation Policy: *"Strip forms of development should be discouraged. Access onto major public roads should be reduced whenever possible."*

Page 5-7, Transportation Plan: *The site is accessed by a "Minor Arterial" which is immediately adjacent to a "Principal Arterial."*

Easton Village will dedicate a six (6) acre waterfront/water access park and pavilion with off-street parking to the Town. A proposed waterfront trail along the waterfront will be connected to a proposed trail following the abandoned rail right-of-way and will be connected to the Easton Point area via proposed construction of a pedestrian bridge. These proposed improvements allow the development to comply with the following excerpts from the Comprehensive Plan:

- Page 10-2, Parks and Recreation Policy: *"The County should continue to retain, maintain, and enhance access to public waters for County recreational boaters, outdoorsman, picnickers and swimmers."*
- Page 10-2, Parks and Recreation Policy: *"The County should further develop the existing system of bicycle trails in areas where this activity will not create automobile/bicycle hazards."*
- Page 10-2, Parks and Recreation Policy: *"The County should explore the feasibility of developing public and private greenways and open space linear parks in areas of the County where this will not create conflicts with private property rights and privacy."*

Easton Village is an environmentally-sensitive development; however, as proposed, the Easton Village complies with all environmental protection policies outlined in the Comprehensive Plan, including the following Comprehensive Plan excerpts:

- Page 8-1: *"Environmental deterioration does not have to be an inevitable consequence of growth and development. The construction of new homes, businesses, industries, schools and roads necessary to accommodate growth can occur without unduly threatening the County's environmental quality if steps are taken to ensure that new development is designed and built in an environmentally-sensitive manner."*
- Page 8-14 through 8-22: *Numerous Goals, Policies and Implementation Recommendations for Natural Resource Conservation and Sensitive Areas Protection are included in this section of the Plan. These goals, policies and recommendations are largely reflective of the Talbot County Zoning Ordinance Critical Area Growth*

Allocation Standards (19-14 (c) (IV) (b) discussed above.

Page 8-23: *"The intent of the County environmental protection measures is not to stop growth and development, but rather to ensure the compatibility of development with the continued productivity and value of environmentally sensitive areas."*

§190-109D.(4)(b)[2] Compatibility with existing and proposed development and land use in the surrounding area.

Easton Village is located within the western perimeter of the Town of Easton boundary.

The portion of the Dudrow property to the north, across St. Michaels Road, is within Town limits and is zoned Limited Commercial. The property is currently in agricultural use. A master-planned PUD is anticipated for this property.

The property to the east, across the Tred Avon River, is a mix of unincorporated residential and industrial uses. Easton Point is an industrial area with fuel docks and tanks, an asphalt plant, commercial marina and public landing. This area has a Critical Area designation of Intensely Developed Area (IDA). Residential communities to the east include West Glenwood neighborhood (LDA), Easton Club PUD (IDA) and Woodland Farms subdivision (LDA).

The incorporated property to the south is part of the Ratcliffe Farm PUD containing 15 waterfront lots and has a Critical Area designation of RCA.

The unincorporated property to the west is zoned TR and RAC. The property is currently a mix of woodland and agricultural uses. A portion of the Lee Haven Farm adjacent to Easton Village is designated as "Development Area" in the County's Comprehensive Plan.

Easton Village is surrounded by a diverse mix of improved and unimproved land uses. The proposed PUD would not be incompatible with these uses. The Traditional Neighborhood Design of the PUD is characteristic of older residential neighborhoods found in Easton, St. Michaels and Oxford. More importantly, the design and density of Easton Village is very compatible with the traditional residential neighborhoods located within the Town of Easton.

§190-109D.(4)(b)[3] Availability of Public Facilities.

The proposed development is located within the incorporated Town of Easton. All Town utilities and services are readily available to the site. Utilities will be extended to the site at the developer's expense. Town sewer will be provided as capacity is available in accordance with Town sewer allocation policies.

§190-109D.(4)(b)[4] The effects on present and future transportation patterns.

The nearby intersection of Rt. 322 (Easton Parkway) and Rt. 33 (St. Michaels Road) is currently operating at a "B" level of service. The Maryland State Highway Administration (MDSHA) requires improvements to an intersection only if the intersection, taking into account traffic from the proposed development, falls below a "D" level of service. Traffic studies prepared by Traffic Concepts and reviewed by Talbot County, the Town of Easton, Town consultants and MDSHA show that at full build out of Easton Village, this intersection does not fall below a "D" level of service. Nonetheless, the Town of Easton and the County will require, and the developer has committed to, funding and building the necessary intersection improvements to maintain or even improve the current level of service. The Council incorporates herein by reference the specific conditions for approval related to traffic impacts which are set forth in the Town's Findings of Fact as incorporated in Town Ordinance No. 461.

§190-109D.(4)(b)[5] The effect of population change within the immediate area.

Easton Village will be built-out over a period of years in response to market demand for housing in the Easton area. The Town of Easton is the primary designated growth area for Talbot County. Town, County and State smart growth plans all encourage future residential development and population growth to occur within designated growth areas as opposed to scattered lower-density residential development throughout the rural areas of the County.

As the residential, commercial, institutional and governmental hub of Talbot County, the Town of Easton is well-positioned to accommodate a population increase. In fact, both the Town and County Comprehensive Plans contemplate an increase in population in and around the Town of Easton.

§190-109D.(4)(b)[6] The past, present, and anticipated need for future growth of the County as a whole.

New housing demand in Easton and Talbot County is currently strong.

Recently approved residential subdivisions in a wide variety of price ranges are all experiencing strong sales as a result of high demand.

§190-109D.(4)(b)[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.

Easton Village is located within the incorporated Town of Easton. The decision that this property would be developed at town-scale densities was made in 1998 when the property was annexed. The use of growth allocation to allow this property to be developed in an environmentally friendly manner at town-scale densities is consistent with previous Town growth management decisions. Use of growth allocation for development within existing Towns is encouraged by State and County Critical Area and smart growth policies and regulations.

Both the Town of Easton Planning Commission and Talbot County Planning Commission have recommended approval of growth allocation for Easton Village.

§190-109D.(4)(b)[8] The protection of the public health, safety and welfare.

The development of Easton Village will not adversely affect the health, safety and welfare of the public for the following reasons:

- The development is consistent with the Town and County Comprehensive Plans.
- Proposed road improvements will enhance public safety on adjacent roadways.
- The proposed development design protects environmentally sensitive areas and improves water quality in adjacent waterways.
- The quality of development design will improve land values
- All necessary infrastructure improvements will be paid for by the developer.
- Lands will be dedicated for public use.

The Council has also considered criteria found in § 190-109 B.(6) of the Talbot County Code, and makes the following findings of fact:

§190-109 D.(2)(a) Create Lots or Parcels that maximize the opportunities for cluster development that protects habitat and agricultural resources;

The Development is proposed to occur on 34.4% or 70.6 acres of the site's 205 acres. The remaining 65.6 percent or 134.2 acres of open space is designed to protect the unique environmental features of the site.

§190-109 D.(2)(b) Locate structures so as to minimize impact on habitat protection areas and agricultural areas;

The site is designed with a total of 57.9 acres of 100 – 300 foot shoreline buffers. Delmarva Fox Squirrel habitat areas on the site are also preserved. The development site is located within the Town of Easton and is not identified as an agricultural preservation area by the County. The development plan contains an open space/pastoral area along the St. Michaels Road frontage.

§190-109 D.(2)(c) Provide a minimally disturbed buffer along the shoreline;

A contiguous shoreline development buffer of 57.9 acres is proposed. The buffer varies in width from 100 to 300 feet. Approximately 4,300 feet of shoreline has a 300 foot buffer and 2,000 feet has a minimum 100 foot buffer. Areas of the designated buffer currently in agricultural use will be reforested. No waterfront lots are proposed. A maximum 30 slip small-boat community pier is proposed vs. a proliferation of numerous private piers as exist in many of the County's waterfront subdivisions.

§190-109 D.(2)(d) Minimize soil erosion and runoff;

Prior to construction, a Sediment and Erosion Control Plan will be approved by Talbot County Soil Conservation District and enforced by the Maryland Department of Environment during construction.

§190-109 D.(2)(e) Maximize protection of eroding shorelines

Shoreline stabilization measures, including stone revetment and marsh creation techniques will be used to restore eroding shoreline areas.

§190-109 D.(2)(f) Have a minimal impact or cause an improvement to stormwater, floodplain and stream characteristics;

A Water Quality Management Plan will utilize innovative best management practices (BMPs) which will be designed in accordance with new Town and State stormwater management regulations. Filtration-type BMPs to be used to reduce nutrient loadings from pre-development levels. 100 foot forested buffers are proposed around all tributary streams. No non-water dependent development is proposed within the 100 year floodplain.

§190-109 D.(2)(g) Minimize impacts on non-tidal wetlands;

The plan proposes no permanent disturbance to non-tidal wetlands and associated buffers.

§190-109 D.(2)(h) Maximize protection of plant and wildlife habitats, particularly for threatened endangered species, plant and wildlife common to the Chesapeake Bay Region, and anadromous fish propagation and waters.

The developer is working with U.S. Fish and Wildlife and Maryland Department of Natural Resources to develop a Delmarva Fox Squirrel Habitat Protection Plan that will protect and enhance habitat. The proposed development has been redesigned to minimize development impact in wooded areas and adjacent fields, to create new forested wildlife corridors on the site, and to provide for off-site habitat creation and protection areas. Timing of construction and location of the proposed community pier will avoid impacts to submerged aquatic vegetation (SAVs) and anadromous fish spawning habitat.

§190-109 D.(2)(i) Maximize protection of forests.

Forest clearing for this development has been minimized to less than one acre. Proposed forest clearing within the Critical Area will be approximately 0.6 acres. Forest areas to be retained/protected totals approximately 31.7 acres within the Critical area. No forest clearing is proposed within proposed shoreline development buffers. Outside of the Critical Area forest clearing is 0.2 acres with 11.3 acres of existing forests protected.

In addition to the findings stated herein, the Talbot County Council incorporates by reference those findings of the Town Council set forth in the Findings of Fact incorporated as Exhibit B in the Town's Ordinance No. 461.

Summary of Findings

Easton Village is an environmentally sensitive residential development located within the Incorporated Town of Easton. The proposed development is consistent with the Town and County Comprehensive Plans and State of Maryland "Smart Growth" initiatives. The development complies with all Town, County and State Critical Area Growth Allocation policies and regulations. The award of Growth Allocation to allow for traditional neighborhood development of this site is a rational and logical next step following the 1998 annexation of the property.

Easton Village is precisely the type of development intended for the utilization of Critical Area Growth Allocation. The Maryland State Legislature and Talbot County specifically included Growth Allocation provisions in the Critical Area law to provide for future development within the Critical area that is consistent with local growth management plans and environmental protection regulations. Use of growth allocation for environmentally sensitive development within existing towns where adequate public facilities are available is a prime example of State, County and Town "Smart Growth" objectives.

WHEREFORE, the Talbot County Council finds that the proposed Development satisfies the foregoing criteria and is otherwise in the public interest such that the Council, in the exercise of its legislative discretion in accordance with the provision of Talbot County Code § 190-109 D.(4)(d), hereby grants the application subject to the Conditions of Approval (June 12, 2003) in Town Ordinance No. 461.

VOTING TO GRANT THE APPLICATION:

1 **A BILL TO AWARD 156 ACRES OF SUPPLEMENTAL GROWTH ALLOCATION TO**
2 **THE TOWN OF EASTON AND TO IMPOSE CERTAIN CONDITIONS, RESTRICT-**
3 **IONS, AND LIMITATIONS ON ITS USE.**
4
5

6 WHEREAS, Talbot County Code § 190-109 D. (9) (d) provides that upon request for
7 supplemental growth allocation by any municipal corporation within the County, the
8 County Council may transfer growth allocation to the municipal corporation and may
9 impose such conditions, restrictions, and limitations upon the use of any such
10 supplemental growth allocation, if any, as the Council may consider appropriate; and,
11

12 WHEREAS, the Town of Easton has requested an award of supplemental growth
13 allocation to increase the acreage reserved to the Town of Easton from 155 to 311 acres,
14 which will decrease the available acreage remaining to the County from 317 to 161 acres;
15 and,
16

17 WHEREAS, the Town of Easton has conditionally approved a PUD application
18 and an application for growth allocation by Elm Street Development Company, LC to
19 utilize 156 acres of growth allocation for a project located within the Town of Easton
20 south of Md. Rt. 33; and,
21

22 WHEREAS, Talbot County Code § 190-109 D. (9) (d) [3] provides that the
23 Council shall evaluate the application in accordance with § 190-109 D. (4), which
24 provides that, after receiving the recommendation of the Planning Officer and Planning
25 Commission and before approval or denial, the Council shall introduce a bill and hold a
26 public hearing in order that interested parties and citizens shall have an opportunity to be
27 heard; and,
28

29 WHEREAS, the Council has received the recommendations of the Planning
30 Officer and Planning Commission regarding this application.
31

32 NOW, THEREFORE, in compliance with the requirement of Talbot County Code
33 § 190-109 D. (4), the following bill is hereby introduced:
34

35 SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT
36 COUNTY, MARYLAND, that:
37

38 1. Award. Subject to the following conditions, restrictions, and limitations, Talbot
39 County hereby awards 156 acres of supplemental growth allocation to the Town of Easton.
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41 2. Conditions, restrictions, and limitations. This award of growth allocation is
42 subject to the following conditions, restrictions, and limitations:

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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).

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e. **Intersection improvements Rt. 322 – Rt. 33.** 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.

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. _____ having been published, a public hearing was held on _____

BY THE COUNCIL

Read the third time.

ENACTED _____

By Order _____
Secretary

Duncan - _____
Harrington - _____
Foster - _____
Spence - _____
Carroll - _____

Exhibit "A"

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.

Bill No. _____

Date of Introduction: November 18, 2003

Conditions

Approval of the request for growth allocation is contingent upon performance of the following conditions in connection with the Project, and performance of the promises, representations, and undertakings set forth below voluntarily assumed by the Developer in connection with mitigation of the impacts from the project.

As used in these conditions, the term "Developer" refers to Elm Street Development Company, LC, and includes any successors, assigns, or subsequent purchasers of the Project or development rights and obligations related to the Project. Time is of the essence in connection with Developer's performance. Developer agrees to fully perform the following conditions in a timely manner to the satisfaction of the County:

1. *Mitigation of off-site impacts to County roads.* The Developer shall pay to the County of the sum of \$1,500,000 to mitigate the effects of off-site impacts to County roads. The Developer shall make payment of \$750,000 before issuance of the first building permit for the Project. Payment of the balance of \$750,000 shall be in equal annual installments of \$150,000 per year, due in full, without set-off, on each anniversary of the first payment for the ensuing 5 years. Developer shall be given a credit against (1) any building excise tax adopted by the County, and (2) any development impact fee imposed by the County. In the event the County adopts a building excise tax, and/or a development impact fee that result in an assessment greater than \$6,000 per dwelling or building unit, Developer shall pay the difference on a per unit basis from the effective date of any such building excise tax and/or development impact fee. In no event shall Developer be entitled to any refund, under any circumstance, for any amount paid in accordance with these conditions, nor excused from past or future performance based on the County's action with respect to imposition of building excise taxes or development impact fees.

2. *Construction of intersection improvements to Md. Rt. 322 and 33.* Developer shall construct, at its expense, intersection improvements to Md. Rt. 322 - 33. These improvements shall be constructed in accordance with Exhibit "A-1", which is incorporated by reference. These improvements shall be constructed in accordance with a construction schedule attached as Exhibit "A-2", which is incorporated by reference. Developer shall post a surety bond in an amount determined by the County equal to 110% of the amount projected to be sufficient to fund construction of the proposed improvements. The County shall be designated as a third-party beneficiary of the surety bond, with the ability to cause or require forfeiture of the bond in the

event of Developer's non-performance or breach. Developer's failure to diligently pursue permitting or to complete construction in accordance with the milestones set forth on Exhibit "A-2", in the absence of circumstances which, as determined by the County, are beyond the control of the Developer and are such as to justify the delay, shall authorize the County to exercise its rights with respect to the surety bond. Construction of the intersection improvements shall be completed, in any event, prior to issuance of the 50th building permit for the Project.

3. *Road frontage improvements.* Developer shall construct, at its expense, road frontage improvements along the frontage of Md. Rt. 33 as shown on Exhibit "A-3" which is incorporated by reference. These improvements shall be constructed prior to the issuance of the first occupancy permit.

4. *Conditions by the Town of Easton.* Developer shall comply with the "Conditions of Approval" (June 13, 2002) listed on Exhibit "A" to Findings of Fact for Elm Street, LC adopted by the Town of Easton in connection with Ordinance 461, which are hereby adopted as part of the conditions on which this award of growth allocation is based.

5. *Supplemental and additional documents.* At the County's request, Developer shall prepare and execute such additional documents, in a form satisfactory to the County, which may, at the County's option, be recordable among the land records of Talbot County, Maryland, and which are, in the opinion of the County, sufficient to memorialize these terms and conditions.

6. *Amendment to Comprehensive Water & Sewer Plan.* Developer has voluntarily agreed to the foregoing terms and conditions with the expectation that the Project will proceed as planned without delays caused by water and sewer classifications under the Talbot County Comprehensive Water & Sewer Plan that will prevent construction and hook-ups to the Easton Wastewater Treatment Plant when capacity becomes available, as certified by the Easton Utilities Commission and/or Town Engineer, under the existing allocation policy, whether under the existing or the proposed new Easton Wastewater Treatment Plant. The County is not binding itself to future action on any application to amend the Comprehensive Water & Sewer Plan, but recognizes that if, due to any action or inaction on the County's part regarding amendment of the Comprehensive Water & Sewer Plan, the Project is delayed by a water and sewer classification providing for other than immediate access to available water and sewer capacity from the Easton Wastewater Treatment Plant under the existing allocation policy, then Developer's obligations to construct the road frontage improvements, intersection improvements, and payment of the balance due on any unpaid installment under Paragraph 1, shall be excused until such time as the Comprehensive Water & Sewer Plan is amended to provide immediate access. This subsection shall not be construed to apply to excuse Developer's performance for any delays caused by lack of existing or future wastewater treatment capacity, delays connected with permitting or construction of the new Easton Wastewater Treatment Plant, lack of allocation under the existing or any changed allocation policy, lack of infrastructure for the collection and/or pumping systems, or any other cause whatsoever except the County's decision to not classify the subject property under the County's Comprehensive Water & Sewer Plan for a classification making it eligible for immediate sewer and water service that is otherwise immediately available and that directly results in a delay to the Project. Developer agrees to cause any such request for amendment of the Comprehensive Water & Sewer Plan to be submitted in a timely fashion, in

due form, with appropriate and sufficient information and supporting data to permit approval by the Council without causing any delay to the Project. Failure by the Developer to do so eliminates any excused performance on the Developer's part by reason of this paragraph.

LAW OFFICE

COWDREY, THOMPSON & KARSTEN

A PROFESSIONAL CORPORATION

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March 15, 2004

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

Commissioners of Trappe
4011 Powell Avenue
P.O. Box 162
Trappe, MD 21673

Commissioners of Oxford
101 Market Street
P.O. Box 339
Oxford, MD 21654

Commissioners of Denton
13 N. 3rd Street
Denton, MD 21629

RECEIVED

MAR 16 2004

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Dear Commissioners, Secretary Scott, and Assistant Secretary Rimrodt:

All of you have recently received a copy of a letter from Michael Pullen, the attorney for the Talbot County Council, which was addressed to Maryland Department of Planning leadership.

In my 30 years of law practice as a municipal lawyer, I have never before seen such a letter. While Mr. Pullen and I have had a number of land use cases in the appellate courts over the last several years, all of which were resolved in favor of my clients, I am aware of nothing that justifies the apparent personal animosity in his recent letter. I am sorry that you have had to suffer the receipt of such a communication.

Most of Mr. Pullen's points are just plain irrelevant and inaccurate. There is, however, a theme in Mr. Pullen's letter which deserves a response.

My law firm is counsel for four municipalities. We are advocates for laws and policies that recognize the rights of those municipalities and their citizens. On behalf of our clients, we are opposed to laws which invade the prerogatives of the municipalities, and which impose additional burdens on municipal citizens. We pay attention to legislative and administrative trends which may

create future problems for the towns of the Eastern Shore and their residents. And it is true that together with the attorney for the Town of St. Michaels, and the attorney for the Town of Easton, we are concerned about the policy implications, as they affect Eastern Shore towns, of recent actions by the Talbot County Council. We have alerted the elected leadership of Oxford, Trappe, Denton, and Preston to those issues, which transcend county boundaries, and we have encouraged the towns to be pro-active, and to involve the state agencies with planning jurisdiction to address those issues to help avoid any need for future judicial intervention.

What are those issues? They are growth management issues, which need to be understood by all involved in the task of controlling and influencing the location of future growth.

Talbot County Legislative Bill 933 is one of several efforts by the Talbot County Council to assert County Council control over municipal growth. It was conceived and enacted with absolutely no dialogue with the affected municipalities. It ignores smart growth principles and priority funding policies. It was created in direct response to a pending annexation in the Town of St. Michaels. Bill 933 violates established laws and principles, by attempting to give the county government the right to establish permanent land use control within town boundaries. It seeks to repeal the express recognition in the current Talbot County zoning ordinance of the annexation relationships between town governments and the County Council that are a matter of state law. Bill 933 follows an earlier county legislative enactment, which escaped critical scrutiny by municipal lawyers, which purported to require county approval for certain new growth allocation reclassifications.

Using that claimed power, as a condition to giving growth allocation approval to a proposed development within the Town of Easton, the Talbot County Council recently demanded and received promises for a payment of over \$1,000,000 for alleged impacts of the new development on county roads. The county has no impact fee ordinance at this time. The project is served by Town of Easton roads and state roads. The significant impacts of the development will be within the Town of Easton. In the judgment of many, it is unlikely that the exaction of this particular "impact fee" by the County Council will withstand judicial review. The major leverage asserted by the County in extracting this payment was its claimed right to control municipal rezoning through the growth allocation process. It is Mr. Pullen's stated opinion that the county government owns and controls the growth allocation process, even within the towns. Bill 933 has been enacted to pursue that goal. In our opinion, those legislative efforts are legally unsound, and should be rejected as a matter of state policy. At the same time, the Talbot County Council is attempting to use its control of the County Comprehensive Water and Sewer Plan to dictate to the towns the details of municipal growth, even to the extent of refusing or delaying formal approval of existing sewer service to existing homes and subdivided lots within the Town of Easton, served by Easton's sewer system. These policies can reasonably be expected to be visited upon other municipalities, not just the Town of Easton.

These policies have been noted in other jurisdictions. The Caroline County Commissioners have begun talking about these same policies—control of growth allocation and sewer service areas—as they relate to municipal expansion issues in Denton and Preston. Municipalities in Dorchester have expressed interest and concern about these same issues. Queen Anne's County and its municipalities are dealing with similar issues.

Trappe has recently completed a significant annexation, and consistent with the new Talbot

County Council policy of using the comprehensive water and sewer plan to restrain municipal growth, the Council (with no discussion with Trappe officials) has formally intervened with the Maryland Department of the Environment to support the no growth position of a political action group which fought the Trappe annexation. That annexation was overwhelmingly approved at the polls (70%) in a local referendum election. Yet the Talbot County Council, led by Mr. Pullen, continues to use administrative and legislative efforts to try to control and limit Trappe's municipal land use choices.

I disagree with Mr. Pullen when he suggests that the Towns of Oxford, Trappe, and Denton have no legitimate interest in communicating with the Maryland Department of Planning or the Critical Area Commission about these issues. And I disagree with Mr. Pullen's view that the balance of municipal vs. county land use jurisdiction is not a statewide issue.

There is an old trial lawyer's saying: "If you have the facts, try the facts; if you have the law, try the law; if you have neither, try your opponent." I think the latter is Mr. Pullen's strategy in this case. I am confident in the legal opinions we have expressed. I am hopeful that Department of State Planning officials will not be put off by the red herrings served up in Mr. Pullen's letter, and the Department will continue to support the towns in their efforts to preserve municipal growth prerogatives in the mid-shore area.

I will be happy to discuss the substantive issues with any of you, at any time, and look forward to a productive, professional debate upon the growth management issues that confront us all.

Sincerely yours,



David R. Thompson

cc: Robert T. Willey, Town of Easton
Brad Horsey, Town of Denton
Philip C. Foster, President Talbot County Council
Senator Richard F. Colburn
Delegate Adelaide C. Eckardt
Delegate Jeannie Haddaway
Martin G. Madden, Critical Area Commission
Scott Hancock, Maryland Municipal League
David Bliden, Maryland Association of Counties
Robert T. Snyder, Town of St. Michaels
Michael L. Pullen, Esq.

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February 9, 2004

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

Re: Eastern Shore Towns
Critical Area Growth Allocation Issues
Talbot County Legislative Bill 933

Dear Secretary Scott and Assistant Secretary Rimrodt:

I write to you at the express direction of the Commissioners of Oxford and the Commissioners of Trappe. As you are aware, both municipalities are located within Talbot County. While the specific issues addressed in this letter arise in the context of recent actions by the Talbot County Council, the potential for conflicts related to town growth within the State's critical area exists in all of the local jurisdictions with critical area land. Therefore, we believe it is appropriate for the Department of State Planning to add its voice to the discussion.

First, the Commissioners of Oxford and the Commissioners of Trappe have asked me to communicate their thanks for your willingness, and that of your staff, to meet with town representatives to discuss these growth issues in the context of state planning and state growth policies. We urge your department to continue to take an active role in bringing various interested towns, political subdivisions, and state agencies together to resolve these issues from a statewide policy perspective.

By way of background for the following comments, I have seen some, but not all, of the recent correspondence between the Talbot County Council and the Critical Area Commission. I have read the January 7, 2004 letter to the Chairman of the Critical Area Commission from the Commissioners of St. Michaels, and the Talbot County Council's February 4th response. I followed

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the local legislative course of Talbot County Bill 933 on behalf of the Town of Trappe and the Town of Oxford, and I was present for the public comment at both the Talbot Planning Commission hearing and the Talbot County Council public hearing.

You should know from the outset that it is this law firm's opinion that Talbot County Bill 933 is defective on a significant number of legal grounds. It is not the purpose of this letter to outline all of the legal deficiencies in Bill 933, or in the Talbot County critical area zoning provisions. It is the purpose of this letter to provide the towns' perspective and position in response to the County's action. We believe that the Talbot County Council's approach to municipal growth, as addressed in Talbot County Bill 933, has statewide implications. We are hopeful that your department will continue to interact with the Critical Area Commission to help all of the players appreciate the inter-related issues of municipal land use and growth, use of priority funding areas, and smart growth concepts.

To that end, the Town of Oxford and the Town of Trappe request that the Department of State Planning send its representatives to the Critical Area Commission meetings and hearings at which Talbot County Bill 933 is to be addressed, that the Department request that Bill 933 not be approved by the Commission as an amendment to Talbot County's local critical area program. Our position is based upon the following analysis.

Critical Area Law Background

The following definitions set forth in Md. Code Annotated, Natural Resources Article, § 8-1802 (2003 Cum. Supp.), are basic to the legal concepts being discussed:

- (8) "Growth allocation" means the number of acres of land in the...critical area...that a local jurisdiction may use to create new intensely developed areas and new limited development areas.
- (11) "Local jurisdiction" means a county, or a municipal corporation, with planning and zoning powers...in which any part of the...critical area...is located.

Oxford, like St. Michaels, is a jurisdiction with planning and zoning powers, in which critical area lands are located. In fact, like St. Michaels, virtually the entire Town of Oxford (and all reasonably contiguous land) is located within 1000 feet of the Chesapeake Bay or its tributaries. Oxford, Trappe, St. Michaels, and Easton, like Talbot County, are "local jurisdictions" as referenced in the critical area statute.

Md. Code Annotated, Natural Resources Art., § 8-1808.1 (2003 Cum. Supp.) controls the interpretation and application of the growth allocation concept within the critical area. That statute provides that the growth allocation for a local jurisdiction "shall be calculated based on 5 percent of the total resource conservation area in a local jurisdiction" at the time of the Commission's approval of the local plan. Pursuant to the critical area regulations and local critical area program criteria set

forth in COMAR 27.01.01 through 27.01.11, Talbot County identified and mapped its Resource Conservation Area, resulting in a computation of the total acreage (growth allocation) available within the County for conversion from a resource conservation designation to classifications which permit more intense development (LDA or IDA). Upon annexation, land classified RCA by the County comes into the annexing town, at least initially, carrying the RCA classification applied by the County, absent the County's express consent to a change. See *Mayor and Council of Rockville v. Rylyns Enterprises, Inc.* 372 Md. 514 (2002); see also pending Senate Bill 404, proposed by the Maryland Municipal League to address a limited aspect of the *Rylyns* decision.

Neither the statute, nor the local program criteria contained in COMAR, give the county government the power to control or limit planning, zoning, or subdivision regulation within municipal borders. In fact, both the Legislature and the Court of Appeals have regularly declared, in both legislation and case law, respectively, that municipalities have exclusive planning and zoning and subdivision powers within their borders.

In adopting the state's critical area protection program, the Legislature recognized that municipalities and counties have independent planning and zoning powers. The local program adoption requirements apply to municipalities as well as to counties. The Talbot County towns with lands in the critical area - Oxford, St. Michaels, and Easton - all have local critical area programs which have been approved by the Critical Area Commission. Each of those programs has provisions for dealing with the creation of new or expanded development areas through the use of a growth allocation process to convert RCA lands to LDA or IDA. The growth allocation decisions of the towns are subject to the requirements of the law, the criteria, and the oversight of the Critical Area Commission.

The current debate, created by the Talbot County Council's enactment of Bill 933, stems from a fundamental failure by the Talbot County Council to recognize the planning, zoning, and subdivision authority of the municipalities, and its failure to understand the annexation process as it relates to town growth. Unfortunately, the Council did not engage in any dialogue with the Towns before or during its legislative process, which might have made the current dialogue unnecessary. It is the position of the Town of Trappe and the Town of Oxford that in addition to the right to reclassify lands within the towns at the time the original programs were approved, the towns have the right to plan and rezone lands subsequently annexed to a town. These rights, of course, are subject to the law applicable to municipal annexation, and are subject to compliance with the critical area plans of the annexing town.

Talbot County's Adoption Process – Bill 933

While state planning law and critical area law envision a cooperative planning process between county and municipal governments on the issues of municipal growth, especially in the critical area, the Talbot County Council declined to consult or discuss with Talbot's municipalities either the substance or procedure in the creation and enactment of Bill 933. Other than presiding at the mandatory public hearing prior to its enactment of Bill 933, the County Council had no

a. Audrey E. Scott, Secretary
n. Tom Rimrodt, Assistant Secretary
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communication with representatives of Talbot's municipalities concerning their current, pending or future growth plans. At the Council's public hearing on Bill 933, representatives of the towns did, finally, have an opportunity to express their concerns about the bill. Unfortunately, it was apparent to all in attendance that the public hearing was not intended for a meaningful exchange of information in order to come up with useful, well considered legislation; rather, the public hearing was merely a due process compliance exercise.

While the Council has quoted in its most recent letter to Senator Madden (February 4, 2004) the public hearing comments of former Critical Area Commission Chairman, John C. North, II, as part of the Council's lobbying effort to gain approval by the Commission of Bill 933, neither the former Critical Area Commission Chairman nor the County Council researched or addressed the fundamental town/county relationships that Bill 933 seeks to change. We are hopeful that the Department of State Planning will present these issues to the Critical Area Commission, and in other forums as necessary.

Annexation Law Background

Md. Code Annotated, Art. 23A, § 9(c)(1) and (2) (2001 Repl. Vol) provide that upon annexation, a municipality shall have exclusive planning and zoning and subdivision control over the land annexed, except that for a period of five years following the annexation, no substantially different land use (from those uses specified in current master land use plans) may be permitted without express county council approval. Nothing in the state's critical area protection program alters this basic tenet of municipal/county land use control. Yet Bill 933 purports to give the County Council the right to determine whether towns, within their own boundaries, will be granted the right to use growth allocation to convert RCA lands to another land use classification. Bill 933, among other provisions, seeks to repeal the following section of the Talbot County Zoning ordinance:

Talbot County Code, 190-109(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.

This section of the Talbot County Code appropriately applies state law to the growth allocation reclassification process. Contrary to Mr. Foster's assertion in the Council's February 4th letter, state law does not "give" growth allocation to the County. Rather, state law created a cap on the number of acres located in the critical area portion of a county that may be converted to intensely developed areas or limited development areas. As a matter of state law, contrary to the efforts by Talbot County to control growth and development within towns, the municipalities in Talbot County have the exclusive right to control planning, zoning, and subdivision within their boundaries, subject

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to the provisions of Md. Code Annotated, article 23A, § 9(c). State law does encourage the County to engage in a cooperative planning effort to address town growth. That planning effort resulted in the original growth allocation and annexation area maps which the County Council now seeks to repeal without any mutual planning effort with the towns. I should point out the current Talbot County Comprehensive Plan recognizes the municipal growth areas repealed by Bill 933. The Talbot County Planning Commission has worked with the towns, and recommended that the Council not enact Bill 933, because, among other reasons, it is unnecessary.

Bill 933 is flawed in its fundamental premise

While there are significant legal flaws with several aspects of the County's critical area zoning provisions, until recently, there has been no reason to debate them. Bill 933 has changed that landscape.

A recurring theme in the sometimes tense relationship between the current Talbot County Council and the Talbot municipalities is the County Council's failure to recognize that the municipalities are independent political subdivisions with the power to enact and administer public local laws. In critical area parlance, the municipalities are "local jurisdictions" just like Talbot County is a "local jurisdiction." The Talbot municipalities have independent rights, duties and obligations to address land use issues within their boundaries. With Bill 933, the County Council has imposed a concept of "ownership" of the growth allocation process which has no basis in law or fact. The critical area law's creation of the growth allocation concept did not change the fundamental right of towns to control planning, zoning and subdivision within their boundaries.

The false premise upon which the County Council's position is based is demonstrated by the statement on page 6 of Mr. Foster's February 4, 2003 letter to Chairman Madden, in which Mr. Foster stated:

... Talbot County, not St. Michaels, received 2,254 acres of growth allocation... State Law gave that growth allocation to the County, to be used by the County...

Mr. Foster has ignored the legal underpinnings of municipal and county land use regulatory authority set forth in Article 66B and Article 23A of the Maryland Code, and numerous Court of Appeals cases.

Pursuant to the local program criteria, Talbot County's "Resource Conservation Area" was identified, and mapped. The acreage was computed, and an LDA/IDA conversion limit was established. Those acreage limits were reflected in the Talbot County Critical Area Program as originally approved by the Commission. However, those growth allocation acres are not "owned" by the County. Previous Talbot County Councils understood the relationship of the growth allocation concept with the mechanism of municipal growth. That mechanism, of course, is annexation.

When lands formerly under the planning, zoning, and subdivision jurisdiction of the County

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become a part of a town through annexation, the land use regulations applicable to that land undergo a transition. Until the recent adoption of Bill 933, the Talbot County Critical Area Program recognized the limited role played by the County with respect to the reclassification of lands annexed to the towns. Indeed, those relationships were correctly defined in Talbot County Code, §190-109(15), quoted *infra*, which the County now seeks to repeal with Critical Area Commission approval.

Trappe and Oxford have no complaint, at this time, to the extent that the County Council validly amends its critical area program to address areas under county land use jurisdiction. The County has full authority to identify the areas of the County, outside of the municipalities, where it prefers to see growth occur. Indeed, according to Critical Area Commission records, the County Council has approved more RCA conversion than all of the towns of Talbot, combined, during the entire history of the State's critical area program. It is certainly conceivable that the County Council wishes to identify other growth areas which are not contiguous to the towns, and that it therefore needs to amend its growth allocation priorities. In that limited context, certain aspects of Bill 933 are legally sound.

However, the County cannot legally (as opposed to politically, through the referendum process spelled out in the annexation statute) deprive the towns of their rights to grow through annexation, nor can the County Council prevent the towns from reclassifying land within town boundaries from an RCA classification to an LDA or IDA classification, except pursuant to Article 23A, § 9(c). Bill 933 is invalid to the extent it attempts to reserve all growth allocation land use conversions, even those within towns, to the discretion of the County Council. Such an attempt will not be upheld under applicable law, and should not be approved by the state agencies with jurisdiction to review the County's growth policies and critical area policies.

For the above reasons, the Town of Trappe and the Town of Oxford join with the Town of St. Michaels to support the rejection of Bill 933. We will be happy to discuss these issues in greater detail at any mutually convenient time.

With appreciation for your attention to these issues and your assistance in resolving them, I am,

Very truly yours,



David R. Thompson
Attorney for the Town of Oxford
Attorney for the Town of Trappe

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cc: Robert T. Snyder, Town of St. Michaels
Sidney S. Campen, Jr., Town of Oxford
Robert C. Willey, Town of Easton
Cheryl Lewis, Town of Trappe
Brad Horsey, Town of Denton
Philip C. Foster, Talbot County Council
Senator Richard F. Colburn
Delegate Adelaide C. Eckardt
Delegate Jeannie Haddaway
Martin G. Madden , Critical Area Commission
Scott Hancock, Maryland Municipal League

THE COMMISSIONERS OF ST. MICHAELS

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FACSIMILE TRANSMITTAL SHEET

TO: Mary Owens

FROM: Cheril Thomas

FAX NUMBER:

DATE: December 23, 2003

COMPANY: Critical Area Comm.

TOTAL NO. OF PAGES INCLUDING COVER: 2

PHONE NUMBER:

RE: Talbot County Bill 933

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The Commissioners of St. Michaels

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VIA FACSIMILE to: 410-974 5338

December 23, 2003

Ms. Mary Owens
Chesapeake Bay Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401

Re: Talbot County Bill 933

Dear Ms Owens;

The Town of St. Michaels has learned of the adoption today of Talbot County Bill 933, "A Bill to Review and Reallocate the Number of Reserved Acres of Growth Allocation Allocated Among the Towns For Rezoning in Compliance With The Requirements of Chapter 190, Talbot County Code, "Zoning" 190-109 D.(11)".

As you know, this bill will severely impact all of the Towns in Talbot County and as the most affected, the Town of St. Michaels respectfully asks to be notified as soon as Bill 933 is scheduled on the Critical Area Commission's agenda. The Commissioners would like to attend any hearing on the Bill and testify as to its potential negative impact on the Town. Since this Bill does not become effective until February 23, 2004 and will constitute a major change in Talbot County's Critical Area program, we assume it will not be scheduled for hearing prior to the Commission's March or April 2004 agenda. However, if we are incorrect in this assumption, we would appreciate being notified as soon as possible.

Sincerely,


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

RTS/ct

cc: Roby Hurley



The Commissioners of Saint Michaels

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January 7, 2004

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

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

Town opposition to Talbot County Bill No. 933

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

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

Dear Senator Madden and Commission Members:

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

Not content to merely disrupt and avoid participation in the Town's administrative proceedings for the award of growth allocation, the Talbot County Council on December 23, 2003 adopted County Bill No. 933, entitled "A Bill to Review and Reallocate the Number of Reserved Acres of Growth Allocation Allocated Among the Towns for Rezoning in Compliance with the Requirements of Chapter 190, Talbot County Code, "Zoning" § 190-109 D. (11)". This Bill, a copy of which is enclosed, would remove from the Town, and from all other towns in Talbot County, all growth allocation that is unallocated, or which has been allocated but which has not yet resulted in related construction. If allowed to stand, Bill No. 933 would void a recent annexation and growth allocation award (the Strausburg Annexation) by the Town of St. Michaels that has been approved by the Critical Area Commission. Bill No. 933 would incapacitate the system by which Talbot County's towns in general, and St. Michaels in

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

A.
Town Objection To County Actions

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

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

5. On December 16, 2003 in exchange for more than \$1,500,000 in County road and other off-site improvements promised to the County by a developer, the County Council voted to allot to the Town of Easton sufficient growth allocation acreage to permit the approval of a development within the Critical Area.¹
6. On December 23, 2003, when the County Council concluded that the Town was on the verge of approving an application for growth allocation involving the subject land, the County Council voted to enact Talbot County Bill No. 933, by which the County has withdrawn from all Towns in Talbot County all unallocated growth allocation.

B.

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

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

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

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

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

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

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

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

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

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

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

C.
Historical Background

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

1.

1980 Perry Cabin Farm Annexation Agreement

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

2.

Perry Cabin, Phase I

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

3.

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

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

4.

Husbandry of Growth Allocation in Talbot County

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

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

5.

Miles Point I Application

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

6.

Perry Cabin, Phase II, Application

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

7.

Perry Cabin, Phase III, Application

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

8.

Mediation And Workshop

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

9.

The Strausburg Annexation

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

10.

Miles Point II at the Town Planning Commission

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

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

11.

Actions By Talbot County Council

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

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

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

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

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

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

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

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

12.

Miles Point II at the Town Commissioners

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

13.

Miles Point III

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

14.

Other Relevant History

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

D.

Conclusions

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

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

E.
Request For Critical Area Commission Action

1.

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

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

2.

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

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

3.

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

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

Hon. Martin G. Madden, Chairman
Critical Area Commission
January 7, 2004
Page 12

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

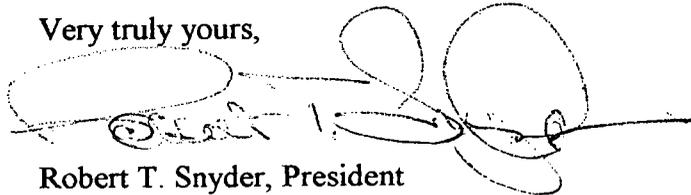
4.

Commission Review Of Miles Point III

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

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

Very truly yours,



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

Enclosures:

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

Hon. Martin G. Madden, Chairman
Critical Area Commission
January 7, 2004
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CC: Senator Richard F. Colburn
James Senate Office Building, Room 315
110 College Avenue
Annapolis, MD 21401-1991

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

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

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

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

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

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

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

Hon. Martin G. Madden, Chairman
Critical Area Commission
January 7, 2004
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Ms. Marianne Mason, Assistant Attorney General
Critical Area Commission for the Chesapeake & Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, Maryland 21401

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

Mr. Tom Rimrodt, Assistant Secretary
Maryland Department of Planning
301 W. Preston Street, Suite 1101
Baltimore, MD 21201-2305

Ms. Pat Goucher, Director of Local Planning
Maryland Department of Planning
301 W. Preston Street, Suite 1101
Baltimore, MD 21201-2305

Ms. Mary R. Owens, Chief, Program Implementation Division
Critical Area Commission for the Chesapeake & Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, Maryland 21401

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

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

RECEIVED

MAR 1 2004

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

(410) 745-9535
FACSIMILE (410) 745-3463
TDD/TTY RELAY 1-800-735-2258



The Commissioners of Saint Michaels

P.O. BOX 206

SAINT MICHAELS, MARYLAND 21663-0206

SETTLED 1670-80
INCORPORATED 1804

February 26, 2004

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

Re: St. Michaels Planning Commission request for Critical Area Commission treatment of
Talbot County Bill No. 933 as a program amendment.

Dear Senator Madden and Commission Members:

The St. Michaels Planning Commission is taking this opportunity to express our concern over Talbot County Bill No. 933, entitled "A Bill to Review and Reallocate the Number of Reserved Acres of Growth Allocation Among the towns for rezoning in Compliance with the Requirements of chapter 190, Talbot County Code, "Zoning § 190-109 D (11)". This Bill would remove from the Town, and from all other towns in Talbot County, all growth allocation that is unallocated, or which has been allocated but which has not yet resulted in related construction. If allowed to pass Bill No. 933 would void two (2) recent annexations and associated growth allocation awards (Strausburg and Midlands).

The effects of County Bill No. 933 are unprecedented, in that it would withdraw from town control much of the growth management authority both currently in town and in growth areas. It is important to understand that the majority of St. Michaels and Oxford and their respective growth areas are in the Critical Area. In addition, the "coordination" system that currently exists would be abandoned. This would leave the Towns with no mechanism for utilizing growth allocation.

Based on the above noted and the resulting devastating affect this legislation will have on the Town of St. Michaels, we are urging the Critical Area Commission to hold a local hearing and to consider Bill 933 as a program amendment.

Thank you for your consideration.

Sincerely,


Eugene C. Hamilton
Vice-Chairman
St. Michaels Planning Commission

J. PHILLIP KELLER, LLC

ATTORNEY AT LAW
22 WEST DOVER STREET
EASTON, MARYLAND 21601
TEL. 410-822-7993

FACSIMILE: 410-822-6420
E-MAIL: pkeller@goeaston.net

SAINT MICHAELS OFFICE:
104A WEST CHESTNUT STREET
ST. MICHAELS, MARYLAND 21663

March 1, 2004

The Honorable Martin G. Madden
Chairman
Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD 21401

RECEIVED

MAR 4 2004

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Dear Mr. Madden:

I am writing to you as a citizen of Saint Michaels, Maryland concerning the recent actions of the Talbot County Council in respect to thwarting growth in the critical area. After five years of litigation between the town and the Midland Company, the developer and town finally agreed on a proposal that incorporates most if not all smart growth principles. We in the town also believe, consistent with hundreds of hours devoted to this by our planning commission, that this current proposal reflects the best possible use of this land. I am sure you are familiar with the proposed shoreline restoration, the vegetative buffer, and so forth. I will not digress on those points here.

The proposed Midland Development concerns us in Saint Michaels for two reasons: (1) we have spent much time and money on this issue to decide for ourselves what is and is not appropriate within our borders and for the fragile critical area in which we have our town, and (2) this development has become a flashpoint for the Talbot County Council to introduce substantive legislation concerning the Critical Area Program that most of us believe to be contrary to the Critical Area regulations, unconstitutional (*vis a vis* self-rule), ill-conceived and paternalistic. I ask you to affirm the request for growth allocation by the Commissions of Saint Michaels. More importantly, I ask you to consider Bill 933 as a substantive amendment to the Critical Area Program, and as such, poorly designed, unworkable and contrary to law.

Having never visited or amended the local Critical Area Program in 14 years, the Talbot County Council proposed Bill 933 within days of learning that the Commissioners of Saint Michaels might recommend the developer's proposal, having received a positive endorsement from its own planning commission. Prior to the Commissioners of Saint Michaels taking up the issue, the Talbot County Council publicly rebuked the Town and introduced legislation to remove hundreds of acres of unused growth allocation that had been given to the municipalities in Talbot County at the very commencement of the Critical Area Program. This proposed legislation, including how municipalities are to seek approval from the county, creates more problems than it solves. A procedural revision would only affect the mechanics of "how" the local program is managed. Unlike a procedural change or grammatical revision, this "revision" is substantive because it goes to the very heart of "who" is the decision-making authority in the local program.

Bill 933 creates a two tiered system in the county (without even describing how that system might function) for the process of recommending growth allocation to the Critical Area

Commission. This additional level of veto power from the County substantially changes the nature of the municipalities' own Critical Area Programs. Moreover, it simply usurps local governmental authority by injecting county control into those elements of municipal government (zoning, development approval, etc.) that are the exclusive jurisdiction of the municipality.

COMAR 27.02.02.02 (A-B) describe that the "local jurisdiction" is responsible to the Critical Area Commission, but that ultimately, the certification comes from the "appropriate agency within the local jurisdiction." In this case, that would be the governing body with the zoning power to approve the plan. See COMAR 27.01.01(54) (definition of Project Approvals means the "appropriate local approval authority" with zoning power). Therefore, the local authority, in the case with any municipality in Talbot County, would be the town or city within the jurisdiction (county). The addition of a system whereby there would be two local jurisdictions (one town, the other county) deprives the regulations of their meaning. What if the two local jurisdictions disagreed? What if each made its own findings and arrived at divergent recommendations to the local Critical Area agency? The amendments created by Bill 933 only serve to create confusion and begs the question of which authority is ultimately in control. If allowed to pass, these issues will likely have to be resolved by the courts or through a substantial re-write of the Critical Area regulations to resolve the conflict.

The proposed bill is constitutionally infirm because it creates two authorities operating within the jurisdiction of each municipality. The towns in Talbot County and elsewhere derive their authority from the state, not from the counties¹. Saint Michaels and other municipalities have the authority from the state to enact legislation, tax, provide for police, zoning, and so forth. Bill 933 in practice makes the county the final arbiter of zoning and development within the towns. This undermines the municipality's ability to self-govern within its own physical boundaries regarding powers the state chosen to let the town exercise. Control over the request for growth allocation, if denied by the county, renders the municipality's authority for growth and development meaningless.

Mr. Foster, the president of the Talbot County Council, informed me personally that if the towns cannot make good decisions for themselves, then the County will have to do it for them. He expressed that he and other council members believe in a "no growth" mandate and are willing to take whatever steps are necessary to prevent growth in the small towns in Talbot County. The whole point of the Critical Area Law is to protect and conserve land within that zone as much as is feasibly possible. The critical area criteria are to be used for responsible growth and to "minimize" the impacts of growth, not prevent growth altogether. Here, it is being used as a tool to achieve an altogether different and political result.

The proposed bill is in conflict with Critical Area regulations because these regulations expressly call for the counties to provide for and accommodate the municipalities' development needs. COMAR 27.01.02.06 (2) reads "[w]hen planning future expansion of intensely developed and limited development areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities." (Emphasis added.) The term "coordination" is defined as a harmonious interaction of functions. "Accommodation"

¹ By way of personal communication, Mr. Foster, a practicing attorney and President of the Talbot County Council, informed me that municipalities derive their authority from the county. Nothing could be further from the truth. The municipalities are chartered by the state and derive their powers directly therefrom. When it comes to state law, the two are equals, and the county cannot impose its rule over the municipalities. Perhaps this is one source of the County Council's confusion.

goes one step further and means that one is obligated to provide or supply for a need or want. The removal of approximately 450 acres of growth allocation from the municipalities and the creation of the County Council as the final arbiter of any recommendation of an award is anything but cooperation or accommodation. In light of its present self-imposed mandate to prohibit growth, the animus it exhibits towards the towns and lack of input from the municipalities concerning the bill, it is clear to those of us affected by this legislation that we cannot look forward to any collaborative efforts with the County. This bill is the opposite of cooperation and accommodation because it deprives the municipalities of growth allocation acres, deprives the municipalities of power under their own Critical Area Programs, creates a hostile and unworkable two-tiered system of approval and deprives the towns (some of which are almost totally within the Critical Area) of any say about their own future development. Those of us in municipalities find this legislation unpalatable and insulting.

We are also concerned about the process in which this bill has been drafted. It is no secret that your predecessor has been actively campaigning for this bill and has been a spokesperson for related maneuvers by groups opposed to traffic and population impacts of the Midland project. Mr. North has also recently been appointed by the Talbot County Council to the county's planning commission. I would not be surprised to learn if he had a major role in the creation of Bill 933. I am not accusing him of any wrongdoing. He appears sincere in his efforts. However, he was removed by Governor Ehrlich because his policies were not consistent with that of the current administration. He is now back in Talbot County doing what appears to be that which he was asked to stop doing in Annapolis. His property is immediately adjacent to the proposed Miles Point development by the Midland Company. I respect that he is entitled to his opinion and his right to protest a development that affects his property value. I would be disturbed to learn, however, that Critical Area amendments were being manipulated by the County Council for its own political gain and for reasons that are (however well-intentioned) inimical to Critical Area Commission and the Ehrlich Administration's policies.

I ask you to grant Saint Michael's request for growth allocation. We in town believe this current proposed project will actually benefit the town, the environment and add to the charm of Saint Michaels. We also believe that development of this caliber, utilizing smart growth principles, an environmentally friendly shoreline and historically accurate homes would serve as a model for planning and development within the Critical Area.

Bill 933, on the other hand, is an example of reactionary legislation, hastily drafted for the purpose of preventing municipalities from having a substantial role (if any) in the award of growth allocation. It is contrary to Critical Area law and policy and contrary to the state constitution. At best, its approval by the Critical Area Commission would create confusion and the likelihood of litigation between the jurisdictions to resolve the problems its acceptance would introduce. For these reasons it should not be approved as an amendment to the Talbot County Critical Area Program. Thank you for your time and consideration in the matter.

Respectfully submitted,



J. Phillip Keller
Saint Michaels Resident

Copy sent *via* facsimile

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/

January 13, 2004

Honorable Robert T. Snyder, President
The Commissioners of St. Michaels
P.O. Box 206
St. Michaels, Maryland 21663-0206

Re: Midlands/Miles Point Project

Dear Commissioner Snyder:

Thank you for your letter of January 7, 2004 concerning Talbot County's Bill 933 and the Midlands Company's proposed development in St. Michaels. As of this date, we have not received official submissions for local Critical Area Program changes from either Talbot County or the Town of St. Michaels.

We will keep your letter on record should these matters come before the Commission for review and will notify you in the event any public hearings are scheduled.

Please contact me at (410) 260-3467, or Executive Director Ren Serey at (410) 260-3462, if you have questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin G. Madden".

Martin G. Madden
Chairman

cc: Honorable Philip Carey Foster, President, Talbot County Council
Marianne D. Mason, Assistant Attorney General
Ren Serey

Serey, Ren

From: Donna [dswartz@tredavonproperties.com]
Sent: Monday, March 29, 2004 2:25 PM
To: Serey, Ren
Subject: HB 933

Hon. Martin G. Madden, Chairman

Critical Area Commission for the Chesapeake & Atlantic Coastal Bays 1804 West Street, Suite 100 Annapolis, MD 21401

Re: Talbot County Bill 933

Dear Senator Madden and Members of the Commission:

The Mid Shore Board of Realtors, an organization with over 500 members, strongly believes in maintaining the quality of our local area through controlled and well thought out growth within our towns and counties. We do not believe that growth in and of its self is a good thing, nor do we believe that growth is a bad thing. We believe that the right growth, well planned and well thought through will benefit all who live and love the Mid Shore Area.

As a member of the Mid Shore Board, I would like to take this opportunity to reiterate what John Hurt, our President Elect, said at your hearing in Easton on March 24, 2004. The Mid Shore Board of Realtors and I strongly oppose the approval of Talbot County Bill 933 as an amendment to the Talbot County Critical Area Program because:

1) It effectively removes planning and zoning powers from the towns since

the vast majority of land within the towns that will be impacted is within the Critical Area. As a result the county would have control of most growth within the towns. This is clearly contrary to both Maryland law and to common sense.

2) It has created a strong adversarial relationship between the county and

the towns. This is also clearly contrary to Maryland law which requires counties to work in coordination and cooperation with municipalities to plan and establish for growth within the municipalities; and

3) It is a far reaching effort to take complete control over one particular

project. Not only will the individual towns suffer a loss, but those who

have dealt with the towns in good faith will also suffer if the county is permitted to retroactively usurp the planning and zoning power from the towns.

Thank you for the opportunity to be heard.

Very truly yours,

Donna Allen Swartz

3/29/2004

Serey, Ren

From: robertgladney@mris.com
Sent: Tuesday, March 30, 2004 8:15 AM
To: Serey, Ren
Subject: Talbot County Bill 933

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

Re: Talbot County Bill 933

Dear Senator Madden and Members of the Commission:

The Mid Shore Board of Realtors, an organization with over 500 members, strongly believes in maintaining the quality of our local area through controlled and well thought out growth within our towns and counties. We do not believe that growth in and of its self is a good thing, nor do we believe that growth is a bad thing. We believe that the right growth, well planned and well thought through will benefit all who live and love the Mid Shore Area.

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- 1) It effectively removes planning and zoning powers from the towns since the vast majority of land within the towns that will be impacted is within the Critical Area. As a result the county would have control of most growth within the towns. This is clearly contrary to both Maryland law and to common sense.**
- 2) It has created a strong adversarial relationship between the county and the towns. This is also clearly contrary to Maryland law which requires counties to work in coordination and cooperation with municipalities to plan and establish for growth within the municipalities; and**
- 3) It is a far reaching effort to take complete control over one particular project. Not only will the individual towns suffer a loss, but those who have dealt with the towns in good faith will also suffer if the county is permitted to retroactively usurp the planning and zoning power from the towns.**

Thank you for the opportunity to be heard.

Very truly yours,

Serey, Ren

From: Chuck Benson [cfbenson@bensonandmangold.com]
Sent: Monday, March 29, 2004 2:22 PM
To: rserey@dnr.state.md.us.
Cc: msb@dmv.com
Subject: Bill 933

Dear Ren:

It has been some time since you and I have spoken with regard to the many issues which surround the impact that growth has and does not have on the waters of the Chesapeake Bay and its tributaries.

With the possibility of Bill 933 becoming a reality I rise up in opposition to the bill and can only reflect on what the then Chairman of the Commission, John C. North told the public during the formative years of the Commission as its representatives went around the mid-shore Counties saying that the Commission would "never become a super zoning authority". It appears that this is not the case.

I wish you fellows would focus on the good that is being done by land owners within the Chesapeake's Critical Areas and begin to address the useless and wasteful legislation applicable to land fills, applications of sewage sludge, outfall from municipal wastewater treatment plants, razor clam dredging, prohibiting blue line stream impoundments and listen to your own biologists and others who are in the field. Forget about the politics and do what is good for the Bay.

Sincerely:

Charles F. Benson
Benson and Mangold
Easton, Maryland
cfbenson@dmv.com

3/29/2004

Serey, Ren

From: Skipper Marquess [wmarques@bluecrab.org]
Sent: Monday, March 29, 2004 2:49 PM
To: Serey, Ren
Subject: HB 933

I think that should Talbot County be permitted to amend the Critical Area Legistion to give and take Groath Allocation from the participating Towns then the entire law needs to be brought back to the Maryland state Senant and be voted on again. I am not in favor of Talbot County Council being permitted to take groath allowacation from ant township.

Resident of Oxford Maryland. William H. Marquess IV

3/29/2004

Mid-Shore Board of REALTORS[®], Inc.

8615 Commerce Drive, Suite 2, Easton, Maryland 21601
(410) 822-8767 FAX (410) 820-4598 Email: msbr@dmv.com

RECEIVED

MAR 24 2004

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

Re: Talbot County Bill 933

Dear Senator Madden and Members of the Commission:

The Mid Shore Board of Realtors, an organization with over 500 members, strongly believes in maintaining the quality of our local area through controlled and well thought out growth within our towns and counties. We do not believe that growth in and of its self is a good thing, nor do we believe that growth is a bad thing. We believe that the right growth, well planned and well thought through will benefit all who live and love the Mid Shore Area.

The question before us tonight is should Talbot County Bill 933 be approved as an amendment to the Talbot County Critical Area Program? Bill 933, if approved, would place all growth allocation land use conversions, even those with town borders, at the discretion of the County Council.

Neither the Critical Area law as it is set forth in the Natural Resources Article of the Maryland Annotated Code, nor the local program criteria contained in COMAR give county government the power to control or limit planning, zoning or subdivision regulation within local municipality borders. Both legislation and case law have regularly declared that municipalities have exclusive planning, zoning and subdivision powers within their borders. The reason for this should be clear. Local municipalities are the best judge of what is appropriate for them. They should be the one to make the decisions on what growth occurs within their respective town limits.

State planning law, critical area law AND the Talbot County Comprehensive Plan all envision and stress the absolute importance and necessity of a cooperative planning process between county and municipal governments on the issues of municipal growth, especially in the critical areas. Unfortunately this has not happened with respect to Bill 933. Despite the fact that this bill, if approved, would have a direct and major effect on the towns, Talbot County never conferred with the towns before introducing it. A cooperative planning process would dictate that the county and the towns meet, discuss and confer on such a major change in advance to attempt to reach through cooperation



after years of hard work and considerable expense the Town of St. Michaels was on the verge of approving the project the county sprang to life.

First it sent a letter on December 1, 2003 to the Commission opposing the project. Then fearing that this was not sufficient to control the situation, on December 23, 2003 it passed Bill 933 which if approved will remove from the Town of St. Michaels, and from all other towns in Talbot County, all growth allocation that is unallocated as well as all growth allocation that has been allocated if actual construction has not yet begun. It would void the Strasburg Annexation and growth allocation award which has already been approved by both the Town of St. Michaels as well as the Critical Area Commission.

In conclusion, the Mid Shore Board of Realtors strongly opposes the approval of Talbot County Bill 933 as an amendment to the Talbot County Critical Area Program because:

- 1) It effectively removes planning and zoning powers from the towns due to the fact that the majority of land within the towns is within the Critical Area, thus the county would have control of most growth within the towns. This is clearly contrary to both Maryland law and to common sense.
- 2) It has created a strong adversarial relationship between the county and the towns. This is also clearly contrary to Maryland law which requires counties to work in coordination and cooperation with municipalities to plan and establish for growth within the municipalities; and
- 3) It is a far reaching effort to take complete control over one particular project. Good legislation demands that those who will be affected have a voice and that voice be heard and considered. If Bill 933 is allowed to take effect this will not be the case. Not only will the individual towns suffer a loss, but those who have dealt with the towns in good faith will also lose. If the county is allowed to usurp the planning and zoning power from the towns because the county disapproves of a town's decision, what will be next?

Thank you for the opportunity to be heard.

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

RECEIVED

MAR 24 2004

CHESTER COUNTY
CRITICAL AREA COMMISSION

March 24, 2004

Dear Panel,

We are Saint Michaels residents writing to express our opposition to Talbot County's Bill 933. Bill 933 and related legislation removes all growth allocation Talbot County had awarded to the towns and creates (an as yet defined) mechanism where the County would involve itself in the zoning and Critical Area Growth Allocation decisions for projects falling within sovereign municipal jurisdictions.

We oppose this ill-considered legislation for several reasons, among the chief reasons:

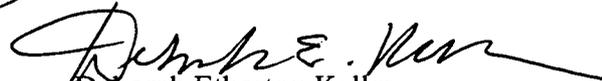
1. It removes growth allocation acreage from the very towns that have shown they can use it judiciously.
2. It makes no allowance for pending decisions where towns have planned or are in the process of approving growth allocation, thereby severely disrupting the planning and zoning process and interfering with the decision making authority of the towns.
3. This bill is illegal because it runs contrary to critical area regulations which require the counties to not only "cooperate" with, but also, "accommodate" future growth in the towns. Talbot County Council Members have all expressed their opposition to growth; this includes planned and responsible growth.
4. It is contrary to smart growth principles which encourage growth near existing towns for reliance on existing infrastructure like sewer treatment, water as well as close access to retail and recreational activities.
5. It encourages urban sprawl whereby large lots will eventually be developed in the critical area on their own septic systems. The actual pollution "load" on the Chesapeake Bay would be higher than the compact development envisioned adjacent to or in the towns.
6. It creates a two-tiered authority within the jurisdictions of the towns. We have sufficient legal reason to believe this bill is constitutionally unworkable and will invite a suit between the county and the towns to resolve the "self-rule" issues it creates.
7. It effectively nullifies the local critical area programs which some towns have established.

8. The bill is substantive in that it completely alters the local critical area program procedural components and substantive decision making authority between the County government and the municipalities.
9. The bill allows the County to create a strangle-hold on towns such that the towns' intended growth, tax revenues and future planning are left the County.
10. Critical area acreage an extremely valuable and limited commodity. By reallocating acres back to the County, decisions about the award of growth allocation would be in the hands of another government whose financial and environmental interests are contrary to those of the towns and those people actually closest to the affected area. These growth units represent millions of dollars from would-be developers to towns for impact fees and to offset the loss in any potential value from development in the towns. Growth allocation award decisions and approvals will be decided more and more on the County's financial self-interest, notwithstanding which local jurisdiction (town) actually incurs the loss.

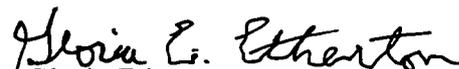
Respectfully submitted,



J. Phillip Keller



Deborah Etherton Keller



Gloria Etherton

104A West Chestnut Street
Saint Michaels, MD 21663

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

RECEIVED

MAR 24 2004

CHEESAPEAKE BAY
CRITICAL AREA COMMISSION

March 24, 2004

Dear Panel,

We are Saint Michaels residents writing to express our opposition to Talbot County's Bill 933. Bill 933 and related legislation removes all growth allocation Talbot County had awarded to the towns and creates (an as yet defined) mechanism where the County would involve itself in the zoning and Critical Area Growth Allocation decisions for projects falling within sovereign municipal jurisdictions.

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8. The bill is substantive in that it completely alters the local critical area program procedural components and substantive decision making authority between the County government and the municipalities.
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Respectfully submitted,



J. Phillip Keller



Deborah Etherton Keller



Gloria Etherton

104A West Chestnut Street
Saint Michaels, MD 21663



THE TOWN OF TRAPPE, INC.

4011 POWELL AVENUE
 P.O. BOX 162
 TRAPPE, MARYLAND 21673-0162

410-476-3170
 Fax:
 410-476-3192

Cheryl Lewis, President
 410-476-3170
 Cheryl@trappemd.net
 Robert Niemeyer, Vice President
 410-476-5244
 Edgar N. Hamson, Commissioner
 410-476-3358
 Danny Adams, Commissioner
 410-476-3197
 Norman R. Fegel, Commissioner

FACSIMILE TRANSMITTAL SHEET

TO: Martin G. Madden	FROM: Cheryl Lewis Town of Trappe
COMPANY: Critical Area Commission	DATE: 3/22/2004
FAX NUMBER: 410-974-5338	TOTAL NO. OF PAGES INCLUDING COVER: 3
PHONE NUMBER: 410-260-3460	SENDER'S REFERENCE NUMBER:
RE: Bill 933 / Hearing March 24, 2004	YOUR REFERENCE NUMBER:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Due to the upcoming hearing March 24, 2004 concerning Bill 933, I have faxed a copy of this letter. The original was mailed on March 22, 2004.

Thank you, Cheryl Lewis
 President, Trappe Town Council

RECEIVED

MAR 22 2004
 CRITICAL AREA COMMISSION



THE TOWN OF TRAPPE, INC.

4011 POWELL AVENUE
P.O. BOX 162
TRAPPE, MARYLAND 21673-0162
410-476-3170
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410-476-3192

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410-476-3170
Cheryl@trappemd.net

Robert Niemeyer, Vice President
410-476-5244

Edgar N. Harrison, Commissioner
410-476-3358

Danny Adams, Commissioner
410-476-3197

Norman R. Fogel, Commissioner

RECEIVED

March 22, 2004

MAR 23 2004

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

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

RE: Talbot County Attorney Michael Pullens' letter, referencing Bill 933, dated March 9, 2003

Dear Secretary Scott and Assistant Secretary Rimrodt:

In reference to the above-mentioned letter, I will leave the legal argument to those who are more educated. Yet, I feel I must defend the Town of Trappe's right to disagree with the Talbot County Attorney on issues involving Municipal - County relations, the right to defend legislation affecting municipalities located in Talbot County and the right to take advice from the attorney of our choosing. That said, the Town of Trappe, being the first municipality in Talbot County to experience the over reaching arm of our current County Council, will continue to fight for municipal rights as long as we feel the County is overstepping its authority.

After an almost 10 year building moratorium, a complete wastewater treatment plant upgrade, a complete town comprehensive plan rewrite and several years of almost weekly meetings and workshops, the Commissioners of the Town of Trappe voted to accept an annexation request submitted by land owners with the intention to develop. An annexation of land within the Towns Growth Area as represented in the Town's comprehensive plan, a plan that was overwhelmingly approved by the then County Council and the Maryland Department of Planning.

The current County Council and its allied special interest groups came out against the Trappe Commissioners and their decision. Members of the County Council spoke out against the Trappe Commissioners at special interest group meetings and in favor of a referendum on the annexation. The Commissioners of the Town are proud to say the annexation, brought to referendum, was approved overwhelmingly by 70% of the voters in one of the largest voter turn outs in the history of the Town.

Following the annexation, the County Council then attempted to introduce legislation to downsize the entire remaining growth area for the Town of Trappe.

In the last two weeks, the Talbot County Council has sent letters to the Maryland Department of the Environment concerning the Town of Trappe's recent Wastewater Discharge Permit, affirming the position of their allied special interest groups and speaking

against the Town of Trappe, while at no time having any direct communication with the Town of Trappe concerning the matter.

The Town of Trappe's "stake" in Bill 933 is that of a municipality in Talbot County with the same concerns as all municipalities in the County. The Commissioners of the Town of Trappe are well aware of the politics in this County. We are well aware of the County's attempts to restrict growth in St. Michaels by removing their growth allocation, knowing full well St. Michaels was legally committed to an annexation and DRRA involving property in their Critical Area.

As the current Talbot County Counsel continues to attempt to use 'revised' growth allocation legislation, 'revised' zoning legislation, 'revised' comprehensive plans, 'revised' water and sewer plans and who knows what other unforeseen 'tools' to stop any growth including Smart Growth in our County, as recommended by the special interest groups that helped to get them elected, the Town of Trappe will continue to vocally defend the right of its citizens and the citizens of our sister municipalities to be treated fairly and reasonably by the County in which we reside.

On a more personal note, I find Mr. Pullen's insinuation that the Commissioners of Trappe are being misled by our attorney and are unable to determine the relevance of Bill 933, along with Mr. Pullen's personal attack on our attorney, to go far beyond the professional level I would expect from an attorney representing a county in the State of Maryland. As a Town Commissioner, I find his letter questioning our attorney's position on 'other clients' cases to be totally out of line. If he was attempting to discredit Mr. Thompson in the eyes of this municipality he has been unsuccessful. I sincerely hope he is just as unsuccessful with the 14 other recipients of his letter.

I truly appreciate the time you have given to our opinion and trust in your ability to lead us all in the right direction.

Sincerely,



Cheryl Lewis
President, Trappe Town Council
for The Trappe Town Council

Cc: Town of St. Michaels
Town of Oxford
Town of Easton
Town of Denton
Martin G. Madden, Critical Area Commission
Scott Hancock, Maryland Municipal League

March 22, 2004

Critical Areas Commission
State of Maryland

Gentlemen:

I am sorry that I will not be able to attend your hearing at the Easton High School Auditorium because I will be traveling to Connecticut on Business. I will attend your meeting concerning St Michaels /Midland request next week.

I am submitting this letter for the record because of my concern about the process that was used by the County Commissioners in their enactment of Bill 933. As a former Mayor of a large community in an urban setting I am concerned about the need to maintain the rural and small community environment that we all love in Talbot County. I did not move here to have another Northern Virginia evolve. I know that growth of some nature is going to take place and I am interested in positive growth. If there is anyone that believes that growth can be stopped they are wrong.

While I live in the County, my home is one block from the city line of St Michaels. I believe that I have some knowledge of the concerns of the people of St Michaels. I would like to express my concerns for the following reasons:

1. The approval of Bill 933 was done without a public hearing and was rushed through to stop St Michaels from making their own decisions on the Critical Area decisions. This was a complete reversal of many years of having the local towns handle their own decisions.
2. If the Towns do not have the ability to manage their own growth then they will not be able to have managed growth, which will increase their tax base. Consequently they will not be able to support the services that are required without killing the local residents with high taxes. The tax burden on the residents of the town is twice as much as that of the County.
3. It removes growth allocation from the towns that have used it judiciously and have come to rely on it for projects under consideration. It is saying to the local communities we will manage your growth and control your tax base but you can increase taxes to maintain services.
4. I believe that it runs contrary to critical area regulations, which require the counties to cooperate and accommodate the towns. It is also not helpful to good growth management which says to keep all growth near the towns so that services such as sewers and water can be handled more efficiently.

RECORDED

MAR 24 2004

CRITICAL AREAS COMMISSION

Nicholas A. Panuzio

Page 2

5. The County decided many years ago that the best way to handle these actions were for the people closest to the situation to make the decisions. Now because of an attempt to control what Local citizens want the County has reversed its traditions, which have worked well. Citizens should make the decisions for their communities not people who live outside the community.

I hope that the Critical Area Commission will reject Bill 933 and allow the local communities to control their destinies. If not perhaps the County should come up with a taxing system that says if the county is going to control the economic development of the towns then they will spread the cost of the services throughout the County and have everyone share in the taxes. I do not believe that those who oppose any growth will want that to be done.

Sincerely,



Nicholas A. Panuzio

708 Riverview Terrace
St. Michaels, MD 21663

RICHARD F. COLBURN
STATE SENATOR

37th Legislative District
Caroline County
Dorchester County
Talbot County
Wicomico County

Member

Education, Health, and
Environmental Affairs Committee
Capital Budget Subcommittee
Joint Committee on Administrative,
Executive, and Legislative Review
Special Joint Oversight Committee on
Chesapeake Bay Critical Areas



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401-1991

IN REPLY PLEASE REFER TO OFFICE INDICATED

Annapolis Office
315 James Senate Office Building
Annapolis, Maryland 21401-1991
410-841-3590
1-800-492-7122 Ext. 3590

Mid-Shore Office
5210 Heron Road
Cambridge, Maryland 21613
410-228-1137 · 410-819-3337
Fax 410-376-3737

Wicomico County Office
24790 Porter Mill Rd.
Hebron, Maryland 21830
410-548-3737

March 23, 2004

Honorable A. Phillip Dinkel, Vice President
The County Commissioners of St. Michaels
P.O. Box 206
Saint Michaels, MD 21663-0206

Dear Commissioner Dinkel:

I would like to thank you for giving me an opportunity to show my support in this delicate matter. As a native of the Eastern Shore I have been blessed to have the opportunity to not only see but also to have lived in one of the most beautiful regions in the world. Saint Michaels is a microcosm in which the bounty of the Eastern Shore is encompassed, but perhaps even more impressive is the symbiotic relationship between its people and the pristine environment. For hundreds of years the people of Saint Michaels have not simply lived *on* the land but have lived *with it*.

I have recently become aware of the introduction of a bill (Bill 933) that would essentially revoke the power of the local government to do what they have done so well, for so long and that's to govern. I refuse to say "If it isn't broken don't fix it", that tired cliché is out of place in this instance. I *am* saying that if growth allocation is going to occur, who better than the people that have to live with the growth to make the decisions of how that growth will take place.

I have been made aware of an effort to prevent the recently approved growth allocation for the Midland Companies designated for their proposed development of Perry Cabin Farm. After reviewing the logistics involved with the project I have found that the development will not only strengthen the infrastructure of the rural area but it will also serve the function of shoreline and waterfowl restoration which are an integral part of the public park.

RECEIVED

OFFICE OF THE CLERK
CRITICAL COMMITTEE SUBMISSION

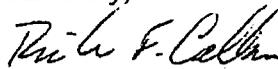
Page 2

3/23/04

Honorable A. Phillip Dinkel, Vice President

In conclusion I would like to let it be known that in reference to Talbot County's Bill 933 I am opposed. I would like to see this last minute attempt to block what is most appropriately called "Smart Growth", dismissed. I feel it would be a grievous error to remove the municipalities from the process of determining what allocations would best serve the very community being affected.

Sincerely,



Richard F. Colburn

Cc: Cheryl Thomas
Critical Area Commission

OFFICE OF THE ATTORNEY GENERAL

For the
Department of Natural Resources
Tawes State Office Building, C4
580 Taylor Avenue
Annapolis, MD 21401
Fax (410)260-8364

FACSIMILE COVER SHEET

DATE: 12/29

TO: Ren

PHONE NO: _____ FAX NO: _____

FROM: Marianne

PHONE NO: _____ FAX NO: (410) 260-8364

SPECIAL INSTRUCTIONS: from Del Haddaway
re Talbot County

TOTAL NUMBER OF PAGES 9 (Including this page)

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DEL-22-2263 16:40 FROM:

TD:14105767036

P.4



*Draft
revised
10/16/03*

The Commissioners of St. Michaels

SETTLED 1670-80
INCORPORATED 1804

P.O. BOX 208
ST. MICHAELS, MARYLAND 21663-0208

(410) 745-9535
FAX (410) 745-3489
TDD/TTY RELAY 1-800-735-2258

December 16, 2003

HAND DELIVERED
Hon. Philip C. Foster, President
County Council of Talbot County, Maryland
142 N. Harrison Street
Easton, Maryland 21601

Re: Opposition to proposed Talbot County Bill No. 933

Dear President Foster Council Members:

On November 18, 2003, the County Council of Talbot County introduced legislation in the form of County Bill No. 933 that would remove from the Towns' control all growth allocation acreage previously allotted, whether unallocated, *already allocated*, or *currently under consideration* for allocation to a specific parcel of land. In essence, Bill 933 would deprive the Towns of their ability to award growth allocation on land within their own municipal boundaries. More than half of the land located within Town of St. Michaels is also located within the Chesapeake Bay Critical Area. Therefore, with respect to the significant part of the municipality located within the Critical Area, Bill No. 933 would effectively take land planning and zoning functions over that area from the Town and give it to Talbot County. We believe the enactment of Bill No. 933 by the County Council is unnecessary, inconsistent with State law and will have a negative impact on the Towns of Talbot County.

So far as we can determine, with regard to other municipalities in Talbot County, and to be sure as far as St. Michaels is concerned, we were not informed by the County in advance of the introduction of any problem that would require such a remedy as Bill 933. Further, we were not solicited by the County for a solution or cooperation in solving such a problem, and were not provided by the County with a copy of the proposed Bill in advance for comments and suggestions, on a matter that is important to the Town. We regret this state of affairs. To the extent possible, we hope to improve communications between the County and the Town.

To that end, we offer by this letter what we hope you will accept as forthright and constructive comments and suggestions regarding Bill No. 933.

Hon. Philip C. Foster, President
County Council of Talbot County, Maryland
December 16, 2003
Page 2

1. The Code of Maryland Regulations ("COMAR"), § 27.01.02.06, relating to growth allocation, requires "a process to accommodate the growth needs of the" Town. We can find nothing about either the Bill, or the manner in which the Bill has come about, to indicate that it will create or facilitate such a process. As drafted, the Bill would have the effect of dismantling the right and ability of St. Michaels to self-determination regarding growth and development in the Critical Area within the Town.
2. We do not think that this drastic step is necessary to manage available growth allocation among the towns and the County in a way that will achieve the stated purpose of the Bill, or to qualify the County for an additional allotment of growth allocation for use as IDAs. We believe that the current provisions of the County Code and a cooperative effort among the affected jurisdictions could accomplish the necessary results.
3. Maryland laws indicate that the Town is intended by the State to have home rule powers, and to have planning, zoning, and subdivision powers over land within the Town, to the exclusion of the County. We believe that the Bill is contrary to the Maryland Constitution and several State statutes.
4. For 20 years the Towns have exercised careful stewardship of their growth allocation. This fact is evidenced by the amount of allocation acreage remaining to us and indicates that Bill 933 is unnecessary.

We urge the Council to review the facts contained in the enclosed position paper and to carefully consider if a hasty adoption of Bill 933 is the best interest of all Citizens of Talbot County. As far as we are aware, there is no deadline facing either the Town of Easton or the County that would preclude a careful study of the issues and a concerted effort by all parties affected to reach an equitable solution. If it is truly the Council's intent to fairly distribute the County's growth allocation, then constructive conversation between the Towns and the County can only improve the end results.

We respectfully urge you to consider these issues and to postpone action on Bill 933 until you have met with the elected officials of the Towns of Easton, Oxford and St. Michaels.

Thank you for your consideration.

Sincerely,

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

RTS/ct
Enclosure

Hon. Philip C. Foster, President
County Council of Talbot County, Maryland
December 16, 2003
Page 3

CC: Hon. Delegate Jeanne Haddaway
32 S. Washington Street
Easton, MD 21601

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

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

Hon. Cheryl Lewis, President
Trappe Town Council
P.O. Box 162
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The Commissioners of St. Michaels
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ST. MICHAELS, MARYLAND 2169-0206

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**Opinion of the Commissioners of St. Michaels on
Talbot County Bill 933
December 16, 2003**

The Commissioners of St. Michaels wish to have this document entered into the record of the public hearing on proposed County Bill 933 (hereafter the "Bill"). We unanimously oppose the Bill for several reasons, which will be addressed herein.

Bill 933 is Unnecessary

We do not think that this drastic step is necessary to manage available growth allocation among the towns and the County in a way that will achieve the stated purpose of the Bill, to qualify the County for an additional allotment of growth allocation for use as IDAs. The current County Code, Chapter 190 (Zoning) Section 190-109 (Administration), Subsection D (Growth allocation district boundary amendments in the Critical Area), Part (11), provides for periodic reviews "for possible reallocation" of growth allocation. We believe that this existing process could be used to meet and solve the stated problem in a way that would be mutually agreeable and within the applicable State laws. From our viewpoint, Bill 933 would result in a tremendous amount of Town funds and resources having been wasted in reliance upon a set of facts that form the basis of Town planning and zoning documents that has been in place for decades.

Bill 933 is Not Consistent With State Law

We believe that the Bill, if enacted, would be contrary to State laws and policies because it would have the effect of taking from the Town government, and placing in the County government, certain home rule, planning and zoning powers. In 1804 the Town of St. Michaels was granted the status of a municipal corporation by the State of Maryland. As an incorporated municipality, St. Michaels is intended by State law to have certain powers. Among the powers granted exclusively to Maryland municipalities are those expressed in the following:

1. Maryland Constitution, Article XI-E (Municipal Corporations), Section 3 (Power of home rule);
2. Maryland Code, Article 23A (Municipal Corporations), Section 2 (Express powers), Subsection 36; and
3. Maryland Code, Article 66B (Land Use).

DEC-22-2003 16:41 FROM:

TO: 14105767038

P. 8

**Opinion of the Commissioners of St. Michaels
County Bill 933
December 16, 2003**

4. Maryland Code, State Finance And Procurement Article, § 5-7B-02 (Priority funding area).

We believe that these Maryland laws indicate that the Town is intended by the State to have home rule powers, and to have planning, zoning, and subdivision powers over land within the Town, to the exclusion of the County. For example, Article 66B requires the Town to have its own comprehensive plan.

Further, in the case of *Gordon v. Commissioners of St. Michaels*, 278 Md. 128, 359 A.2d 543 (1976), the Maryland Court of Appeals struck down as "unconstitutional that portion of Maryland Code (1957, 1970 Repl. Vol., 1975 Cum. Supp.) Art. 66B, § 4.05(d), permitting each incorporated town in Talbot County to 'have territorial planning and zoning jurisdiction over all land lying within one mile of its corporate boundaries' because Maryland Constitution Art. XI-E forbids passage by the General Assembly of 'any law relating to the incorporation, organization, government, or affairs of those municipal corporations which are not authorized by Article 11-A of the Constitution to have a charter form of government which will be special or local in its terms or in its effect . . .'" We believe that principles of *Gordon v. Commissioners of St. Michaels* apply to the Bill, if enacted, which would effectively give Talbot County planning and zoning powers over those portions of the Town which are within the Chesapeake Bay Critical Area, which include a substantial part of the Town.

Despite claims to the contrary, State policy still favors the concept that growth and new development should occur within and around existing municipalities. See Maryland Code, State Government Article, Title 9 (Miscellaneous Executive Agencies), Subtitle 14 (Office Of Smart Growth), Section 9-1402 (Legislative findings and purpose). See also the attached letter to the Commissioners from John W. Frece, Acting Director of the Governor's Office of Smart Growth in April of 2003 and the attached letter from Secretary Audrey E. Scott of the Maryland Department of Planning to Mr. Valanos of the Midland Companies dated August 2003. We believe that the effect of the Bill would be to take from the Town's control all or substantially all of the available growth allocation allotted by the State to the County. Therefore, the Town would be left without access to a reasonable quantity of the County's available growth allocation to effect the State policies relating to growth within and around the Town. We believe that if the County's true purpose of the Bill is to make available when needed additional growth allocation for use in allowing development as "Intensely Developed Areas" (or "IDAs", as that term is used in the State Critical Area laws and regulations), then there are better and less radical ways in which to accomplish that purpose without taking from the incorporated municipalities in Talbot County the right of self-government, as the Bill would do.

It is noted, in particular, that the Code of Maryland Regulations ("COMAR"), § 27.01.02.06, provides, in part:

- A. Intensely developed and limited development areas may be increased subject to these guidelines:
 - (1) ;

Opinion of the Commissioners of St. Michaels
County Bill 933
December 16, 2003

- (2) When planning future expansion of intensely developed and limited development areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities. [Emphasis added.]

Bill 933 does not create or facilitate "a process to accommodate the growth needs of the" Town. The Bill was drafted and introduced without our knowledge or input of the very Towns state law requires to be accommodated. As drafted, the Bill would have the effect of dismantling the right and ability of the Towns to self-determination regarding growth and development in the Critical Area.

We believe the enactment of Bill 933 would be contrary to the intent, policies and purposes of at least the above-described State laws. The Council has repeatedly stated that it wants a cooperative effort between the County and Towns in the awarding of growth allocation. Bill 933 does not foster that objective and provides no mechanism by which the Towns may control their own growth. The proposed legislation would not direct development to the established municipalities, and would promote urban sprawl.

Bill 933 Will Have a Negative Impact On All Talbot County Municipalities

To date the Towns of Oxford and St. Michaels have used the growth allocation allotted to their respective areas sparingly, if at all; holding out for the best development plans and policies for their respective situations. This is not to say that the Town of Easton has not done likewise. Easton, in its judgment, based on its unique situation, has determined that some of the plans submitted to it are worthy of growth allocation. St. Michaels believes that Easton is the best judge of when its growth allocation should be used in the Easton area. Likewise, St. Michaels and Oxford are the best judges of the location, design and extent of development that should be permitted in and adjacent to our Towns.

We believe that by enacting Bill No. 933, Talbot County would be positioning itself to make decisions for the towns in Talbot County that are solely municipal functions. Towns have different interests, serve different governmental purposes, and have different powers from those of counties. By their average density of development and the extent of governmental services typically provided by municipalities, as opposed to the average density and extent of governmental services in counties, municipalities have goals that are different from county goals. Therefore, the decisions relating to growth, and under what circumstances growth allocation should be used, are destined to be different.

We disagree with the proposition in Bill 933 that there is any shortage in growth allocation that would dictate that Talbot County reverse the policies resulted in the towns' original allotments of growth allocation. The boundaries of the towns in Talbot County have not changed in any way that was not contemplated by the growth allocation acreage allotted, and the

**Opinion of the Commissioners of St. Michaels
County Bill 933
December 16, 2003**

maps that designated the areas for growth, as originally enacted by the County. Moreover, because of its concentration of land within the critical area, Talbot County is one of those counties that are exempted from the normal limitation on the percentage of growth allocation that can be located in the Resource Conservation Area ("RCA") See Maryland Code, Natural Resources Article, Section 8-1808.1 (Growth allocation), Subsection (c), Part (3) and Part (5).

The Towns have operated with the understanding that the original allotment of growth allocation acreage to the St. Michaels area was a permanent act; or at least not subject to being suddenly and retroactively withdrawn without notice. The adoption of the proposed Bill No. 933 will have one resounding effect on future relations between the County and the municipalities in Talbot County. That is, quickly use and exhaust anything that is made available to the municipalities by the County, before it can be withdrawn. Hence, any growth allocation that is made available to the municipalities in the future is likely to be used before it can be withdrawn. It is likely that the "use-it-as-fast-as-you-can" attitude will not be limited to growth allocation, but will flow over to every benefit or opportunity that the County makes available to the towns in the future. Is that the type of relationship and attitude that will ultimately be beneficial for the County and its citizens?

We, the elected officials of the Town of St. Michaels ask that you reconsider the actions begun with the introduction of Bill 933. We trust that a careful study of the Bill and its ramifications will lead you to the conclusion that its passage is not warranted. Please take the time to work with the Towns on a solution to this situation that can work for all Talbot citizens.

This document represents the unanimous position of the Town Commissioners. Thank you for your consideration of our requests.

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

RTS/ct

**CC: Hon. Delegate Jeanne Haddaway
32 S. Washington Street
Easton, MD 21601**

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

**Opinion of the Commissioners of St. Michaels
County Bill 933
December 16, 2003**

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

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

Serey, Ren

From: PEYTON LOGEMAN [PEYTON.LOGEMAN@Longandfoster.com]
t: Tuesday, March 30, 2004 12:26 PM
Serey, Ren
Cc: PEYTON LOGEMAN
Subject: FW: HB 933 Letter

Importance: High

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

Re: Talbot County Bill 933

Dear Senator Madden and Members of the Commission:

The Mid Shore Board of Realtors, an organization with over 500 members, strongly believes in maintaining the quality of our local area through controlled and well thought out growth within our towns and counties. We do not believe that growth in and of its self is a good thing, nor do we believe that growth is a bad thing. We believe that the right growth, well planned and well thought through will benefit all who live and love the Mid Shore Area.

As a member of the Mid Shore Board, I would like to take this opportunity to reiterate what John Hurt, our President Elect, said at your hearing in Easton on March 24, 2004. The Mid Shore Board of Realtors and I strongly oppose the approval of Talbot County Bill 933 as an amendment to the Talbot County Critical Area Program because:

- 1) It effectively removes planning and zoning powers from the towns since the vast majority of land within the towns that will be impacted is within the Critical Area. As a result the county would have control of most growth within the towns. This is clearly contrary to both Maryland law and to common sense.
- 2) It has created a strong adversarial relationship between the county and the towns. This is also clearly contrary to Maryland law which requires counties to work in coordination and cooperation with municipalities to plan and establish for growth within the municipalities; and
- 3) It is a far reaching effort to take complete control over one particular

project. Not only will the individual towns suffer a loss, but those who have dealt with the towns in good faith will also suffer if the county is permitted to retroactively usurp the planning and zoning power from the towns.

Thank you for the opportunity to be heard.

Very truly yours,

Peyton Logeman
Realtor
Long and Foster Realtors

Serey, Ren

From: Bob Mielke [bobmielke@goeaston.net]

Sent: Tuesday, March 30, 2004 1:20 PM

To: Serey, Ren

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

Re: Talbot County Bill 933

Dear Senator Madden and Members of the Commission:

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- 2) It has created a strong adversarial relationship between the county and the towns. This is also clearly contrary to Maryland law which requires counties to work in coordination and cooperation with municipalities to plan and establish for growth within the municipalities; and
- 3) It is a far reaching effort to take complete control over one particular project. Not only will the individual towns suffer a loss, but those who have dealt with the towns in good faith will also suffer if the county is permitted to retroactively usurp the planning and zoning power from the towns.

Thank you for the opportunity to be heard.

Very truly yours,

Robert D. Mielke, Associate Broker
Director Mid-Shore Board of Realtors
Alex Fountain Realty LLC
113 E. Dover Street
Easton, MD 21601
410-822-2165

3/30/2004

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2ND AND 4TH TUESDAY OF EACH MONTH

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Oxford, Maryland 21654

Commissioners of Oxford

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CHESAPEAKE BAY
CRITICAL AREA COMMISSION

February 27, 2004

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

Re: Proposed Amendment to Talbot County
Critical Area Plan (Talbot County Legislative Bill 933)

Dear Chairman Madden:

The Town of Oxford believes that Talbot County Legislative Bill 933, as enacted by the Talbot County Council, constitutes a significant amendment to the County's critical area program, both in terms of what the bill seeks to repeal, and what it seeks to add. Bill 933 infringes upon the Talbot towns' management of their own critical area programs and their own planning and zoning functions within their own boundaries. The issues created by Bill 933 are significant to all of the Talbot County municipalities.

The purpose of this letter is to request a public hearing upon the proposed changes to the Talbot County Critical Area program embodied in Talbot County Legislative Bill 933.

With appreciation for your attention to this request, I am,

Very truly yours,

David R. Thompson
Attorney for the
Town of Oxford

cc: Commissioners of Oxford

Martin G. Madden, Chairman

February 27, 2004

Page 2 of 2

Commissioners of Trappe
Commissioners of St. Michaels
Easton Town Council
Senator Richard F. Colburn
Delegate Adelaide C. Eckardt
Delegate Jeannie Haddaway
Maryland Department of Planning
Maryland Municipal League



The Commissioners of Saint Michaels

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January 13, 2004

JAN 21 2004

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

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Re: Additional comments for the record on Talbot County Bill 933

Dear Senator Madden and Commission Members:

Our letter of January 7, 2003 addressed the reasons for our opposition to Talbot County Bill No. 933, entitled "A Bill to Review and Reallocate the Number of Reserved Acres of Growth Allocation Allocated Among the Towns for Rezoning in Compliance with the Requirements of Chapter 190, Talbot County Code, "Zoning" § 190-109 D. (11)". By this letter, we would like to add additional reasoning for the Critical Area Commission to deny Talbot County's attempt to remove growth allocation from the Towns' control.

In our January 7, 2003 letter we noted that more than half of the Town of St. Michaels is located within the Critical Area and because of this, Talbot County Bill No. 933 has the effect of transferring ultimate planning and zoning authority in a significant part of the Town from the Town to the County government. We further noted that such action is contrary to the grant of home rule powers to the Town by Maryland Constitution, Art. 11-E; the express powers granted to the Town by Maryland Code, Art. 23A, § 2; and the planning and zoning powers granted to the Town by Maryland Code, Art. 66B.

Article 66B has relevant language to point out the impropriety of Bill No. 933. Article 66B, Section 1.01 (*Visions*), states:

In addition to the requirements of § 3.05(c) of this article, *a commission shall implement the following visions* through the plan described in § 3.05 of this article:

- (1) Development is concentrated in suitable areas.
- (2) Sensitive areas are protected.
- (3) *In rural areas, growth is directed to existing population centers and resource areas are protected.*

- (4) Stewardship of the Chesapeake Bay and the land is a universal ethic.
- (5) Conservation of resources, including a reduction in resource consumption, is practiced.
- (6) *To assure the achievement of items (1) through (5) of this section, economic growth is encouraged and regulatory mechanisms are streamlined.*
- (7) *Adequate public facilities and infrastructure under the control of the county or municipal corporation are available or planned in areas where growth is to occur.*
- (8) *Funding mechanisms are addressed to achieve these visions.*

Further, Section 4.01 (Grant of powers; statement of policy; construction of powers), states:

- (a) (1) *It is the policy of this State that:*
 - (i) *The orderly development and use of land and structures requires comprehensive regulation through the implementation of planning and zoning controls; and*
 - (ii) *Planning and zoning controls shall be implemented by local government.*

On October 8, 2003, Governor Ehrlich issued Executive Order 2003.33, which states, in part:

- A. Established. There shall be a *Maryland Priority Places Strategy*. The Strategy shall be developed and *implemented by the Maryland Department of Planning*.
- B. Purpose. The Strategy shall be to identify specific State actions that will be undertaken and definitive procedures that will be instituted *to accomplish the following objectives:*
 - (1) *Achieve the established goals of State planning policy and local comprehensive plans for development, economic growth, community revitalization, and resource conservation;*
 - (2) Accomplish these diverse goals through mutually supportive means; and
 - (3) *Promote fiscal responsibility of State government to achieve the best "public return" on State investments in these goals.*
- C. The Maryland Priority Places Strategy shall be *based on:*
 - (1) *The eight statewide visions [stated in Article 66B, Section 1.01 (Visions)] of State Planning Policy for Economic Growth, Resource Protection and Planning established in the Economic Growth, Resource Protection and Planning Act of 1992;*

- (2) *The Priority Funding Areas Act of 1997* [Maryland Code, State Finance And Procurement Article, Division I (State Finance), Title 5 (State Planning), Subtitle 7b (Priority Funding Areas)]; and
 - (3) Existing State and *local planning requirements, comprehensive plans, regulations, powers*, and processes.
- D. The Maryland Department of Planning shall implement the Maryland Priority Places Strategy *by developing initiatives to accomplish the following:*
- (1) *Ensure that State programs, regulations and procedures, and funds are used strategically to achieve the goals of local comprehensive plans and State planning policy and provide for the infrastructure necessary to support planned growth;*
 - (2) Better enforce existing laws, regulations and procedures that are designed to ensure mutually supportive public investments and actions;
 - (3) Streamline State regulations and procedures *to make quality, well designed growth easier to build inside Priority Funding Areas;*
 - (4) Identify key plans and functions of State government that affect growth and development and make appropriate changes to those plans and functions to better support the goals of the Maryland Priority Places Strategy;
 - (5) *Encourage resource protection and production outside of the Priority Funding Areas* for environmental protection, recreation, tourism, forestry, and agricultural purposes; and
 - (6) Enhance existing brownfield cleanup and redevelopment, transit oriented development, and community revitalization efforts.

Except for the initial five-year period after an annexation, as provided in Maryland Code, Art. 23A, § 9 (c), a county has no planning or zoning authority over land within a Maryland municipality. However, Bill No. 933 has the effect of taking from the Town the power to plan and zone the Perry Cabin Land, as well as other significant areas of the Town. The County's enacting of Bill No. 933 is contrary to vision number 3 (In rural areas, growth is directed to existing population centers) of the eight statewide visions, and to the Priority Funding Areas Act of 1997, in that it makes development within significant areas of the Town impossible without the consent of the County.

In addition to the above-described actions of the Talbot County Council, the County owns and the Council controls the wastewater treatment and collection system that serves the Town and the surrounding areas of the County. That wastewater treatment plant is inadequate in the volume of treatment capacity to meet current demand and is technically outdated to meet current water quality laws. Further, the collection system has significant inflow and infiltration problems, allowing significant volumes of stormwater to enter the sewage treatment system and

Martin G. Madden, Chairman
Area Commission
13, 2004

flow through the treatment plant, further overloading the treatment system. To address these problems the County Council has for several years been in the process of deciding on the upgrading and expansion of that plant. The renovated and expanded plant is to be online in the summer of 2006.

In its deliberations regarding the expansion and renovation of the wastewater treatment plant, the Talbot County Council has debated what should be the treatment capacity of the upgraded plant. Although a former Council approved a larger plant, the County Council has very recently voted to decrease the size of the renovated plant to a capacity that the Council now says may not be adequate to serve the proposed Miles Point project, all of which would be located within a municipality and zoned to qualify as a priority funding area. In fact, of the 89 acres proposed to be devoted to the project, 72 acres have been within the Town and zoned for 7,200 sq. ft. lots (well in excess of 3.5 units per acre) since 1980 - pursuant to an annexation agreement to which the County is a party. However, it appears from their comments that the County has not planned, and is not planning, for the development of this land in its public sewer system.

Only 17 acres of the proposed 89 acre Midland Companies development have been recently annexed to the Town. The entire 89 acres is either currently, or soon will be, a priority funding area. We believe that funding a sewage treatment plant that could be considered inadequate in size almost from the day it is completed is not wise use of State funds. The plant should be sized to accommodate reasonable and foreseeable growth, and the collection system should be fixed so that excessive stormwater is not flowing through the sewage treatment plant. Finally, the cost of fixing the inflow and infiltration problem, which has existed since the County insisted on taking over the system from the Town in 1976, should be paid for by all of the system users rather than penalizing the residents of the Town by assessing the cost of inflow and infiltration repairs only to the properties within the Town.

As stated in our January 7, 2004 letter, State law also encourages development within municipalities at a density of at least 3.5 units per acre. See Maryland Code, State Finance And Procurement Article, § 5-7B-02 (Priority funding area). The point that we want to add here is that all of the land that is involved with proposed the Miles Point development is or will be zoned for development in excess of 3.5 dwelling units per acre. Thus, the zoning on the Perry Cabin Farm property would allow such density as to make the construction and operation of infrastructure, such as public sewer collection and treatment facilities, economically feasible. We believe this is consistent with the Priority Places Strategy and smart growth principles. We believe that the effect on the Chesapeake Bay of a properly designed and operated public sewer collection and treatment system is better than private septic systems serving the same number of residences located within the same area. Therefore, we believe that denial of public sewer service to a development located within a municipality, developed in density of at least 3.5 units per acre, and meeting the critical area criteria, would be environmentally insensitive and contrary to the goals of the Maryland Critical Area laws.

Hon. Martin G. Madden, Chairman
Critical Area Commission
January 13, 2004
Page 5

St. Michaels is a small village that has suddenly found itself in an unwelcome adversarial relationship with its County government. By its review of Talbot County Bill no. 933 the Critical Area Commission will soon be deciding if the Town will continue to govern its own fate or if the most important decision that St. Michaels has faced in its long history will be decided by the Talbot County Council instead of St. Michaels elected officials. We appreciate the opportunity to address these additional concerns regarding this extremely important decision facing the Critical Area Commission and we wish to thank the Commission members and staff for the help we have received in making our stand for municipal rights.

Very truly yours,


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

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

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

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

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

Hon. Robert C. Willey, Mayor
Hon. John Ford, President
Easton Town Council
P.O. Box 520

Hon. Martin G. Madden, Chairman
Critical Area Commission
January 13, 2004
Page 6

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

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

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

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

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

Mr. Tom Rimrodt, Assistant Secretary
Maryland Department of Planning
301 W. Preston Street, Suite 1101
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Ms. Pat Goucher, Director of Local Planning
Maryland Department of Planning
301 W. Preston Street, Suite 1101
Baltimore, MD 21201-2305

Ms. Mary R. Owens, Chief, Program Implementation Division
Critical Area Commission for the Chesapeake & Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, Maryland 21401

Hon. Martin G. Madden, Chairman
Critical Area Commission
January 13, 2004
Page 7

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

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



THE LAW OFFICE OF
J. PHILLIP KELLER, LLC

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SENDER: **J. Phillip Keller, Attorney**

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J. PHILLIP KELLER, LLC

ATTORNEY AT LAW
22 WEST DOVER STREET
EASTON, MARYLAND 21601
TEL. 410-822-7993

SAINT MICHAELS OFFICE:
104A WEST CHESTNUT STREET
ST. MICHAELS, MARYLAND 21663

FACSIMILE: 410-822-6420
E-MAIL: pkeller@goeaston.net

March 1, 2004

The Honorable Martin G. Madden
Chairman
Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD 21401

Dear Mr. Madden:

I am writing to you as a citizen of Saint Michaels, Maryland concerning the recent actions of the Talbot County Council in respect to thwarting growth in the critical area. After five years of litigation between the town and the Midland Company, the developer and town finally agreed on a proposal that incorporates most if not all smart growth principles. We in the town also believe, consistent with hundreds of hours devoted to this by our planning commission, that this current proposal reflects the best possible use of this land. I am sure you are familiar with the proposed shoreline restoration, the vegetative buffer, and so forth. I will not digress on those points here.

The proposed Midland Development concerns us in Saint Michaels for two reasons: (1) we have spent much time and money on this issue to decide for ourselves what is and is not appropriate within our borders and for the fragile critical area in which we have our town, and (2) this development has become a flashpoint for the Talbot County Council to introduce substantive legislation concerning the Critical Area Program that most of us believe to be contrary to the Critical Area regulations, unconstitutional (*vis a vis* self-rule), ill-conceived and paternalistic. I ask you to affirm the request for growth allocation by the Commissions of Saint Michaels. More importantly, I ask you to consider Bill 933 as a substantive amendment to the Critical Area Program, and as such, poorly designed, unworkable and contrary to law.

Having never visited or amended the local Critical Area Program in 14 years, the Talbot County Council proposed Bill 933 within days of learning that the Commissioners of Saint Michaels might recommend the developer's proposal, having received a positive endorsement from its own planning commission. Prior to the Commissioners of Saint Michaels taking up the issue, the Talbot County Council publicly rebuked the Town and introduced legislation to remove hundreds of acres of unused growth allocation that had been given to the municipalities in Talbot County at the very commencement of the Critical Area Program. This proposed legislation, including how municipalities are to seek approval from the county, creates more problems than it solves. A procedural revision would only affect the mechanics of "how" the local program is managed. Unlike a procedural change or grammatical revision, this "revision" is substantive because it goes to the very heart of "who" is the decision-making authority in the local program.

Bill 933 creates a two tiered system in the county (without even describing how that system might function) for the process of recommending growth allocation to the Critical Area

Commission. This additional level of veto power from the County substantially changes the nature of the municipalities' own Critical Area Programs. Moreover, it simply usurps local governmental authority by injecting county control into those elements of municipal government (zoning, development approval, etc.) that are the exclusive jurisdiction of the municipality.

COMAR 27.02.02.02 (A-B) describe that the "local jurisdiction" is responsible to the Critical Area Commission, but that ultimately, the certification comes from the "appropriate agency within the local jurisdiction." In this case, that would be the governing body with the zoning power to approve the plan. See COMAR 27.01.01(54) (definition of Project Approvals means the "appropriate local approval authority" with zoning power). Therefore, the local authority, in the case with any municipality in Talbot County, would be the town or city within the jurisdiction (county). The addition of a system whereby there would be two local jurisdictions (one town, the other county) deprives the regulations of their meaning. What if the two local jurisdictions disagreed? What if each made its own findings and arrived at divergent recommendations to the local Critical Area agency? The amendments created by Bill 933 only serve to create confusion and begs the question of which authority is ultimately in control. If allowed to pass, these issues will likely have to be resolved by the courts or through a substantial re-write of the Critical Area regulations to resolve the conflict.

The proposed bill is constitutionally infirm because it creates two authorities operating within the jurisdiction of each municipality. The towns in Talbot County and elsewhere derive their authority from the state, not from the counties¹. Saint Michaels and other municipalities have the authority from the state to enact legislation, tax, provide for police, zoning, and so forth. Bill 933 in practice makes the county the final arbiter of zoning and development within the towns. This undermines the municipality's ability to self-govern within its own physical boundaries regarding powers the state chosen to let the town exercise. Control over the request for growth allocation, if denied by the county, renders the municipality's authority for growth and development meaningless.

Mr. Foster, the president of the Talbot County Council, informed me personally that if the towns cannot make good decisions for themselves, then the County will have to do it for them. He expressed that he and other council members believe in a "no growth" mandate and are willing to take whatever steps are necessary to prevent growth in the small towns in Talbot County. The whole point of the Critical Area Law is to protect and conserve land within that zone as much as is feasibly possible. The critical area criteria are to be used for responsible growth and to "minimize" the impacts of growth, not prevent growth altogether. Here, it is being used as a tool to achieve an altogether different and political result.

The proposed bill is in conflict with Critical Area regulations because these regulations expressly call for the counties to provide for and accommodate the municipalities' development needs. COMAR 27.01.02.06 (2) reads "[w]hen planning future expansion of intensely developed and limited development areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities." (Emphasis added.) The term "coordination" is defined as a harmonious interaction of functions. "Accommodation"

¹ By way of personal communication, Mr. Foster, a practicing attorney and President of the Talbot County Council, informed me that municipalities derive their authority from the county. Nothing could be further from the truth. The municipalities are chartered by the state and derive their powers directly therefrom. When it comes to state law, the two are equals, and the county cannot impose its rule over the municipalities. Perhaps this is one source of the County Council's confusion.

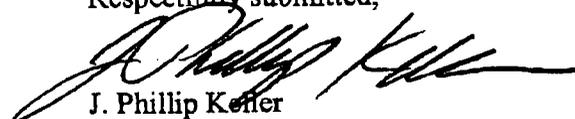
goes one step further and means that one is obligated to provide or supply for a need or want. The removal of approximately 450 acres of growth allocation from the municipalities and the creation of the County Council as the final arbiter of any recommendation of an award is anything but cooperation or accommodation. In light of its present self-imposed mandate to prohibit growth, the animus it exhibits towards the towns and lack of input from the municipalities concerning the bill, it is clear to those of us affected by this legislation that we cannot look forward to any collaborative efforts with the County. This bill is the opposite of cooperation and accommodation because it deprives the municipalities of growth allocation acres, deprives the municipalities of power under their own Critical Area Programs, creates a hostile and unworkable two-tiered system of approval and deprives the towns (some of which are almost totally within the Critical Area) of any say about their own future development. Those of us in municipalities find this legislation unpalatable and insulting.

We are also concerned about the process in which this bill has been drafted. It is no secret that your predecessor has been actively campaigning for this bill and has been a spokesperson for related maneuvers by groups opposed to traffic and population impacts of the Midland project. Mr. North has also recently been appointed by the Talbot County Council to the county's planning commission. I would not be surprised to learn if he had a major role in the creation of Bill 933. I am not accusing him of any wrongdoing. He appears sincere in his efforts. However, he was removed by Governor Ehrlich because his policies were not consistent with that of the current administration. He is now back in Talbot County doing what appears to be that which he was asked to stop doing in Annapolis. His property is immediately adjacent to the proposed Miles Point development by the Midland Company. I respect that he is entitled to his opinion and his right to protest a development that affects his property value. I would be disturbed to learn, however, that Critical Area amendments were being manipulated by the County Council for its own political gain and for reasons that are (however well-intentioned) inimical to Critical Area Commission and the Ehrlich Administration's policies.

I ask you to grant Saint Michael's request for growth allocation. We in town believe this current proposed project will actually benefit the town, the environment and add to the charm of Saint Michaels. We also believe that development of this caliber, utilizing smart growth principles, an environmentally friendly shoreline and historically accurate homes would serve as a model for planning and development within the Critical Area.

Bill 933, on the other hand, is an example of reactionary legislation, hastily drafted for the purpose of preventing municipalities from having a substantial role (if any) in the award of growth allocation. It is contrary to Critical Area law and policy and contrary to the state constitution. At best, its approval by the Critical Area Commission would create confusion and the likelihood of litigation between the jurisdictions to resolve the problems its acceptance would introduce. For these reasons it should not be approved as an amendment to the Talbot County Critical Area Program. Thank you for your time and consideration in the matter.

Respectfully submitted,



J. Phillip Keifer
Saint Michaels Resident

Copy sent *via* facsimile

J. PHILLIP KELLER, LLC

ATTORNEY AT LAW
22 WEST DOVER STREET
EASTON, MARYLAND 21601
TEL. 410-822-7993

SAINT MICHAELS OFFICE:
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March 1, 2004

The Honorable Martin G. Madden
Chairman
Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD 21401

RECEIVED

MAR 4 2004

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

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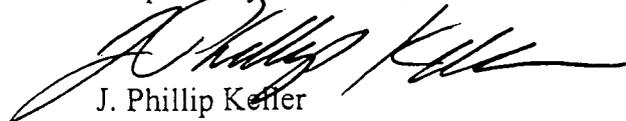
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Respectfully submitted,



J. Phillip Keffer
Saint Michaels Resident

Copy sent *via* facsimile

Robert L. Ehrlich, Jr.
Governor



Martin G. Madden
Chairman

Michael S. Steele
Lt. Governor

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/

March 9, 2004

Mr. J. Phillip Keller
22 West Dover Street
Easton, Maryland 21601

Dear Mr. Keller:

We have received your letter concerning Talbot County Bill 933 and its relation to growth allocation and the Town of St. Michaels. We will include the letter in our official file.

The Critical Area Commission will conduct two public hearings related to these matters. You are welcome to testify and provide additional information at the hearings. Specific information is provided below.

Public hearing on Talbot County Bill 933 and other County Critical Area Bills:

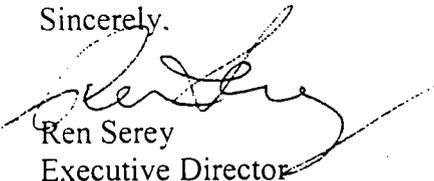
Easton High School - Cafeteria
March 24, 2004
7:00 p.m.

Public hearing on St. Michaels growth allocation, annexation, and zoning code changes:

Chesapeake Bay Maritime Museum - Steamboat Building
April 1, 2004
7:00 p.m.

If you have questions, please contact me at (410) 260-3462.

Sincerely,


Ren Serey
Executive Director

February 29, 2004

The Honorable Martin G. Madden
Critical Areas Commission
1804 West Street--- Suite 100
Annapolis, MD 21401

RECEIVED

MAR 2 2004

CHESAPEAKE BAY
CRITICAL AREAS COMMISSION

Dear Mr. Madden,

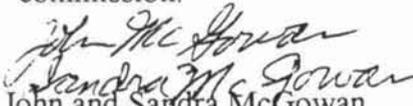
Re: 933

As residents of St. Michaels and Talbot County we are amazed, appalled, offended, vexed and insulted by the dictatorial actions of the Talbot County Council in withdrawing the growth allocation from the town of St. Michaels. The manner by which the action was undertaken can be reasonably described as extremely suspect with an apparent collusive intent designed to assuage and ultimately protect a very small but extremely vociferous group of dissenters mostly residing in the county. This small group of "neo prohibitionists" opposed the development of the Miles Point property for years resorting to untruths, half-truths, misinformation, and distortion of facts. They have masqueraded as protectors of the environment but protection of the environment is not their real agenda.

The town of St. Michaels has been debating, deliberating and litigating over Miles Point since 1997 at a cost approaching \$1.5 million. All of the issues related to the development have been fully vetted. The town has taken into account all inputs- pro and con- and unanimously concluded that the allocation for growth is legally required, is an economic plus and the restoration of the shoreline and the contribution of public space is good for the future of the town.

As a former member of the St. Michaels Historic Commission, I (John) have been particularly sensitive to how the town will grow and evolve. I can say without reservation, the town has come to the correct conclusion and it is doing the right thing.

We request that you return to the town of St. Michaels and for that matter all the towns impacted by the Talbot County Council dictate, their right to do what is best overall for all the residents of their town. Please do not permit your commission to be influenced and "used" by individuals and groups as well as past and present office holders whose real agenda is to protect certain private interests. It is abundantly clear to many what is happening and they expect and deserve a credible outcome from the commission.


John and Sandra McGowan
400 Water Street
St. Michaels, MD 21663

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/

March 9, 2004

Mr. John McGowan
Ms. Sandra McGowan
400 Water Street
St. Michaels, Maryland 21663

Dear Mr. and Ms. McGowan:

We have received your letter concerning Talbot County Bill 933 and its relation to growth allocation and the Town of St. Michaels. We will include the letter in our official file.

The Critical Area Commission will conduct two public hearings related to these matters. You are welcome to testify and provide additional information at the hearings. Specific information is provided below.

Public hearing on Talbot County Bill 933 and other County Critical Area Bills:

Easton High School - Cafeteria
March 24, 2004
7:00 p.m.

Public hearing on St. Michaels growth allocation, annexation, and zoning code changes:

Chesapeake Bay Maritime Museum - Steamboat Building
April 1, 2004
7:00 p.m.

If you have questions, please contact me at (410) 260-3462.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ren Serey".
Ren Serey
Executive Director





Town of Easton
MARYLAND

RECEIVED

MAR 24 2004

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

March 24, 2004

The Honorable Martin G. Madden, Chairman
Critical Area Commission For the Chesapeake and Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, Maryland 21401

Re: Talbot County Bill Number 933

Dear Senator Madden:

The purpose of this letter is to express the views of the Town of Easton regarding the pending proposal of Talbot County to amend its Critical Area zoning regulations to abrogate the allotment of Growth Allocation acreage to municipalities within the County. The issue before the Commission at this point is whether or not the Commission should approve Bill 933 as an amendment to the County's Critical Area zoning regulations. We are aware that a number of entities, most prominently, the Towns of Oxford and Saint Michaels, and the Department of State Planning have expressed, or intend to express, their views regarding Bill 933. Our comments will focus on two areas: first, the advantages and disadvantages of the current growth allocation procedure which Easton and the County currently utilize to award growth allocation within Easton and, second, some of the implications of Bill 933, if approved by the Commission.

As the County has pointed out to the Commission¹, in 2000, the County Council amended the Talbot County Zoning Ordinance to provide for a procedure by which Talbot

¹ Letter from Philip Carey Foster, President of the Talbot County Council, to the Honorable Martin G. Madden dated February 4, 2004.

The Honorable Martin G. Madden

March 24, 2004

Page 2

County could award growth allocation to projects in Easton on a case-by- case basis. The legislation (Talbot County Bill 762) is now codified as Section 190-109.D. (9)(d). As Mr. Foster indicated in his letter, the Talbot County Zoning Ordinance now provides for a system of joint hearings by the County and Town Planning and Zoning Commissions and the County and Town Councils. Mr. Foster goes on to state that "Easton and the County have used this joint review repeatedly, effectively and cooperatively, with excellent results."

The joint growth allocation award process has been used twice on significant projects. The first was Phases 4 and 5 of "Cooke's Hope Village" in Easton. This matter, which involved 36.42 acres, was approved by the Town of Easton and the County Council after a joint hearing process. (The Town's records do not reflect that the award of growth allocation ever received approval from the Commission.) The second time the joint review process was used was for the "Easton Village" project referred to in Mr. Foster's letter. This project was reviewed and approved by the two jurisdictions in 2002 and 2003.

While the process worked for Easton Village in the sense that the project eventually obtained approval from both the Town and the County Councils, the process did not reflect close cooperation between the Town and the County on either a procedural or a substantive basis. While the County Council participated in the joint hearing with the Town Council, the County Council also held a subsequent, separate public hearing on the application before granting the allocation. Thus the applicant was subject to an additional two months delay. The County Council also held separate negotiations with the developer of the project as a result of which the developer agreed to pay \$1,000,000 to the County for road improvements as a condition to the grant of growth allocation.

From the Town's perspective, the Easton Village process had a "successful" outcome because the Town will obtain the benefits of an extremely well-planned and environmentally sensitive residential development and the County will receive \$1,000,000 towards road improvements. It is important to bear in mind that this "success" occurred because, and only because, the developer was willing to agree to a substantial monetary exaction in order to gain approval of the project. The fact that a particular developer is unusually compliant does not demonstrate the efficacy of the joint review process.

In summary, while the joint review process outlined in the County's Zoning Ordinance *permits* joint consultation and cooperation between the County Council and a municipality, it certainly doesn't *require* it, as the Easton Village application itself demonstrates.

However, the fact that the joint application process works well in Easton, or doesn't work well in Easton, is not the point. The real issue is whether the County can, or should, unilaterally take away growth allocation which had been allocated to Oxford and Saint Michaels

The Honorable Martin G. Madden
March 24, 2004
Page 3

for years in order to improve its bargaining position in obtaining exactions from developers in municipalities or imposing conditions upon such developments.² It is clear that the attempt by the County to reserve to itself the power to impose conditions and limitations on land use projects within municipal boundaries is at variance with every notion of appropriate relations between counties and municipalities in this State.

The Town of Easton recognizes that Talbot County faces difficult fiscal challenges. It agrees whole-heartedly with the principle that municipalities and the County should work together to address issues of raised by future development in the County and the towns. But Bill 933, which unilaterally eliminates the long-standing allotments of Growth Allocation acreage for Saint Michaels and Oxford, is hardly a means to accomplish this result.

Very truly yours,

John F. Ford
President, Easton Town Council

cc: Mayor and Council of Easton
Michael L. Pullen, Talbot County Attorney
David R. Thompson, Attorney, Town of Oxford
H. Michael Hickson, Esquire, Attorney, Saint Michaels

² Section 190-109 D(9)(d) of the County Zoning Ordinance, which gives the County Council the authority to grant supplemental growth allocation within a municipality purports to authorize the County Council to "impose such conditions, restrictions and limitations upon the use of such supplemental growth allocation, if any, as the County may consider appropriate."

March 1, 2004

RECEIVED

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

MAR 2 2004
CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Re: Talbot County Council and Bill 933

Dear Senator Madden and Commission Members:

I am writing as a concerned member of Talbot County, a resident of St. Michaels and a member of the Town of St. Michaels Board of Appeals regarding Bill 933 and the unprecedented, paternalistic actions of the Talbot County Council.

By now, I am sure you are well versed in the history of this bill and the animosity many residents of Talbot County, and particularly St. Michaels, feel about the Talbot County Council in general. As a concerned citizen, I am diabolically opposed to the actions of the Talbot County Council and Bill 933 for the following reasons:

1. Government and decision making of what is most beneficial for the municipalities of the County will be stripped away from the discretion and decision making of those who are most knowledgeable and best suited to make such critical determinations for the towns;
2. The Talbot County Council acts without being fully informed, without ever attending or participating in a meeting in St. Michaels regarding an award of growth allocation;
3. As the Town of St. Michaels stated in its January 7, 2004 letter to the Critical Area Commission, Bill 933 would be an "impediment to effective land planning and zoning for the Town."
4. Bill 933, if passed, and the continued unilateral actions of the Talbot County Council will effectively destroy what the Town of St. Michaels has worked so hard to achieve and will waste millions of dollars of Town resources, money, time, etc.;
5. Specifically regarding the Miles Point project, the Talbot County Council deprived the Town, and the rest of Talbot County, of an eight (8) acre waterfront public park, an unprecedented site in Talbot County.
6. Out of a total of two hundred sixty nine acres (269), St. Michaels awarded a mere twenty (20) acres of growth allocation in 2003 to the Strausburg property. However, before Bill 933 was enacted, Easton exhausted *all* of its awarded growth allocation. In essence, this fact lends itself to a conclusion that the Talbot County Council is acting only in the best interests of the Town of Easton and disregarding what is best for the municipalities and the county as a whole.

The list of questionable maneuvers and decisions by the Talbot County Council continues *ad infinitum*. Specifically regarding Bill 933, it is interesting to note, and quite suspect to most, that despite a provision in the County's critical area laws requiring periodic review of growth allocation, Talbot County did not comply with this mandatory provision until November 2003, at the exact time the Town of St. Michaels was nearing a decision on the application for growth allocation filed for the Miles Point Project. Was this occurrence merely coincidental or the result of a few influential members of the County? The latter is most likely.

As a citizen of Talbot County, I urge the Commission to treat Bill 933 as a major program amendment because its effect would be to rescind all growth allocation previously allotted to the towns of the county and would hinder growth of towns surrounded by tidal waters, such as St. Michaels and Oxford. Furthermore, I urge the Commission to reject Bill 933 because of its disregard for state laws. This bill strips the towns of the powers to effectively plan and zone. In addition, the bill is inconsistent and not uniform in its treatment of the critical areas in Talbot County. Rejecting Bill 933 will leave the government of the individual towns to those that are best suited to make such decisions, the towns themselves.

Respectfully yours,

A handwritten signature in black ink that reads "Melissa M. Shannahan". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Melissa Machen Shannahan

Robert L. Ehrlich, Jr.
Governor

Michael 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/

March 9, 2004

Ms. Melissa Machen Shannahan:
P.O. Box 807
St. Michaels, Maryland 21663

Dear Ms. Shannahan:

We have received your letter concerning Talbot County Bill 933 and its relation to growth allocation and the Town of St. Michaels. We will include the letter in our official file.

The Critical Area Commission will conduct two public hearings related to these matters. You are welcome to testify and provide additional information at the hearings. Specific information is provided below.

Public hearing on Talbot County Bill 933 and other County Critical Area Bills:

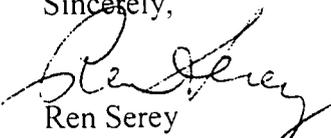
Easton High School - Cafeteria
March 24, 2004
7:00 p.m.

Public hearing on St. Michaels growth allocation, annexation, and zoning code changes:

Chesapeake Bay Maritime Museum - Steamboat Building
April 1, 2004
7:00 p.m.

If you have questions, please contact me at (410) 260-3462.

Sincerely,


Ren Serey
Executive Director

February 27, 2004

The Honorable Martin G. Madden, Chairman
Critical Areas Commission
1804 West Street — Suite 100
Annapolis, MD 21401

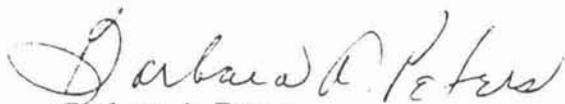
Dear Mr. Madden:

Re: 933

I am writing as a Talbot County resident to express my dismay at the heavy-handed manner in which the county has withdrawn growth allocation from the town of St. Michaels and more specifically the Miles Point development. The actions of the Talbot County Council are a thinly veiled attempt to placate a vocal and not altogether accurate or fair group of county citizens (most of whom do not live in St. Michaels nor pay taxes to support the town) who just don't want growth at all.

The town of St. Michaels has spent a large sum of money to litigate the Miles Point development and has come to the unanimous conclusion that not only is it legally correct, but is vital to the economic well-being of the town. The developer has come to a generous agreement with the town to make this a class addition to the village and has taken steps to protect the environment far beyond what is required. All owners of shoreline property should be so environmentally sensitive!

I am hereby respectfully requesting that you return to all the towns affected by the Talbot County Council decision, their right to do what they conclude is best for each of them and not allow your commission to be bullied by present and past office holders to protect their private interests. We are all watching and can see clearly what is going on.



Barbara A. Peters
24560 Deep Water Point Drive
St. Michaels, MD 21663

RECEIVED

MAR 2 2004

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

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/

March 9, 2004

Ms. Barbara A. Peters
24560 Deep Water Point Drive
St. Michaels, Maryland 21663

Dear Ms. Peters:

We have received your letter concerning Talbot County Bill 933 and its relation to growth allocation and the Town of St. Michaels. We will include the letter in our official file.

The Critical Area Commission will conduct two public hearings related to these matters. You are welcome to testify and provide additional information at the hearings. Specific information is provided below.

Public hearing on Talbot County Bill 933 and other County Critical Area Bills:

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Chesapeake Bay Maritime Museum - Steamboat Building
April 1, 2004
7:00 p.m.

If you have questions, please contact me at (410) 260-3462.

Sincerely,

A handwritten signature in cursive script that reads "Ren Serey".

Ren Serey
Executive Director

March 30, 2004

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

RECEIVED
MAR 31 2004
CHESAPEAKE BAYS
CRITICAL AREA COMMISSION

Re: Public Hearing on Talbot County Bill 933

Dear Senator Madden and Commission Members:

After attending the public hearing last week, as a resident of Talbot County, I must express my dismay with the actions of Talbot County, yet again.

As you should recall, at the commencement of the meeting, the panel announced the protocol for speaking at the meeting and expected those who wished to speak to abide by said protocol. Roughly speaking, the County was to make its presentation through its attorney, Michael Pullen, followed by town officials (i.e. town attorneys), elected town representatives, other government agencies, proponents of the bill and then lastly, the opponents. Each speaker was asked to limit their comments to five (5) minutes.

In keeping with protocol, Mr. Pullen presented Bill 933 to the panel, focusing mostly on a certain COMAR section. After speaking for approximately ten minutes, Mr. Pullen "yielded" the County's remaining time to Mr. North, a former judge and former member of the Critical Area Commission. Mr. North proceeded to provide the panel with his interpretation of the specific COMAR section, as well as providing comments from former members of the Commission, solicited by Mr. North specifically for this hearing.

I have several comments to make on this completely inappropriate action taken by the County. First, while Mr. North is a former judge and a former member of the Commission and a current member of the Talbot County Planning and Zoning Commission, and is highly respected by some in the community, he is merely a proponent of Bill 933. He is not a county official, much less a town official, and he is not an elected town or county representative nor is he a member of a government agency. Therefore, given the protocol set forth by the panel at the commencement of the hearing, Mr. North's comments should have been reserved for the time allotted for proponents of Bill 933. His comments should be given no more weight or influence than other concerned citizens of Talbot County who spoke, in keeping with proper protocol.

Secondly, I suggest this inappropriate behavior was not the fault of the panel, nor the Commission, but of the County itself, and of Mr. North to be sure. As is apparent to both proponents and opponents who attended the meeting, Mr. North was merely attempting to influence the panel and the Commission by using his former positions as leverage, hoping his comments would be given more weight than other citizens of the County.

Third, allowing the County to "yield" its time, which was obviously unlimited, to Mr. North effectively gave the County the opportunity to speak in favor of Bill 933 in an unlimited capacity. As I am sure the panel and the Commission are aware, all the contacts made by Mr. North were *former* members of the Commission and *former* State politicians. While many of these people were quite influential during their tenure, and are certainly still highly respected for their efforts, they are not involved in the current controversy. They are merely former members. In fact, it is apparent from Mr. North's "presentation" that he solicited every comment he presented to the panel at the public hearing. One can merely speculate as to what Mr. North told these persons, or in what manner he went about soliciting such comments. The panel and the Commission should be quite suspect of the comments solicited by Mr. North, as they are surely tainted by his opinion since solicited personally by him specifically for purposes of presentation at the public hearing.

Fourth, there are concerned citizens that are not originally from Talbot County, but who have resided there long enough to see the influence Mr. North attempts to exert only in situations that benefit himself. These concerned citizens are not "mesmerized," as others seem to be, by Mr. North's former positions, and are not swayed by his opinions. It is obvious the County is completely awestruck with Mr. North, his former positions, and the opinions he currently holds. However, the County is merely bootstrapping its position in hopes the Commission will rule in its favor. This action is certainly suggestive of an inference the County's position is not strong enough to stand on its own.

Fifth, Mr. North repeatedly gave his interpretation of the COMAR section in question with regards to Bill 933. The County, conveniently, takes the same position. However, Mr. North, as a former judge, should know the basic principle of statutory construction is that all sections of a statute are to be read in conjunction with one another, not in isolation. Mr. North never mentioned another statute, much less read the COMAR provision in conjunction with others. Taken in isolation, one can make a certain provision mean anything. It is important for the panel and the Commission to read the COMAR provisions as a whole, not merely the one provision Mr. North and the County think controls Bill 933.

I urge you not to fall into the trap the County and Mr. North have set in trying to persuade the panel and the Commission by using Mr. North's supposed influential former positions as leverage to pass Bill 933. The panel and the Commission should make a

March 30, 2004

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

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MAR 31 2004
CHESAPEAKE BAYS
CRITICAL AREA COMMISSION

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RICHARD F. COLBURN
STATE SENATOR

37th Legislative District
Caroline County
Dorchester County
Talbot County
Wicomico County

Member

Education, Health, and
Environmental Affairs Committee
Capital Budget Subcommittee
Joint Committee on Administrative,
Executive, and Legislative Review
Special Joint Oversight Committee on
Chesapeake Bay Critical Areas



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401-1991

IN REPLY PLEASE REFER TO OFFICE INDICATED

Annapolis Office
315 James Senate Office Building
Annapolis, Maryland 21401-1991
410-841-3590
1-800-492-7122 Ext. 3590

Mid-Shore Office
5210 Heron Road
Cambridge, Maryland 21613
410-228-1137 · 410-819-3337
Fax 410-376-3737

Wicomico County Office
24790 Porter Mill Rd.
Hebron, Maryland 21830
410-548-3737

March 23, 2004

Honorable A. Phillip Dinkel, Vice President
The County Commissioners of St. Michaels
P.O. Box 206
Saint Michaels, MD 21663-0206

RECEIVED

MAR 25 2004

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Dear Commissioner Dinkel:

I would like to thank you for giving me an opportunity to show my support in this delicate matter. As a native of the Eastern Shore I have been blessed to have the opportunity to not only see but also to have lived in one of the most beautiful regions in the world. Saint Michaels is a microcosm in which the bounty of the Eastern Shore is encompassed, but perhaps even more impressive is the symbiotic relationship between its people and the pristine environment. For hundreds of years the people of Saint Michaels have not simply lived *on* the land but have lived *with it*.

I have recently become aware of the introduction of a bill (Bill 933) that would essentially revoke the power of the local government to do what they have done so well, for so long and that's to govern. I refuse to say "If it isn't broken don't fix it", that tired cliché is out of place in this instance. I *am* saying that if growth allocation is going to occur, who better than the people that have to live with the growth to make the decisions of how that growth will take place.

I have been made aware of an effort to prevent the recently approved growth allocation for the Midland Companies designated for their proposed development of Perry Cabin Farm. After reviewing the logistics involved with the project I have found that the development will not only strengthen the infrastructure of the rural area but it will also serve the function of shoreline and waterfowl restoration which are an integral part of the public park.

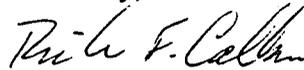
Page 2

3/23/04

Honorable A. Phillip Dinkel, Vice President

In conclusion I would like to let it be known that in reference to Talbot County's Bill 933 I am opposed. I would like to see this last minute attempt to block what is most appropriately called "Smart Growth", dismissed. I feel it would be a grievous error to remove the municipalities from the process of determining what allocations would best serve the very community being affected.

Sincerely,



Richard F. Colburn

Cc: Cheryl Thomas
Critical Area Commission

Vance C. Strausburg
Broad Reach Farm - PO Box 657
St. Michaels, MD 21663
410-745-9566

Chairman Martin Madden
Panel Chairman David P. Blazer
Critical Area Commission Members
Critical Area Commission for the
Chesapeake & Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, MD 21401

RECEIVED
MAR 22 2004
CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Subject: Talbot County Growth Allocation Bill 933

Dear Chairman, Panel Chairman and Critical Area Commissioners,

I am sorry that I was unable to attend the public hearing on Talbot County Bill 933 last week. I know that David Thompson spoke on my behalf, and I would like to enter my thoughts for the record.

I have owned and lived on Broad Reach Farm, a 136-acre parcel in St. Michaels District on Broad Creek, since 1975. When we purchased the property the farm had one acre zoning, and zoning and subdivision were controlled by the Town of St. Michaels. The property was (and is) identified on Town and County land use plans as an area slated for intense development. That was never our desire.

When the Critical Area Law was proposed in the 1980's I attended the public hearings, and was fully aware of its implications. We elected at that time not to intensely subdivide the property, fully realizing that we would be giving up substantial value; however, it had always been our goal not to see the farm in small pieces.

Over the years, on numerous occasions, I approached the Talbot County Planning Office with ideas of a large lot estate-type subdivision for the farm, but each time I was rebuffed – being told the farm needed to be developed intensely.

We have tried to be good stewards of the land and to preserve this special place for future generations, while at the same time protecting our family's major asset. I can't tell you how many times I have been approached by developers, and even international companies, wanting to purchase this special property for obvious reasons. We decided each time to resist and keep the property untouched. Unfortunately, it had been increasingly clear to us over the last couple of years that private property owners who do not seek to protect their property will probably lose any flexibility for the future planning of their land.

I think this is a very sad situation. As regulations have increased, I have seen a continual degradation of traditional private property rights in the State of Maryland. And

the people who are hurt the most, like myself, are the ones who have tried to preserve their property for the good of all.

Approximately 15 months ago I once again approached the Talbot County Planning Office with my engineer, and laid out the conservation plan that I thought would be good for myself, the people of St. Michaels, Bay Hundred District, and Talbot County, as well as the Chesapeake Bay, but was once again rebuffed and told these ideas were unacceptable and the County would have absolutely nothing to do with it, and I should go away and not worry about it.

Based upon this decision, the history of St. Michaels zoning of the land, and the fact that my family has had a close association with the Town of St. Michaels dating back to at least the early 1800's, I approached the Town of St. Michaels concerning annexation and the implementation of my conservation program.

The nuts and bolts of this program are that we gave up 135 development rights, and gained a 20-acre growth allocation which allowed for 5 waterfront parcels. In reliance on the work and effort of the St. Michaels Commissioners, and the approval of the Critical Areas Commission, we donated a perpetual conservation easement on over half of the farm, totaling 75 acres, thereby protecting extensive open space, including Critical Area lands, and aesthetic views from the road frontage, on the northern approach to St. Michaels, in perpetuity. This annexation and growth allocation have been recognized as creating a great asset to the people of Talbot County and St. Michaels, by creating a perpetual easement that cannot be changed.

Through extensive public hearings, we received nearly unanimous support. Everyone in our area realizes that to preserve this important piece of land, which was then only 2,000 feet from the St. Michaels border, and which adjoins land owned by the Town of St. Michaels, is a wonderful and important thing, particularly based on the intense development pressure in the area. We were a part of St. Michaels planning and zoning when we bought the property, and we are now a part of St. Michaels again. Our conservation program allows us to give something to the community, and at the same time preserve our property value. I like to think this is a "win-win" situation, and one which might encourage other property owners to embark on a similar path.

Throughout our approximately one year of well advertised public hearings, with formal written notice to the County government of the extensive public meetings and hearings which were required to accomplish our goals, there was never a comment, or to my knowledge any attendance, by any Talbot County officials. There was one Talbot County Planning Commission hearing, and the County Planning Commission recommended the annexation because it secured the greenbelt easement. So you can imagine my shock upon seeing Bill 933 introduced by the County Council which would take away the growth allocation applied to our land by the Town of St. Michaels, and approved by the Critical Area Commission. Bill 933 proposes a retroactive taking, after all the time, money and effort we have put into the process.

A bill of this type, quite honestly, is a very scary thing to a private citizen who believes in the protective processes of government, and it is quite honestly beyond my imagination that a bill of this nature could be arbitrarily imposed on the people of Talbot

County, to apply my family farm, after approval of growth allocation by both the Town and the Critical Area Commission.

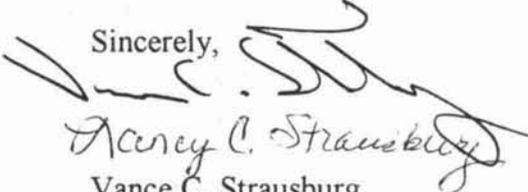
We sincerely hope that the Critical Area Commission will not approve Bill 933 in its present form. The county government should not have the right to veto Town growth allocations that have been through a substantial public process.

There is another problem with the retroactive aspect of Bill 933. Bill 933 says that unless growth allocation acres are actually developed, by clearing and building roads, the growth allocation is cancelled. We have an approved subdivision. We are considering extending our conservation easement for tax planning purposes by putting some lots under the easement each year, depending upon tax issues. It would defeat our conservation efforts if we are required to build roads to lots that we do not want to sell. And if we have to build roads to preserve our property value, it only assures that lots will be sold. Bill 933 is bad policy all around. Please reject it. At the very least, the Commission should reject the retroactive application of Bill 933 to growth allocation already approved by the Commission.

If any members of the Commission want to visit our farm in order to see what we are trying to accomplish, we will be happy to meet with you.

Thank you for considering our views as the property owners.

Sincerely,



Vance C. Strausburg
and Nancy C. Strausburg

Barbara C. Watkins
ASSOCIATE BROKER
www.easternshorehomes.com



BENSON & MANGOLD
CHESAPEAKE ESTATES AND FARMS
27999 OXFORD ROAD
OXFORD, MARYLAND 21654

OFFICE: 410-822-1415
TOLL FREE: 1-877-243-7378
FAX: 410-822-0877
bwatkins@bluecrab.org

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

Re: Talbot County Bill 933

Dear Senator Madden and Members of the Commission:

The Mid Shore Board of Realtors, an organization with over 500 members, strongly believes in maintaining the quality of our local area through controlled and well thought out growth within our towns and counties. We do not believe that growth in and of its self is a good thing, nor do we believe that growth is a bad thing. We believe that the right growth, well planned and well thought through will benefit all who live and love the Mid Shore Area.

As a member of the Mid Shore Board, I would like to take this opportunity to reiterate what John Hurt, our President Elect, said at your hearing in Easton on March 24, 2004. The Mid Shore Board of Realtors and I strongly oppose the approval of Talbot County Bill 933 as an amendment to the Talbot County Critical Area Program because:

- 1) It effectively removes planning and zoning powers from the towns since the vast majority of land within the towns that will be impacted is within the Critical Area. As a result the county would have control of most growth within the towns. This is clearly contrary to both Maryland law and to common sense.
- 2) It has created a strong adversarial relationship between the county and the towns. This is also clearly contrary to Maryland law, which requires counties to work in coordination and cooperation with municipalities to plan and establish for growth within the municipalities; and
- 3) It is a far reaching effort to take complete control over one particular project. Not only will the individual towns suffer a loss, but those who have dealt with the towns in good faith will also suffer if the county is permitted to retroactively usurp the planning and zoning power from the towns.

Thank you for the opportunity to be heard.

Very truly yours,

Barbara C. Watkins

RECEIVED

MAR 31 2004

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Community Bank Mortgage



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

March 29, 2004

Re: Talbot County Bill 933

Dear Senator Madden and Members of the Commission:

The Mid Shore Board of Realtors, an organization with over 500 members, strongly believes in maintaining the quality of our local area through controlled and well thought out growth within our towns and counties. We do not believe that growth in and of its self is a good thing, nor do we believe that growth is a bad thing. We believe that the right growth, well planned and well thought through will benefit all who live and love the Mid Shore Area.

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Thank you for the opportunity to be heard.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Thomas P. Madden".

RECEIVED

MAR 31 2004

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

JEANNIE HADDAWAY
Legislative District 37B
CAROLINE, DORCHESTER, TALBOT,
AND WICOMICO COUNTIES



Annapolis Office
308 Lowe House Office Building
Annapolis, Maryland 21401-1991
410-841-3429
1-800-492-7122 Ext 3429
Fax 410-841-3523
E-Mail Jeannie_Haddaway@house.state.md.us

The Maryland House of Delegates
ANNAPOLIS, MARYLAND 21401-1991

District Office
32 South Washington Street
Suite 1
Easton, Maryland 21601
410-820-8043
Fax 410-820-8759

March 29, 2004

Martin G. Madden, Chair
Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401

Dear Chairman Madden,

I am writing to express concerns about Talbot County Council Resolution 933, which would revoke growth allocations from the municipalities in Talbot County. My primary concerns include the following:

- Cooperative, inter-jurisdictional planning is one of the most critical elements to ensure proper and controlled growth. Growth needs can be accommodated without sacrificing the integrity of the community and the environment when all levels of government work together. Resolution 933 discourages cooperation between the County and the towns and is a clear violation of the intent of Title 27 (Critical Area Criteria) and the Planning Act of 1992.
- Resolution 933 penalizes municipalities that have demonstrated responsible land management and growth planning by not using all of their growth allocations. Using allocations only when they become necessary is a principle element of smart growth that is undermined by this legislation.
- Resolution 933 specifically interferes with a project in St. Michaels called Midlands. The Town of St. Michaels and the Midlands Corporation have spent countless hours and dollars ensuring that the Midlands Project is properly planned, includes land preservation efforts and meets the needs of the stakeholders involved. If the County truly feels it is necessary to revoke growth allocations, it would be better to revoke future allocations instead of those that are already in play.

For the reasons outlined above, I would like to be on public record as opposed to Resolution 933.

Sincerely,

A handwritten signature in cursive script that reads "Jeannie Haddaway".
Jeannie Haddaway

RECEIVED

MAR 31 2004

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

RECORDED

MAR 24 2004

CRITICAL AREA COMMISSION

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

Members Present

**Richard Hutchison, Chairman
John Sewell, Vice Chairman
Officer
William C. Boicourt
Linda Makosky
Robert Zuehkle**

Staff Present

**George Kinney, Planning Officer
Mary Kay Verdery, Assistant Planning
Officer
Debbie Moore, Recording Secretary**

Zoning Text Amendment – Bill 933

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

Mr. George Kinney presented the staff report.

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

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

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

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

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

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

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

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

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

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

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

➤ Steve Florkewicz, East Morango Street, St. Michaels

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

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

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

➤ Barry Gillman, St. Michaels Town Commissioner

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

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

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

➤ Michael Hickson

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

➤ Mr. Robert Amdur, Bozman

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Sewell seconded.

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

Motion passed 3-1



Maryland Department of Planning

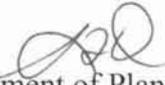
Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Audrey E. Scott
Secretary

Florence E. Burian
Deputy Secretary

TO: Critical Area Commission Panel for Talbot County

FROM: Larry F. Duket, 
Maryland Department of Planning

SUBJ: Statement of the Maryland Department of Planning
Re: Talbot County Council Bill 933

DATE: March 24, 2004

RECEIVED

MAR 24 2004

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

INTRODUCTION

The Maryland Department of Planning appreciates the opportunity to offer comments on Talbot County's Council Bill 933. The Bill would create a significant change in the manner in which Talbot County addresses the growth allocation needs of incorporated municipalities (towns).

The Bill is of significant interest to this Department because it comes at a time when the State is committing its planning functions, regulatory programs, funding, technical assistance, and capital programs in furtherance of directing growth towards county-designated growth areas and incorporated municipalities (county and municipal "smart growth" and "priority funding" areas, if you will). With the Governor's Priority Places initiative, this Department is committed to participating in the debate on issues fundamental to the implementation of a sound growth strategy for Maryland.

The growth allocation process was principally created to allow county and municipal governments to reconcile their comprehensive planning, zoning, and capital programs with the new Resource Conservation Area (RCA) rules of the Critical Area law. The RCA category limited development to one dwelling unit per 20 acres. From a land use planning perspective, it is unusual and economically inefficient to have land within municipalities relegated to a one dwelling unit per 20 acre standard. Yet, the Critical Area RCA had this effect on farm and forest lands not yet having public water and sewer that were located within municipalities, within municipal growth boundaries, and on adjacent lands eligible for annexation. Municipal governments, in particular, were given assurances in the Critical Area law that their need for growth allocation would be accommodated.

COUNCIL BILL 933

Under CB-933, specific amounts of growth allocation reserved for towns would be deleted from the Talbot County Critical Area Program. Consequently, the County will have approval authority over all future growth allocation requests in towns. This would occur through the supplemental growth allocation process that is now part of the County's Program. This process was originally created for narrower purposes by CB-762, "supplemental" growth allocation, and was approved as a refinement by the Commission in 2000. It seems unlikely that, in 2000, the Commission would have treated such a significant change to the growth allocation process as a mere refinement, were it not for the retention at that time of specific language giving allocations to the towns.

Under CB-933, the County, and a town with an applicant seeking growth allocation, would use a joint hearing process to ostensibly ensure that both municipal and county planning and growth issues are considered. This Department supports the use of tools and processes that promote interjurisdictional coordination and cooperation, and appreciates that this is the primary goal of CB-933. Our concern is that CB-933, by striking reserved amounts of allocation for each town, places the County as the final decision-maker for all municipal requests for growth allocation.

A county's process for accommodating the needs of municipalities for growth allocation should not operate as a blank check for towns. That is, we do not believe the rule calls for municipalities to always get what they purport to need. But CB-933 effectively makes the supplemental growth allocation process the "primary and only" process and contains no decision-making criteria or standards to account for or accommodate municipal growth needs. Not even the municipal comprehensive plan or zoning map is relevant under the terms of CB-933. Council Bill 933 can result in the denial of a specific, bona-fide, good faith request for growth allocation which meets the accounting and location criteria of the Critical Area law, adheres to the Commission's Growth Allocation Policy, and is consistent with town planning and zoning laws and town Critical Area Programs. It is difficult to understand how that process accommodates the growth allocation needs of the towns.

Under the Regional District Act, certain incorporated municipalities in Prince George's and Montgomery Counties are under the zoning authority of their respective county because these municipalities have never been given the authority to exercise their own zoning powers. That aside, the concept of county control over municipal land use decisions is not contemplated in Maryland planning and zoning law. County and municipal planning and zoning programs are created on equal, separate, and, at times, competitive footings. And the General Assembly has been careful to address county-municipal relationships in writing Maryland's planning, growth, and environmental laws. In doing so, the Legislature has both preserved the sanctity of municipal land use decisions and created laws that embody preferences for continued growth in municipalities that plan and zone for growth. Even in the case of municipal annexation of land previously under county jurisdiction, the General Assembly has limited the

County's control over land use decisions on annexed land to a five year period following the date of annexation.

When the Critical Area law was being drafted, much legitimate concern was voiced over the application of the RCA category to farm and forest land that was either within municipal boundaries or at its edges, where growth and expansion were planned. Such concerns were based on property interests, public infrastructure investments, long range capital plans, and professional land planning principles. These concerns were answered by the creation of growth allocation (growth increment) in the law. The concerns of municipalities, in particular, were addressed by the rule that the counties shall have a process to accommodate the growth allocation needs of the municipalities.

On hindsight, the issue of County control over municipal growth allocation should have been raised in the context of CB-762. Given that CB-762 retained specific allocations for each town, perhaps the issue was not as well defined as now presented in the context of CB-933. Also, there may be approved Programs in other counties with a similar practice; we think these Programs need to be revisited. Perhaps this can be evaluated during the six year review process, and perhaps it needs to be evaluated sooner if municipalities report to you that they are not being accommodated.

Much has changed since the first generation of Critical Area Programs. The Commission and local governments know more and have greater experience with much of the detail and technical nature of the Critical Area law and Criteria. Many new State laws have been enacted since then: the 1992 Planning Act, the Forest Conservation Act, Priority Funding Areas, Rural Legacy, Smart Codes, and so on. Each of these new laws favors growth directed to county-designated growth areas and incorporated municipalities. These new laws reflect the same spirit as the Critical Area law: growth within municipalities that plan and zone for it, is to be accommodated.

The Maryland Department of Planning offers its assistance to the County, the several towns, and the Critical Area Commission to work to resolve issues to ensure that municipal needs for growth allocation are accommodated. Thank you for the opportunity to offer our views on this important matter.



The Commissioners of St. Michaels

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Position Paper

From: The Commissioners of St. Michaels
To: County Council of Talbot County, Maryland
Re: Talbot County Bill No. 933
Date: December 16, 2003

The Commissioners of St. Michaels wish to have this document entered into the record of the public hearing on proposed County Bill No. 933 (hereafter the "Bill"). We unanimously oppose the Bill for several reasons, which will be addressed herein.

1.

Bill No. 933 Is Unnecessary

We do not think that this drastic step is necessary to manage available growth allocation among the Towns and the County in a way that will achieve the stated purpose of the Bill, to qualify the County for an additional allotment of growth allocation for use as IDAs. The reasons for our belief are:

- a. The current County Code, Chapter 190 (Zoning) Section 190-109 (Administration), Subsection D (Growth allocation district boundary amendments in the Critical Area), Part (11), provides for periodic reviews "for possible reallocation" of growth allocation. We believe that this existing process could be used to meet and solve the stated problem in a way that would be mutually agreeable and within the applicable State laws.
- b. We understand that the Critical Area Commission frequently does not require full compliance with Maryland Code, Natural Resources Article, Section 8-1808.1 (Growth allocation), Subsection (c), Part (5). Therefore, this avenue should be explored.

From our viewpoint, Bill 933 would result in a tremendous amount of Town funds and resources having been wasted in reliance upon a set of facts that form the basis of existing Town planning and zoning documents that has been in place for decades.

2.

Bill No. 933 Is Not Consistent With State Law

We believe that the Bill would be contrary to State laws and policies. This is because it would take from the Town government, and place in the County government, certain home rule,

planning and zoning powers. In 1804, the Town of St. Michaels was granted the status of a municipal corporation by the State of Maryland. As an incorporated municipality, St. Michaels is intended by State law to have certain powers. Among the powers granted exclusively to Maryland municipalities are those expressed in the following:

1. Maryland Constitution, Article XI-E (Municipal Corporations), Section 1 (providing that "the General Assembly shall act in relation to the incorporation, organization, government, or affairs of any such municipal corporation only by general laws which shall *in their terms and in their effect apply alike* to all municipal corporations");
2. Maryland Code, Article 66B (Land Use); and
3. Maryland Code, State Finance And Procurement Article, § 5-7B-02 (Priority funding area).

We believe that these Maryland laws indicate that the Town is intended by the State to have home rule powers, and to have planning, zoning, and subdivision powers over all land within the Town, to the exclusion of the County. We believe the Bill would have the effect of limiting the planning and zoning powers of municipalities in Talbot County in a way in which those same powers are not limited for other municipalities throughout the State.

Despite claims to the contrary, State policy still favors the concept that growth and new development should occur within and around existing municipalities. See Maryland Code, State Government Article, Title 9 (Miscellaneous Executive Agencies), Subtitle 14 (Office Of Smart Growth), Section 9-1402 (Legislative findings and purpose). See also the attached letter to the Commissioners from John W. Frece, Acting Director of the Governor's Office of Smart Growth in April of 2003 and the attached letter from Secretary Audrey E. Scott of the Maryland Department of Planning to Mr. Valanos of the Midland Companies dated August 2003. We believe that the effect of the Bill would be to take from the Town's control all or substantially all of the available growth allocation allotted by the State to the County. Therefore, the Town would be left without access to a reasonable quantity of the County's available growth allocation to effect the State policies relating to growth within and around the Town. Moreover, we believe that the Bill would have the effect of preventing or discouraging the concentration of new development in and around existing municipalities in Talbot County in accordance with the smart growth principles. We believe that if the County's purpose of the Bill is to make available when needed additional growth allocation for use in allowing development as "Intensely Developed Areas" (or "IDAs", as that term is used in the State Critical Area laws and regulations), then there are better and less radical ways in which to accomplish that purpose without taking from the incorporated municipalities in Talbot County the right of self-government, as the Bill would do.

3.

The Bill Is Contrary To State A Regulation

The Code of Maryland Regulations ("COMAR"), § 27.01.02.06, provides, in part:

- A. Intensely developed and limited development areas may be increased subject to these guidelines:
- (1);
 - (2) When planning future expansion of intensely developed and limited development areas, *counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities. [Emphasis added.]*

Bill 933 does not create or facilitate "a process to accommodate the growth needs of the" Town. The Bill was drafted and introduced without our knowledge or input of the very Towns state law requires to be accommodated. As drafted, the Bill would have the effect of dismantling the right and ability of the Towns to self-determination regarding growth and development in the Critical Area.

4.

Bill 933 Will Have A Negative Impact On All Talbot County Municipalities

To date the Towns of Oxford and St. Michaels have used the growth allocation allotted to their respective areas sparingly, if at all; holding out for the best development plans and policies for their respective situations. This is not to say that the Town of Easton has not done likewise. Easton, in its judgment, based on its unique situation, has determined that some of the plans submitted to it are worthy of growth allocation. St. Michaels believes that Easton is the best judge of when its growth allocation should be used in the Easton area. Likewise, St. Michaels and Oxford are the best judges of the location, design and extent of development that should be permitted in and adjacent to our Towns.

We believe that by enacting Bill No. 933, Talbot County would be positioning itself to make decisions for the towns in Talbot County that are solely municipal functions. Towns have different interests, serve different governmental purposes, and have different powers from those of counties. By their average density of development and the extent of governmental services typically provided by municipalities, as opposed to the average density and extent of governmental services in counties, municipalities have goals that are different from county goals. Therefore, the decisions relating to growth, and under what circumstances growth allocation should be used, are destined to be different.

We respectfully disagree with the proposition in Bill 933 that there is any shortage in growth allocation that would dictate that Talbot County reverse the policies resulted in the towns' original allotments of growth allocation. The boundaries of the towns in Talbot County have not changed in any way that was not contemplated by the growth allocation acreage allotted, and the maps that designated the areas for growth, as originally enacted by the County. Moreover, because of its concentration of land within the critical area, Talbot County is one of those counties that are exempted from the normal limitation on the percentage of growth allocation that can be located in the Resource Conservation Area ("RCA") See Maryland Code,

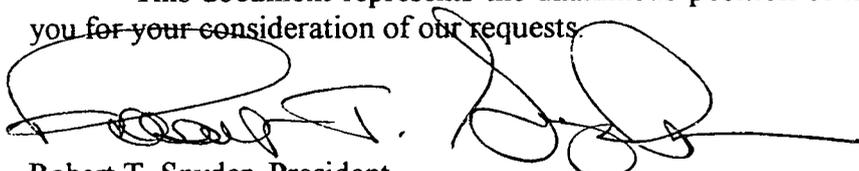
Opinion of the Commissioners of St. Michaels
County Bill 933
December 16, 2003

Natural Resources Article, Section 8-1808.1 (Growth allocation), Subsection (c), Part (3) and Part (5).

The Towns have operated with the understanding that the original allotment of growth allocation acreage to their respective areas was a permanent act; or at least not subject to being suddenly and retroactively withdrawn without notice. The adoption of the Bill will have one resounding effect on future relations between the County and the municipalities in Talbot County. That Bill will encourage the Towns in the future to quickly use and exhaust anything that is made available to them by the County, before it can be withdrawn. Hence, any growth allocation that is made available to the municipalities in the future is likely to be used before it can be withdrawn. It is likely that the "use-it-as-fast-as-you-can" attitude will not be limited to growth allocation, but will flow over to every benefit or opportunity that the County makes available to the towns in the future. That type of relationship and attitude will ultimately not be beneficial for the County and its citizens.

We, the elected officials of the Town of St. Michaels, respectfully ask that you reconsider the actions begun with the introduction of Bill 933, and the negative effects that the Bill would have if enacted. We believe that a careful study of the Bill and its ramifications will lead you to the conclusion that its passage is not warranted. Please take the time to work with the Towns for a solution to this situation that can benefit all Talbot citizens.

This document represents the unanimous position of the Town Commissioners. Thank you for your consideration of our requests.



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

RTS/ct

CC: Hon. Delegate Jeanne Haddaway
32 S. Washington Street
Easton, MD 21601

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

Hon. Robert C. Willey, Mayor
Hon. John Ford, President

Opinion of the Commissioners of St. Michaels
County Bill 933
December 16, 2003

Easton Town Council
P.O. Box 520
14 South Harrison Street
Easton, Maryland 21601

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



The Commissioners of St. Michaels

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December 16, 2003

HAND DELIVERED

Hon. Philip C. Foster, President
County Council of Talbot County, Maryland
142 N. Harrison Street
Easton, Maryland 21601

Re: Opposition to proposed Talbot County Bill No. 933

Dear President Foster Council Members:

On November 18, 2003, the County Council of Talbot County introduced legislation in the form of County Bill No. 933 that would remove from the Towns' control all growth allocation acreage previously allotted, whether unallocated, *already allocated*, or *currently under consideration* for allocation to a specific parcel of land. In essence, Bill 933 would deprive the Towns of their ability to award growth allocation on land within their own municipal boundaries. More than half of the land located within Town of St. Michaels is also located within the Chesapeake Bay Critical Area. Therefore, with respect to the significant part of the municipality located within the Critical Area, Bill No. 933 would effectively take land planning and zoning functions over that area from the Town and give it to Talbot County. We believe the enactment of Bill No. 933 by the County Council is unnecessary, inconsistent with State law and will have a negative impact on the Towns of Talbot County.

So far as we can determine with regard to other municipalities in Talbot County, and to be sure with regard to St. Michaels, in advance of the introduction of Bill 933 the County did not:

- Inform us of any problem that would require such legislation;
- Seek our suggestions for a solution or cooperation in solving such a problem
- Provide us with a copy of the proposed Bill for comments and suggestions, on a matter that is important to the Town.

We regret this state of affairs. To the extent possible, we hope to improve communications between the County and the Town.

Hon. Philip C. Foster, President
County Council of Talbot County, Maryland
December 16, 2003
Page 2

To that end, we offer by this letter what we hope you will accept as forthright and constructive comments and suggestions regarding Bill No. 933.

1. We think that this drastic step is unnecessary to manage available growth allocation among the towns and the County in a way that will achieve the stated purpose of the Bill, and to qualify the County for an additional allotment of growth allocation for use as IDAs. We believe that the current provisions of the County Code and a cooperative effort among the affected jurisdictions could accomplish the necessary results.
2. Maryland laws indicate that the Town is intended by the State to have home rule powers, and to have planning, zoning, and subdivision powers over all land within the Town, to the same extent as all other municipalities in this State. The Bill would create a situation in which the municipalities in Talbot County would effectively have less planning and zoning powers within their boundaries than other municipalities in this State, in violation of Maryland Constitution, Article XI-E (Municipal Corporations), Section 1.
3. The Code of Maryland Regulations ("COMAR"), § 27.01.02.06, relating to growth allocation, requires "a process to accommodate the growth needs of the" Town. We can find nothing about either the Bill, or the manner in which the Bill has come about, to indicate that it will create or facilitate such a process. As drafted, the Bill would have the effect of dismantling the right and ability of St. Michaels to self-determination regarding growth and development in the Critical Area within the Town.
4. For 20 years the Towns have exercised careful stewardship of their growth allocation. This fact is evidenced by the amount of allocation acreage remaining, and indicates that Bill 933 is unnecessary.
5. The County is a party to at least two contracts, of which we are aware, that could be either impaired or breached by the Bill and/or by acts taken pursuant to the Bill. Those contracts are as follows:
 - a. The agreement for the assumption for the Town's sewer system by County Sewer District No. 2, which we believe has been subsequently assumed by the County; and
 - b. The Annexation Agreement relating to Perry Cabin Farm.Rather than engage in counter-productive rhetoric, we enclose a copy of those documents herewith for your review. In addition to the Town, property owners may have rights pursuant to those contracts.

We urge the County Council to review the facts contained in the enclosed Position Paper and to carefully consider whether adoption of Bill 933 today is the best interest of all Citizens of Talbot County. As far as we are aware, there is no deadline facing the County that would preclude a careful study of the issues, and a concerted effort by all affected parties to reach an equitable solution. If it is truly the Council's intent to fairly distribute the County's growth

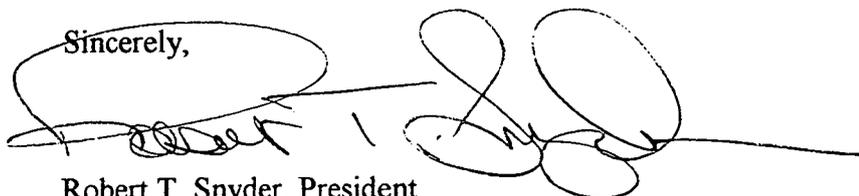
Hon. Philip C. Foster, President
County Council of Talbot County, Maryland
December 16, 2003
Page 3

allocation, then a constructive dialog between the Towns and the County can only improve the end results.

We respectfully urge you to consider these issues and to postpone action on Bill 933 until you have met with the elected officials of the Towns of Easton, Oxford and St. Michaels regarding this important matter. Please note that we normally have our public Town meetings on the second and fourth Tuesday of each month. However, if provided with sufficient advance notice and barring some legal requirement that we hold our meeting on a particular date, we offer to reschedule our meetings if it would facilitate a joint meeting of the County and the affected Towns.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert T. Snyder', with a long horizontal line extending to the right.

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

RTS/ct
Enclosure

CC: Hon. Delegate Jeanne Haddaway
32 S. Washington Street
Easton, MD 21601

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

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

Hon. Cheryl Lewis, President
Trappe Town Council
P.O. Box 162
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PHONE: 410-770-8030

December 3, 2003

Bill 933

MEMORANDUM

TO: Members of the Talbot County Planning Commission

FROM: George Kinney, Planning Officer

SUBJECT: Review and recommendation to County Council
Zoning Ordinance Text Amendment

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

(This Bill was introduced by Council on November 18, 2003 and is currently scheduled for public hearing)

Nature of the Request

Consistent with §190-109D(11), the attached Bill serves to review and reallocate the number of reserved growth allocation acres originally afforded to the Towns of Oxford, Easton and St. Michaels. The Bill was prepared by the County Attorney and introduced by County Council on November 18, 2003. Consistent with §190-109A, the Planning Commission must review the legislation and provide a recommendation to Council.

Staff Comments

In 1989, the County was originally awarded 1,213 acres from the Critical Area Commission for growth allocation. From that acreage, 155 acres were awarded to the Town of Easton, 195 acres to the Town of Oxford and 245 acres to the Town of St. Michaels. The remaining 618 acres remained with the County. As currently written and upon adoption, this Bill would recapture remaining acreage from the Towns and require them to approach the County in the event growth allocation is necessary for a specified Town project. This change would afford the County the opportunity to involve itself in the development process and further help to achieve the 90% threshold necessary to request additional allocation acreage from the Critical Area Commission.

Additional considerations and/or modifications are still being developed with respect to this legislation and it is not clear at this time whether Town projects will retain the growth allocation necessary to support existing project proposals. As such, the attached Bill may not be identical to the one Council will consider for public hearing. Staff recognizes that it will be difficult for the Planning Commission to thoroughly review this proposal and suggests that the Commission may wish to discuss the matter further and/or pursue a joint meeting with the Towns should the opportunity presents itself.

Proposed Amendment to Bill 933

[To reallocate growth allocation among the towns]

Proposed by: Mr. Carroll
Date: December 16, 2003

Reason: There are three amendments, the first to amend the title, the second to restate the reasons for adoption, and third to make grammatical changes.

Substantive: No. Neither the title nor the reasons for adoption are operative portions of the Bill; neither becomes law. The grammatical change is not substantive.

The first proposal is to amend the title of Bill 933 as follows:

1 **A BILL TO REVIEW AND REALLOCATE THE NUMBER OF RESERVED ACRES OF**
2 **GROWTH ALLOCATION ALLOCATED AMONG THE TOWNS FOR REZONING IN**
3 **~~COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 190, TALBOT COUNTY~~**
4 **~~CODE, "ZONING" § 190-109 D. (11).~~ TO COMPLY WITH THE CHESAPEAKE BAY**
5 **CRITICAL AREA COMMISSION FOUR-YEAR REVIEW REQUIREMENT.**

The second proposal is to amend the introductory clauses to the Bill by deleting the final 3 introductory clauses, and by adding 14 new introductory clauses, as follows:

6 ~~WHEREAS, the Town of Easton has requested 156 acres of supplemental growth~~
7 ~~allocation and has enacted Ordinance No. 461 to approve a Planned Unit Development. Part of~~
8 ~~that planned development requires the County to grant the Town's application for 58.80 acres of~~
9 ~~growth allocation for reclassification from Resource Conservation Area (RCA) to Limited~~
10 ~~Development Area (LDA) and 97.20 acres of growth allocation for reclassification from RCA to~~
11 ~~Intensely Developed Area (IDA); and~~
12

13 ~~WHEREAS, the County currently has a total of 316.229 acres of growth allocation~~
14 ~~available to rezone from RCA to LDA. The Town of Easton is requesting 58.80 acres, which, if~~
15 ~~granted, would reduce the County's remaining growth allocation under the current ordinance in~~
16 ~~this category to 257.429 acres; and,~~
17

18 ~~WHEREAS, the total amount of IDA growth allocation available for the entire county is~~
19 ~~128 acres. The 1989 projection reserved 24 acres for the Town of Easton and 36 acres for the~~
20 ~~County, totaling less than the 97.20 acres of IDA growth allocation requested by the Town in~~
21 ~~their current application. Therefore, to grant the Town of Easton's pending request for an award~~

22 ~~of supplemental growth allocation requires the County to withdraw IDA growth allocation from~~
23 ~~other towns and reallocate growth allocation under § 190-109 D-10 (b). In light of that, and~~
24 ~~because of the foregoing, the lack of any continuing usefulness, or validity, of the 1989 maps and~~
25 ~~projections, for any purpose, is now evident.~~

26
27 WHEREAS, Talbot County had a total of 2,554 acres of growth allocation under the
28 State formula for calculating the total amount for each county [5% of the total resource
29 conservation area located within the County]; and

30
31 WHEREAS, § 8-1808.1 (c) (3), Natural Resources Art., Md. Ann. Code provides, with
32 certain exceptions, no more than one-half of the expansion permitted by growth allocation in the
33 critical area may be located in resource conservation areas (RCA); and

34
35 WHEREAS, § 8-1801.1 (c) (5) Natural Resources Art., Md. Ann. Code provides that if
36 Talbot County is unable to utilize a portion of the County's total growth allocation within or
37 adjacent to exiting intensely or limited development areas, then that portion of the growth
38 allocation which cannot be so located may be located in an RCA; and

39
40 WHEREAS, Talbot County has followed this requirement of State law by restricting the
41 use of available growth allocation through § 190-109 D. (9) (a) of the Talbot County Code. That
42 section provides that not more than 1,213 acres of land lying within the Critical Areas of the
43 County shall be reclassified from RCA to any other zoning district. [The 1,213 acres is derived
44 from the total acreage available for growth allocation in the entire county by the following
45 formula: (5% of total acres in resource conservation areas, equal to 2,554 acres = total available
46 growth allocation), less 128 acres reserved for reclassification from limited development areas to
47 intensely developed areas, divided by 50%. The calculation is: 2,554 acres minus 128 acres
48 divided by ½ = 1,213 acres.]; and

49
50 WHEREAS, the County may not utilize the remaining 50% of available growth
51 allocation [1,213 acres] until the Critical Area Commission grants permission, under the
52 exception provided in § 8-1801.1 (c) (5), cited above, based upon a showing that the County is
53 unable to utilize that portion of its available growth allocation in areas adjacent to limited or
54 intensely developed areas; and

55
56 WHEREAS, to trigger release of the withheld 50% of the County's growth allocation, §
57 190-109 D. (9) (b) provides that when 1,092 acres [90% of 1,213 acres] has been approved for
58 growth allocation by the towns and/or the County, then the County shall request permission from
59 the Maryland Critical Area Commission to double the maximum number of acres that may be
60 reclassified from RCA from 1,213 to 2,426 acres; and

61
62 WHEREAS, Section 190-109 D. (9) (a) of the Talbot County Code adopted in 1989
63 reserved 155 acres of growth allocation for the Town of Easton, 195 acres for the Town of
64 Oxford, 245 acres for the Town of St. Michaels, and 618 acres for Talbot County; and

65
66 WHEREAS, the Town of Oxford has allocated only 15.223 acres of growth allocation,
67 and the Town of St. Michaels has conditionally allocated only up to 20 acres of growth

68 allocation. The Town of Oxford has 139.777 acres remaining, and the Town of St. Michaels has
69 225 acres remaining. Combined, Oxford and St. Michaels have 364.777 acres of growth
70 allocation; and

71
72 WHEREAS, the County currently has a total of 316.229 acres of growth allocation. If it
73 grants a pending application for supplemental growth allocation submitted by the Town of
74 Easton for 156 acres, the County will have 160.229 acres of growth allocation; and

75
76 WHEREAS, under current law the Town of Oxford, or the Town of St. Michaels, either
77 separately or in combination, could forever block the County from accessing the remaining
78 growth allocation under § 190-109 D. (9) (b), by preventing the total acres utilized to equal or
79 exceed 1,092 acres, the required trigger under § 190-109 D. (9) (b); and

80
81 WHEREAS, the Town of Easton has fully allocated the growth allocation reserved to it,
82 and Talbot County has worked, and continues to work, cooperatively with the Town of Easton in
83 approving projects for which the Town has requested supplemental growth allocation; and

84
85 WHEREAS, growth in and around the towns affects not only the particular town, but also
86 the County as a whole, and the County should, therefore, have some ability to protect the
87 County's legitimate interests as they are affected by development in the critical area, as
88 contemplated by State law when it gave this control to the counties under the Chesapeake Bay
89 Critical Area Protection Program, § 8-1801, et. seq., Md. Ann. Code; and

90
91 WHEREAS, § 8-1809 (g), Natural Resources Art., Md. Ann. Code, requires that Talbot
92 County review its entire critical area program and propose any necessary amendments to its
93 entire program, including local zoning maps, at least every 4 years beginning in 1993 and every
94 4 years thereafter; and

95
96 WHEREAS, Talbot County is currently near completion of such a 4-year review, and as
97 part of that process desires to make the following amendments to the County's critical area
98 program to better reflect the original intent of the State law governing growth allocation, which
99 calculated growth allocation for Talbot County as 5% of the resource conservation area in the
100 County, and gave the County the authority to determine, within the limits imposed by State law
101 and regulations, how that growth allocation would be utilized, and reallocated among the Towns
102 and the County, project by project.

103
The third proposal is to amend page 7 Section 2, paragraph 1 (a) line 5 of the Bill as follows:

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.



The Commissioners of Saint Michaels
P.O. BOX 206

SAINT MICHAELS, MARYLAND 21663-0206

SETTLED 1670-80
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January 7, 2004

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

JAN 13 2004

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

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

Town opposition to Talbot County Bill No. 933

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

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

Dear Senator Madden and Commission Members:

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

Not content to merely disrupt and avoid participation in the Town's administrative proceedings for the award of growth allocation, the Talbot County Council on December 23, 2003 adopted County Bill No. 933, entitled "A Bill to Review and Reallocate the Number of Reserved Acres of Growth Allocation Allocated Among the Towns for Rezoning in Compliance with the Requirements of Chapter 190, Talbot County Code, "Zoning" § 190-109 D. (11)". This Bill, a copy of which is enclosed, would remove from the Town, and from all other towns in Talbot County, all growth allocation that is unallocated, or which has been allocated but which has not yet resulted in related construction. If allowed to stand, Bill No. 933 would void a recent annexation and growth allocation award (the Strausburg Annexation) by the Town of St. Michaels that has been approved by the Critical Area Commission. Bill No. 933 would incapacitate the system by which Talbot County's towns in general, and St. Michaels in

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

A.
Town Objection To County Actions

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

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

5. On December 16, 2003 in exchange for more than \$1,500,000 in County road and other off-site improvements promised to the County by a developer, the County Council voted to allot to the Town of Easton sufficient growth allocation acreage to permit the approval of a development within the Critical Area.¹
6. On December 23, 2003, when the County Council concluded that the Town was on the verge of approving an application for growth allocation involving the subject land, the County Council voted to enact Talbot County Bill No. 933, by which the County has withdrawn from all Towns in Talbot County all unallocated growth allocation.

B.

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

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

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

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

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

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

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

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

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

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

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

C.
Historical Background

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

1.
1980 Perry Cabin Farm Annexation Agreement

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

2.
Perry Cabin, Phase I

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

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

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

4.

Husbandry of Growth Allocation in Talbot County

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

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

5.

Miles Point I Application

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

6.

Perry Cabin, Phase II, Application

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

7.

Perry Cabin, Phase III, Application

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

8.

Mediation And Workshop

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

9.

The Strausburg Annexation

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

10.

Miles Point II at the Town Planning Commission

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

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

11.

Actions By Talbot County Council

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

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

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

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

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

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

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

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

12.

Miles Point II at the Town Commissioners

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

13.

Miles Point III

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

14.
Other Relevant History

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

D.
Conclusions

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

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

E.
Request For Critical Area Commission Action

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

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

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

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

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

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

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

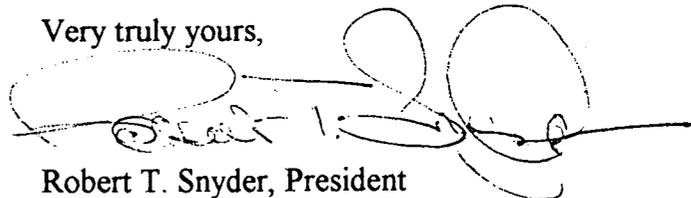
4.

Commission Review Of Miles Point III

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

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

Very truly yours,



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

Enclosures:

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

Hon. Martin G. Madden, Chairman

Critical Area Commission

January 7, 2004

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

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

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

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

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

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

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

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

Hon. Martin G. Madden, Chairman

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

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

Mr. Tom Rimrodt, Assistant Secretary
Maryland Department of Planning
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Ms. Pat Goucher, Director of Local Planning
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Ms. Mary R. Owens, Chief, Program Implementation Division
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1804 West Street, Suite 100
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Mr. Sam Bradner, Development Coordinator
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The St. Michaels Planning Commission
300 Mill Street
St. Michaels, MD 21663

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JOHN C. NASON
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e-mail: hickson@bnhlaw.com

April 5, 2004

RECEIVED

APR 5 2004

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

FOR HAND DELIVERY TO:

Critical Area Commission
For The Chesapeake And Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, Maryland 21401

FOR INCLUSION IN THE RECORD OF THE PANEL HEARING ON:

TALBOT COUNTY BILL NO. 933

Conducted on March 24, 2004

Dear Chairman Blazer, Panel Members and Staff:

Thank you again for your time and effort in the above-referenced matter. I am writing this letter on behalf of The Commissioners Of St. Michaels (hereinafter the "Town") in opposition to Talbot County Bill No. 933 (hereinafter the "Bill"). This letter is intended to be included in the record of the above-captioned matter before the record is closed on April 5, 2004, and to address and integrate some of the testimony that was presented after I testified, and to cover some of the matters that I did not have sufficient time to address at the hearing. Therefore, on behalf of the Town, in my capacity as Town Attorney, I enclose and submit herewith for the record the following documents and comments:

1. Pages 15 and 16 of my prepared testimony, submitted for the record at the March 24, 2004 hearing, in which a proposal to resolve this issue is described. **(See Exhibit 1, enclosed herewith.)**
2. Letter of this date from the Town Commissioners to the County Council, reiterating the proposal made in my written testimony of March 24, 2004. **(See Exhibit 2, enclosed herewith.)**
3. Bill 933 states that by failing to use the growth allocation acreage allotted to them by the County, the Towns of St. Michaels and Oxford could prevent the County from applying for and receiving permission to begin using the second half of the total growth allocation permitted by State law. Although the Town is not authorized to speak for all of the incorporated municipalities located within the County (the "Talbot Towns"), the Town has reason to believe that the other Talbot Towns

would accept the proposal contained in my testimony (paragraph 1 hereof) and the Commissioners' letter (paragraph 2 hereof). The implementation of that proposal would eliminate the possibility that the County would be "held hostage" at sometime in the future because one or more of the Talbot Towns is "hoarding" its allotted acres of growth allocation, thereby preventing the County from applying for and receiving permission to begin using the second half of the total growth allocation permitted by State law. This proposal would seem to be an easy solution to the "hoarding" or "veto" posed by the County as a reason for the Bill. For the record, I will note again that prior to the introduction of Bill 933 no County official or employee has ever raised any of the issues used by the County to justify the Bill with any official of the Town. Further, no County official or employee has ever sought any solution to any of those issues from the Town.

4. As you are well aware, and as referenced in my testimony and that of Mr. Duke on behalf of the Maryland Department of Planning, among other things, the Bill must be evaluated by you in terms of whether it complies with the requirements of COMAR 27.01.02.06 A (2), which states:

Location and Extent of Future Intensely Developed and Limited Development Areas.

A. Intensely developed and limited development areas may be increased subject to these guidelines:

- (1) The area of expansion of intensely developed or limited development areas, or both, may not exceed an area equal to **5 percent of the county's portion** of the resource conservation area lands that are not tidal wetlands or federally owned;
- (2) When planning future expansion of intensely developed and limited development areas, **counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities.** [*Emphasis added.*]

5. Transcript of testimony at the public hearing by Mr. Larry Duckert, given at the March 24, 2004 hearing (see **Exhibit 3, enclosed herewith**, hereinafter referred to as the "Duket Transcript") on behalf of the Maryland Department of Planning. The testimony of Mr. Duckert makes the following noteworthy points which lead to the conclusion that the approval of County Bill No. 933 would result in the establishment of a growth allocation process which **does not accommodate the growth needs of the affected municipalities**, and which **would result in a process that is contrary to the State growth strategy as implemented by numerous State laws, including** the Economic Growth, Resource Protection, and Planning Act of 1992 (Chapter 437, Laws of Maryland, 1992); the Forest Conservation Act (codified as Subtitle 16 of Title 5 of the Natural Resources ("NR") Article); the Rural Legacy Program (codified as Subtitle 9A of Title 5 of the NR Article); and the "Smart Growth legislation" (Chapter 759, Laws of Maryland 1997, most of which was codified as Subtitle 7B of Title 5 of the State Finance and Procurement Article ("SFP") of the Annotated Code of Maryland), including Priority Funding Areas (codified

as part of Subtitle 7B of Title 5 of the SFP Article):

- 5.1. Mr. Duket is appearing on behalf of the Maryland Department of Planning. (Duket Transcript, page 3/lines 19 - 21.) Mr. Duket and the Maryland Department of Planning have no interest in the outcome of this matter except to see that County growth allocation laws are consistent with the State growth strategy.
- 5.2 Mr. Duket is knowledgeable and experienced in State growth strategy, having been involved in State growth planning for nearly 30 years. (Duket Transcript, 3/10 - 11.) Further, Mr. Duket is a former member of the Critical Area Commission, so that he is experienced in looking at these types of issues from several perspectives.
- 5.3 Maryland's growth, environmental protection, and funding laws work together to form a growth strategy. Since the adoption of the Critical Area law many new State laws have been enacted; the 1992 Planning Act, which applies to all State agencies and promotes eight different visions or goals for growth in the State; Forest Conservation Act, Priority Funding Areas, Rural Legacy, Smart Codes, on and on it goes. If you look at the details of each of these laws you will find that they favor growth directed to county-designated growth areas and incorporated municipalities. Indeed, these new laws reflect the same spirit as the Critical Area's growth allocation rule. Growth within municipalities that plan and zone for it should be accommodated. (Duket Transcript, 11/18 - 12/10.) (Duket Transcript, 3/13 - 15. The State growth strategy, implemented by various laws, regulations and programs, work together to direct growth towards both county designated growth areas and incorporated municipalities, which the State calls county and municipal Smart Growth and Priority Funding Areas. (Duket Transcript, 4/8 - 14.)
- 5.4 The Resource Conservation Area ("RCA") category limits development to only one dwelling unit per 20 acres. From a land-use planning perspective, it is unusual and economically inefficient to have land within municipalities relegated to a one dwelling unit per 20 acres standard. The Critical Area laws had the unusual, economically inefficient and apparently irreconcilable effect of applying the RCA standard (one dwelling unit per 20 acres) to all farm and forest lands located within or adjacent to municipalities. (Duket Transcript, 5/5 - 15.
- 5.5 When the Critical Area law was being drafted there was a lot of legitimate concern that was voiced by municipalities over the application of the RCA category to farm and forest land that was either within municipal boundaries or at its edges where growth and expansion were planned. (Duket Transcript, 10/5 - 10.) The growth allocation process was principally created to allow county and municipal governments to reconcile their comprehensive planning, zoning and capital programs with the RCA rules of the Critical Area law. (Duket Transcript, page 4/21 - 5/4.) The concerns of municipalities in particular were addressed by the rule that the counties shall have a process to accommodate the growth allocation needs of municipalities. (Duket Transcript, 10/16 - 19.)

- 5.6 Bill 933 would create a significant change in the manner in which Talbot County addresses the growth allocation needs of incorporated municipalities. (Duket Transcript, 4/1 - 4.) The State Department of Planning is participating in this debate because the Bill would affect growth in a way that is contrary to the State growth strategy. (Duket Transcript, 4/16 - 20.) Therefore, the Bill is of significant interest the State Department of Planning. (Duket Transcript, 4/6 - 7.)
- 5.7 The concern of the State Planning Department is that Bill 933, by striking reserve amounts of allocation to each town, places the County as the final decision maker for all municipal requests for growth allocation. (Duket Transcript, 7/6 - 9.) Under Council Bill 933, specific amounts of growth allocation reserved for towns would be deleted from the Talbot County Critical Area program. (Duket Transcript, 5/20 - 6/1.) As the result of Council Bill 933, the County would have approval authority over all future growth allocation requests in town. This would occur through the supplemental growth allocation process that is now part of the County's program. (Duket Transcript, 6/2 - 6/6.)
- 5.8 Council Bill 933 effectively makes the supplemental growth allocation process the primary and only process. (Duket Transcript, 7/17 - 19.) The supplemental growth allocation process was originally created for narrower purposes than is now contemplated by Council Bill 933. Through Council Bill 762, the supplemental growth allocation process was created, and was approved as a refinement by the Commission. It seems unlikely that the Commission would have treated such a significant change to the growth allocation process as a mere refinement were it not for the retention at that time of specific language giving growth allocation allotments to the towns. As the result of Council Bill 933, the County and a town with every applicant seeking growth allocation would use the supplemental growth allocation process was created by Council Bill 762 in a joint hearing process between the County and the town. (Duket Transcript, 6/7 - 20.) Now, in hindsight the issue of County control over municipal growth allocation should have been raised in the context of Council Bill 762; however, given that 762 retains specific allocations for each town, perhaps the issue was not as well defined as now presented in the context of Council Bill 933. We also recognize the many approved programs in other counties with similar practice. We think these programs need to be revisited. (Duket Transcript, 10/20 - 11/8.)
- 5.9 Contrary to COMAR 27.01.02.06 A (2), Council Bill 933 contains no decision-making criteria or standards that must be applied by the County to account for or *accommodate municipal growth needs*. Not even the municipal Comprehensive Plan or the municipal zoning map, nor a municipal Critical Area Program, nor a growth allocation map prepared by the town is relevant under the terms of Council Bill 933. Council Bill 933 can result in the denial of a specific bona fide, good-faith

request for growth allocation which meets the accounting and locational criteria of the Critical Area law. It appears that the Commission's growth allocation policy is consistent with Town planning and zoning laws and the Critical Area programs. *It's difficult, if a denial should occur in such a situation, to see how that process accommodates the growth allocation needs of the towns.* (Duket Transcript, 7/19 - 8/14.) [NOTE: See COMAR 27.01.02.06 A (2), in paragraph 4, above.]

- 5.10 The General Assembly has been careful to address county-municipal relationships in writing Maryland's planning, growth and environmental laws and, in doing so, *uniformly the legislature has both preserved the sanctity of municipal land-use decisions and created laws that embody preferences for continued growth in municipalities that plan and zone for growth.* (Duket Transcript, 9/10 - 17.) [NOTE: Maryland Code, Article 66B, grants to municipalities planning and zoning powers that are independent of the counties.]
- 5.11 Mr. Duket concluded by offering the assistance of the Maryland Department of Planning to the County, several towns and the Critical Area Commission to work to resolve issues that show that municipal needs for growth allocation are accommodated. (Duket Transcript, 12/11 - 15.)

6. It is undisputed in the testimony at the panel hearing that there was literally no *coordination* by the County *with affected municipalities* with regard to the establishment of the process that would be created by Bill 933. (See Exhibit 3, enclosed herewith, transcript of Hickson testimony.)

- 6.1 On October 29, 2003, the County Manager contacted the Critical Area Commission for the purpose of advising the Commission of when Bill 933 would be enacted by the County Council and would be ready for a public hearing by the Critical Commission.
- 6.2 Before the title (without the content) of Bill 933 appeared on the County website on Friday, November 14, 2003, the Talbot municipalities were given no indication by the County of the existence of Bill 933, or that the County perceived a problem that required the enactment of Bill 933.
- 6.3 Before Bill 933 was voted by the County Council to be introduced as a piece of County legislation on November 18, 2003, the Talbot municipalities were given no indication by the County of any perceived problem giving rise to Bill 933, and were not asked to participate in formulating any solution, process or legislation relating to those perceived problems.
- 6.4 On November 18, 2003, after the County Council voted to introduce Bill 933, despite being requested by the Town Manager of St. Michaels, a copy of Bill 933 was not made available by the County to St. Michaels. Indeed, the first time that a draft copy

of Bill 933 was made available to St. Michaels, despite persistent efforts by the Town to obtain a copy thereof, was on November 19, 2003.

- 6.5 On November 21, 2003, with only one day of notice, the County Council held a public meeting in which the members of the County Council chided the Commissioners of St. Michaels for even entertaining the Miles Point application for growth allocation. Without any receiving input from the Town Commissioners, and without having attended any of the previous public hearings on the application, the County Council voted unanimously at that meeting to urge the Town Commissioner to deny the Miles Point Application.
- 6.6 On December 1, 2003, the Talbot County Council wrote a letter to Senator Madden in his capacity as chairman of the Critical Area Commission, urging the Critical Area Commission to deny any award of growth allocation the Town of St. Michaels might make to the Midland Companies relating to the Miles Point project, citing lack of sewer capacity. The County did not mention in that letter that the County had voted to expand the treatment volume capacity and to upgrade the treatment quality of the wastewater treatment plant that serves the St. Michaels vicinity, including the area where the Miles Point project would be located.
- 6.7 Despite the fact that representatives of the municipalities of Oxford, St. Michaels, and Trappe appeared at the public hearings on Bill 933, conducted by the Talbot County Planning Commission (on December 2, 2003) and by the Talbot County Council (on December 16, 2003) in the legislative process, at which those municipalities requested the opportunity for a dialog with the County to learn of the perceived problems and to participate in the solutions, no such meeting or dialog was permitted by the County. The Talbot County Planning Commission recommended to the County Council that the Bill was not needed.
- 6.8 On December 16, 2003, at the public hearing held by the Talbot County Council, a new version of Bill 933 appeared. Changes to the Bill included the removal of three "Whereas" clauses, the addition of 11 new "Whereas" clauses, a change in the title, and other new language. Despite the fact that changes in the original justification for the Bill were publicly announced for the first time on December 16, 2003, the Council voted unanimously that the changes were "not substantial," and proceeded with the public hearing without sending the new bill back through the Planning Commission process.

The undisputed evidence is that there was no coordination by the County with the affected municipalities in establishing the process by which growth allocation would be awarded in those municipalities after the effective date, and as the result of, Bill 933. This is contrary to the requirement of COMAR § 27.01.02.06 A (2), which requires coordination with the affected municipalities in establishing a process for the awarding of growth allocation that would allow the expansion of IDA and/or LDA. Moreover, these are not the actions of a governing body that has an open mind toward the Miles Point project or has any intention of cooperating or coordinating with

the towns on these matters in the future.

7. Bill 933 is written based on the premise that unless Talbot County agrees to the contrary, a municipality in Talbot County may receive no more growth allocation than an area that is equal to five percent of the area of that town that is located within the critical area. That basic premise is erroneous, in that it is inconsistent with the established State growth strategy described by Mr. Duket in his testimony, and the many State laws that favor growth in and around exiting municipalities, cited above.

8. Bill 933 also states: "WHEREAS, these 1989 maps have been used to justify "leap-frog" or "pipe-stem" annexation, which is inconsistent with current principles of proper planning and the land use goals and policies in the existing and draft Talbot County Comprehensive Plans..." This clause can only refer to the annexation and award of growth allocation relating to the Strausburg Property by the Town of St. Michaels in September of 2004. The following Town documents relating thereto (not enclosed), contain extensive findings of fact, sound reasoning, and valid land-use planning principles by the Town for its actions in annexing and awarding growth allocation relating to the Strausburg Property:

- 8.1 Findings Of Fact (11 pages), adopted in connection with the annexation of the Strausburg property by the Commissioners Of St. Michaels by a vote of 4 - 0 on October 14, 2003;
- 8.2 Findings Of Fact And Recommendations Of the St. Michaels Planning Commission To The Commissioners Of St. Michaels (37 pages), unanimously adopted by a vote of the St. Michaels Planning Commission on August 19, 2003, in connection with the award of growth allocation to the Strausburg property; and
- 8.3 Findings Of Fact And Decision of the Commissioners of St. Michaels (23 pages), adopted in connection with the award of growth allocation to the Strausburg property by a 4 - 0 vote of the Commissioners of St. Michaels on September 10, 2003.

The Town's planning consultant, Anthony Redman, has endorsed the Strausburg annexation , involving a 75-acre perpetual conservation easement for the Town, as being consistent with valid land-use planning principles. Mr. Redman has worked at the State level with Judge Liss and Sara Taylor Rogers in the formulating critical area criteria for development, and has served as chairman of the Planning Subcommittee of the Maryland Economic Growth Resource Protection And Planning Commission. The language directed toward the Strausburg property in Bill 933, and the vesting provisions contained in that Bill, can only be aimed at defeating the Strausburg annexation and the award of growth allocation relating thereto. Again, the formulation, drafting and enactment Bill 933 was done by the County without any consultation, dialog or request for information by the County relating to the award of growth allocation, and serves as another example of the insensitivity of the County to the requirements for coordination with the towns and the County's lack of accommodation

of the growth needs of the affected towns.

9. At the March 24, 2004 public hearing, panel member Jackson asked County Attorney Michael Pullen what would happen if there were findings of the County and the Town that were not concurrent in a growth allocation award. Mr. Pullen was asked "Who has the tie-breaker in that?" Mr. Pullen responded by admitting that Bill 933 does not address that situation and that he "hoped" the process wouldn't create a dilemma for the developer, but that it was possible that it would. However, the supplemental growth allocation process, created by County Bill 762 and made immediately applicable to all applications for growth allocation in towns by Bill 933, clearly gives the County unfettered discretion to deny an application that has been approved by a town.

10. It is apparent from the written decision of the County in approving growth allocation for the Easton Village project, under the supplemental growth allocation process, that no attention is paid by the County to any Town Of Easton criteria. It is equally clear that according to Talbot County Code, § 190-109D(9)(d), the use of the word "may" in the opening paragraph is intended to make the award of supplemental growth allocation by the County discretionary even when all criteria are met. Part [3] of that section provides that the County Council shall evaluate the application in accordance with County Code § 190-109D(4). Nowhere in section 190-109D(9)(d) or in section 190-109D(4) is there any reference to any town criteria, town comprehensive plan, or any town land-use law or regulation. Further, section 190-109D(4) (c) says, "The fact that an application for a growth allocation district boundary amendment complies with all the specific requirements and purposes set forth in this chapter . . . is not, in itself, sufficient to require approval." Thus, the award of supplemental growth allocation, according to the County Code, is without consideration of municipal needs, criteria, and is totally discretionary. Therefore, if Bill 933 were approved, the County would be the final word with respect to award of growth allocation. In municipalities such as St. Michaels and Oxford, where a majority of their territory is within the critical area, this amounts to absolute control by the County over planning and zoning in those areas of the towns, in violation of Maryland Code, Article 66B.

11. In the final analysis, it appears that the real motivating reason for the adoption of Bill 933 by the County Council is to obtain discretionary control, and the final say, in whether growth allocation is granted within municipalities so it can defeat the award by the Town of growth allocation to the Miles Point project. That project complies with all State and Town critical area criteria, which makes good sense from a land planning perspective, and is consistent with the State's growth strategy.

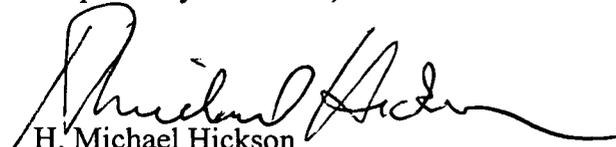
12. The Town believes that Bill 933 will take from the municipalities in Talbot County their ability to grow, through infill development and through annexation, which will perpetuate the

Critical Area Commission
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Re: Panel hearing on Talbot County Bill No. 933
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sprawl that has been allowed by the County around St. Michaels, as shown in the attached color map titled "Area Of St. Michaels". (See **Exhibit 5, enclosed herewith.**) The type of growth shown in that map is contrary to the State growth strategy discussed by Mr. Duket.

For all of the above reasons The Commissioners Of St. Michaels respectfully urge the Critical Area Commission to reject Talbot County Bill No. 933, and send it back to Talbot County with the instruction that if the County wishes to eliminate the growth allocation specifically allotted to the municipalities, then it must do so in conjunction with the adoption of a procedure, in coordination with the affected municipalities, that accommodates the growth needs of those municipalities. Again. Thank you for your consideration of this matter.

Respectfully submitted,



H. Michael Hickson
St. Michaels Town Attorney

HMH/pjh
Enclosures

cc: Michael L. Pullen, Esquire w/encl.
Mayor and Council of the Town of Easton w/encl.
Christopher B. Kehoe, Esquire w/encl.
Commissioners of Oxford w/encl.
Trappe Town Council w/encl.
David R. Thompson, Esquire w/encl.

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**VI.
A Proposed Solution**

The Commissioners Of St. Michaels fully recognize that this may not be the arena to propose a solution to a problem that is not the Commission's duty or the Town's duty to cure.



472 However, in an effort to save the local jurisdictions from what may be a continuing dispute, the
473 Town offers the following proposal, including the condition that by accepting this solution no
474 party thereto is waiving or acknowledging any interpretation or rights as far as the power to
475 control growth allocation is concerned.

476 The towns would raise no objection to Talbot County "taking back" into a
477 common pool the unused remainder of the growth allocation acreage originally
478 reserved for the towns in the County Local Program, provided that the County
479 Program is amended by legislation which provides as follows:

- 480 a. The unused remainder of the reserved growth allocation acreage is held
481 in a common pool that would be available to all towns, and after the
482 County's other growth allocation acreage is exhausted, the common pool
483 growth allocation acreage would also be available to the County;
- 484 b. Except during the five-year regarding an annexation during which the
485 County does not otherwise relinquish the zoning control provided by
486 Article 23A, Section 9 (c), the decision of whether to grant growth
487 allocation within the town, or regarding land which is the subject of a
488 petition for annexation to the Town, will be made as it has been, solely by
489 the towns but subject to approval by the Critical Area Commission,
490 without any participation in the decision-making process by the County;
491 and
- 492 c. The requirement of substantial construction for vesting be eliminated
493 from the determination of when growth allocation acreage is used. In the
494 alternative, include in the definition a reasonable amount of time period
495 within which the applicant must either start construction of the project or
496 to sign a development rights and responsibilities agreement with the
497 town. This would need worded so that the Strausburgs have a reasonable
498 time to preserve their growth allocation.

499 The Town believes that this proposal would meet the County's legitimate concerns and preserve
500 the towns' rights.



The Commissioners of St. Michaels
P.O. BOX 206

ST. MICHAELS, MARYLAND 21663-0206

SETTLED 1670-80.
INCORPORATED 1804

(410) 745-9535
(410) 745-3463

TDD/TTY RELAY 1-800-735-2258

April 5, 2004

Hon. Philip C. Foster, President
County Council of Talbot County, Maryland
142 N. Harrison Street
Easton, Maryland 21601

Re: A proposed alternative to Talbot County Bill No. 933

Dear President Foster Council Members:

The Commissioners of St. Michaels were concerned that there would be insufficient time allotted for presentation of all of its comments and concerns at the panel hearing on Talbot County Bill No. 933 conducted by the Critical Area Commission on March 24, 2004. Therefore, our Town representative who presented at that hearing, Mr. Hickson, in addition to his oral comments, submitted written testimony at that hearing.

Included in that testimony, which Mr. Hickson did not have time to adequately present in his oral comments at that hearing, is a proposal which we offer without prejudice, as an alternative to Talbot County Bill No. 933. A copy of that portion of the prepared testimony containing the proposal is enclosed herewith. This proposal has the unanimous support of the Commissioners of St. Michaels.

We believe that this proposal, if implemented by the County, would eliminate the possibility, in theory or in practice, that a town in Talbot County would be able to "hoard" growth allocation in such a manner that would prevent Talbot County from reaching the required percentage of used growth allocation necessary to apply for authorization to begin using the second half of the total amount of growth allocation allowed by law. Therefore, we believe the implementation of this proposal would eliminate the stated major reason for the County's enactment of Bill No. 933. Moreover, this proposal would allow the towns, particularly Oxford and St. Michaels, to exercise the planning and zoning powers granted to them by Article 66B of the Maryland Code.

While we are not authorized to speak for the other municipalities in Talbot County, we believe this proposal would satisfy their objections to Bill No. 933 if the proposals were enacted so as to take effect at the same time as the provisions of Bill 933.

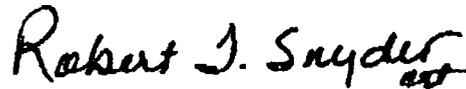
EXHIBIT

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Hon. Philip C. Foster, President
County Council of Talbot County, Maryland
Re: A proposed alternative to Talbot County Bill No. 933
April 5, 2004
Page 2

This offer is made without prejudice. We hope that you will give this proposal your serious consideration, and advise us of your position in that regard. If you agree that this is a viable proposal, then we request that you withdraw Bill 933 from consideration by the Critical Area Commission so that we can gain the support of all of the Talbot municipalities for this proposal, and we can then all work together in earnest to draft the legislation and implement this proposal. This offer will expire and be automatically withdrawn by a decision of the Critical Area Commission regarding Bill No. 933, unless that decision is a denial of the Bill with a recommendation that the County adopt this proposal. Thank you for your consideration.

Very truly yours,



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

RTS/ct
Enclosure

cc: Michael L. Pullen, Esquire w/encl.
Mayor and Council of the Town of Easton w/encl.
Christopher B. Kehoe, Esquire w/encl.
Commissioners of Oxford w/encl.
Trappe Town Council w/encl.
David R. Thompson, Esquire w/encl.

ORIGINAL

EXCERPT
MEETING OF A PANEL
OF
THE STATE OF MARYLAND
CRITICAL AREA COMMISSION
FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS
(Talbot County Bill 933)

Testimony of Larry Duket
Maryland Department of Planning

Date: Wednesday, March 24, 2004

Time: 7:00 p.m.

Location: Easton High School
Easton, Maryland

Reported by: David M. Schafer, AA, CCR



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MEMBERS OF THE PANEL:

Dave Blazer, Chair

William Giese

Joseph Jackson

Gary Setzer

Edwin Richards

Marianne Mason, Assistant Attorney General

1 MR. DUKET: How are you doing, Mr.
2 Chairman, ladies and gentlemen of the panel, staff,
3 counselor. For the record, I'm Larry Duket of the
4 Maryland Department of Planning.

5 And I know what's going through your
6 heads; here comes State Planning again.

7 But I want you all to think about the
8 Critical Area law, but I want you to think about a
9 little bit more than the Critical Area law.

10 I've been involved in State growth
11 planning for nearly 30 years now. And if I had a
12 couple hours to explain it all, you'd be amazed at
13 how well all of our growth and environmental
14 protection and funding laws fit together to form a
15 pretty good growth strategy for Maryland.

16 I'm going to go ahead and read this
17 statement rather than just speak extemporaneously,
18 just to get this over with.

19 The Maryland Department of Planning
20 appreciates the opportunity to offer comments on
21 Council Bill 933.

1 The Bill would create a significant
2 change in the manner in which Talbot County
3 addresses the growth allocation needs of
4 incorporated municipalities, or towns as they've
5 been referred to tonight.

6 The bill is of significant interest to
7 this department because it comes at a time when the
8 State is committing its planning functions, its
9 regulatory programs, its funding, its technical
10 assistance and its capital programming in
11 furtherance of directing growth towards both county
12 designated growth areas and incorporated
13 municipalities, which we now call County and
14 Municipal Smart Growth and Priority Funding Areas,
15 if you will.

16 With the current governor's Priority and
17 Places initiative, this department is committed to
18 participate in the debate on issues fundamental to
19 the implementation of a sound growth strategy for
20 Maryland.

21 The growth allocation process was

1 principally created to allow county and municipal
2 governments to reconcile the comprehensive planning,
3 zoning and capital programs with the new resource
4 conservation rules of the Critical Area law.

5 The RCA category limits development to
6 only one dwelling unit per 20 acres. From a
7 land-use planning perspective it's unusual and
8 economically inefficient to have land within
9 municipalities relegated to one dwelling unit per 20
10 acres standard. Yet the Critical Area RCA had this
11 effect on farm and forest lands not yet having
12 public water and sewer that were located within
13 municipalities, within municipal growth boundaries
14 and on adjacent lands eligible for municipal
15 annexation.

16 Municipal governments in particular when
17 the law was being written were given assurances in
18 the Critical Area law that their need for growth
19 allocation would be accommodated.

20 Under Council Bill 933 specific amounts
21 of growth allocation reserved for towns would be

1 deleted from the Talbot County Critical Area program
2 and consequently the County will have approval
3 authority over all future growth allocation requests
4 in town. This would occur through the supplemental
5 growth allocation process that is now part of the
6 County's program.

7 This process was really originally
8 created for narrower purposes through Council Bill
9 762, the supplemental growth allocation process, and
10 was approved as a refinement by the Commission, I
11 believe circa 2000.

12 Looking back on it, it seems unlikely
13 that in 2000 the Commission would have treated such
14 a significant change to the growth allocation
15 process as a mere refinement were it not for the
16 retention at that time of specific language giving
17 allocations to the town.

18 Under Council Bill 933, the County and a
19 town with an applicant seeking growth allocation
20 would use a joint hearing process to ostensibly
21 assure that both municipal and county planning and

1 growth issues are considered. And, as a matter of
 2 fact, this department supports the use of tools and
 3 processes that promote interjurisdictional
 4 coordination and cooperation, and appreciates that
 5 this is the primary goal of Council Bill 933.

6 Our concern, however, is that 933, by
 7 striking reserve amounts of allocation to each town,
 8 places the County as the final decision maker for
 9 all municipal requests for growth allocation.

10 Now, the County's process for
 11 accommodating the needs of municipalities for growth
 12 allocation should not operate as a blank check for
 13 towns. That's not what we are saying; that is, we
 14 do not believe that the rule calls for
 15 municipalities to always get what they purport to
 16 need.

17 But Council Bill 933 effectively makes
 18 the supplemental growth allocation process the
 19 primary and only process, and contains no
 20 decision-making criteria or standards to account for
 21 or accommodate municipal growth needs. Not even the

1 municipal Comprehensive Plan or the municipal zoning
2 map, nor a municipal Critical Area Program, nor a
3 growth allocation map prepared by the town is
4 relevant under the terms of Council Bill 933.

5 Council Bill 933 can result in the denial
6 of a specific bona fide, good-faith request for
7 growth allocation which meets the accounting and
8 locational criteria of the Critical Area law. It
9 appears that the Commission's growth allocation
10 policy is consistent with Town planning and zoning
11 laws and the Critical Area programs. It's
12 difficult, if a denial should occur in such a
13 situation, how that process accommodates the growth
14 allocation needs of the towns.

15 Now I'm going to throw you a curve ball
16 here because I want to talk about the Regional
17 District Act just for a second just to clarify
18 something.

19 Under the Regional District Act certain
20 incorporated municipalities in Prince George's and
21 Montgomery Counties are under the zoning authority

1 of their respective counties because these
2 municipalities have never been given the authority
3 by the General Assembly to exercise their own zoning
4 powers. That set aside, the concept of county
5 control over municipal land-use decisions is not
6 contemplated in Maryland's planning and zoning law.
7 County and municipal planning and zoning programs
8 are created on equal, separate and, at times,
9 competitive footings. No mystery.

10 And the General Assembly has been careful
11 to address county-municipal relationships in writing
12 Maryland's planning, growth and environmental laws
13 and, in doing so, uniformly the legislature has both
14 preserved the sanctity of municipal land-use
15 decisions and created laws that embody preferences
16 for continued growth in municipalities that plan and
17 zone for growth.

18 Even in that case where municipal
19 annexation of land previously under county
20 jurisdiction occurs the General Assembly has created
21 a pretty clear rule that says that the county can

1 control the zoning the municipal wants to put on
2 there for five years, but after five years there is
3 no longer any county control over municipal land use
4 or zoning.

5 Now, when the Critical Area law was being
6 drafted there was a lot of legitimate concern that
7 was voiced over the application of the RCA category
8 to farm and forest land that was either within
9 municipal boundaries or at its edges where growth
10 and expansion were planned. Such concerns were
11 based on property interests, public infrastructure
12 investments, long-range capital plans and
13 professional land planning principles, but these
14 concerns were answered very clearly by the creation
15 of the growth allocation law.

16 The concerns of municipalities in
17 particular were addressed by the rule that the
18 counties shall have a process to accommodate the
19 growth allocation needs of municipalities.

20 Now, in hindsight the issue of county
21 control over municipal growth allocation should have

1 been raised in the context of Council Bill 762;
2 however, given that 762 retains specific allocations
3 for each town, perhaps the issue was not as well
4 defined as now presented in the context of Council
5 Bill 933.

6 We also recognize the many approved
7 programs in other counties with similar practice.
8 We think these programs need to be revisited.
9 Perhaps this can be evaluated during the six-year
10 review process or perhaps it needs to be evaluated
11 sooner if municipalities report to you they are not
12 being accommodated.

13 Now, much has changed since the first
14 generation of the Critical Area programs. The
15 Commission and local governments know more, they
16 have greater experience with much of the detail and
17 technical nature of the Critical Area law and the
18 criteria. And also since the adoption of the
19 Critical Area law many new State laws have been
20 enacted; the 1992 Planning Act, which applies to all
21 State agencies and promotes eight different visions

1 or goals for growth in the State; Forest
2 Conservation Act, Priority Funding Areas, Rural
3 Legacy, Smart Codes, on and on it goes. If you look
4 at the details of each of these laws you will find
5 that they favor growth directed to county-designated
6 growth areas and incorporated municipalities.
7 Indeed, these new laws reflect the same spirit as
8 the Critical Area's growth allocation rule. Growth
9 within muni that plan and zone for it should be
10 accommodated.

11 The Maryland Department of Planning
12 offers its assistance to the County, several towns
13 and the Critical Area Commission to work to resolve
14 issues that show that municipal needs for growth
15 allocation are accommodated.

16 I thank you for your attention. If
17 there's any questions, I'll be glad to try to answer
18 them.

19 PANEL MEMBER BLAZER: Thank you, Mr.
20 Duket.

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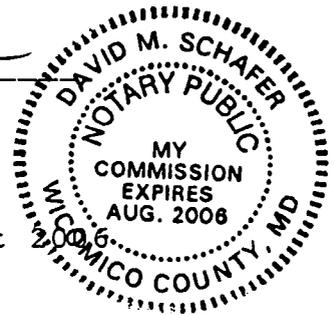
I, David M. Schafer, a Notary Public in and for the State of Maryland, County of Wicomico, do hereby certify the foregoing excerpt a true and accurate record of the aforementioned proceeding.

As Witness, my hand and Notarial Seal this 2nd day of April 2004, at Delmar, Maryland.



David M. Schafer

My Commission expires August 2006



ORIGINAL

EXCERPT

MEETING OF A PANEL
OF
THE STATE OF MARYLAND
CRITICAL AREA COMMISSION
FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: Wednesday, March 24, 2004

Time: 7:00 p.m.

Location: Easton High School
Easton, Maryland

Reported by. David M. Schafer, AA, CCR



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MEMBERS OF THE PANEL:

Dave Blazer, Chair

William Giese

Joseph Jackson

Gary Setzer

Edwin Richards

Marianne Mason, Assistant Attorney General

1 MR. HICKSON: Thank you. My name is
2 Michael Hickson. I'm attorney for the Town of St.
3 Michaels, and I would like to respond.

4 First of all, the Town would oppose Bill
5 933.

6 Mr. Pullen, the County attorney, took you
7 600 miles down Route 95 to Charleston. I would like
8 to take you, instead, a couple of hundred years
9 back, to 1804, when the village people of St.
10 Michaels decided that their interests were not
11 exactly the same as those of the county as a whole
12 and they decided to incorporate.

13 And I think there is the crux of the
14 problem. Some people like to live with lots of land
15 around them and they have one perspective. Other
16 people like to live with lots of people around them
17 and they have a different perspective.

18 The interests of the County and the
19 interest of the Town are not the same.

20 The difficulty that the Town has with 933
21 is that it takes back all of the growth allocation

1 that was previously reserved for the counties and
2 puts it completely in the control of the county;
3 that's to say, the county has the last word.

4 St. Michaels would not mind if the growth
5 allocation were taken back and put in a common pool.
6 But the difficulty here is not just the taking back
7 of the reserve, but the fact that it then throws the
8 process -- it throws the current process for the
9 awarding of growth allocation out which has been
10 totally within the control of the town, subject to
11 all the criteria of its laws and its local program
12 which was approved by the Critical Area Commission,
13 and instead sets up a different process for what the
14 County calls supplemental growth allocation, in
15 which the County, in effect, carries on a dual
16 process.

17 It may be carried on in the same rooms
18 with the members of the St. Michaels town bodies,
19 but in effect it's an entirely separate decision
20 making process. While on the one hand the Town
21 officials look at the Town's laws, the Town's

1 Comprehensive Plan, the Town's local program, if you
2 look at the County program, the County officials are
3 looking at things that are completely different.
4 They are looking at the County's Comprehensive Plan,
5 which does not control the Town under State law.
6 And they are looking at other things that are not
7 a part of the Town's decision-making process and the
8 Town's concerns.

9 Judge North took a considerable amount of
10 time reading letters about one particular COMAR
11 provision. And I was thinking to myself, why all
12 these letters about the same thing; he doeth protest
13 too much.

14 I would commend the panel and the
15 Commission to a careful reading of COMAR
16 27.01.02.06A2, and I'll quote. "When planning
17 future expansion of intensely developed and Limited
18 Development Areas, counties, in coordination with
19 affected municipalities, shall establish a process
20 to accommodate the growth needs of the affected
21 municipalities.

1 All we are talking about here is creating
2 a process. We are not talking about sitting in on
3 the judgment.

4 And, secondly, we are talking about
5 creating a process in coordination with the town
6 that is, the process of establishing the proced
7 should be done in coordination with the town.

8 And, thirdly, it says that it should
9 done to accommodate the Town's needs.

10 Now, I've prepared a memorandum and
11 supplied a copy of it to your counsel and other
12 counsel, and I'll submit an original tonight with
13 copies, and I've also prepared written testimony
14 that I'll submit tonight that goes into some of the
15 details, but I want to hit some of the high points.
16 Some of it is legalese and legal oriented. I want
17 to hit the high points of the important facts and I
18 want to focus on this section. That was my intent
19 from the beginning.

20 Coordination, cooperation, and
21 accommodation. I don't see any of these things in

1 here which, in effect, throws out the current
2 process and throws the towns into a joint decision-
3 making process in which the counties do what the
4 State law, in my opinion, does not permit and what
5 the village people in 1804 wanted to avoid.

6 The process of the arriving at Bill 933
7 goes something like this. In 1997 the Town of St.
8 Michaels had never received an application for
9 growth allocation at all. In that year for the
10 first time it received an application from Midland,
11 a developer that wanted to do a substantial
12 development in Talbot -- in the Town. During that
13 process Midland submitted successive Applications
14 which the Town successively denied, which were
15 successively litigated. There were in all six
16 Circuit Court cases, two of which went to the Court
17 of Appeals. All of this was very highly publicized
18 in the local newspaper.

19 Three of those Applications were
20 completed, the three cases litigated; all the while
21 the Town is denying growth allocation applications

1 and all the while the County does absolutely nothing
2 but let the Town swing in the breeze and spend more
3 than a million dollars in legal fees, consultants'
4 Fees, time, conducting procedures, participating in
5 litigation to defend its position.

6 Seeing that nothing was going to happen,
7 the Town took ahold of reality and initiated a
8 nonbinding mediation process with a professional
9 mediator who is, in fact, the head of the department
10 in land use at the University of Virginia. And
11 Doctor Collins mediated between a group of citizen
12 representatives and the developer all during the
13 summer of, I believe it was 2002, to come up with a
14 rough consensus. Not everybody was in agreement,
15 but they came up with some general principles, one
16 of which was a traditional neighborhood development
17 plan would be preferable to a cookie cutter, old
18 style development, it would fit better with the
19 Town. And there were some environmental
20 discussions, be assured.

21 After that mediation process, the Town

1 then conducted a public workshop with the developer.
2 And at the close of the public workshop the Town
3 announced some principles of what it would want to
4 see in a development, including traditional
5 neighborhood development, taking care of the
6 shoreline and some other things, open spaces. And a
7 as a result of that the developer submitted his
8 forth application.

9 (Change audiotape)

10 This was in the fall of 2003. At that
11 time the application process commenced. The Town
12 Planning Commission received the Application and
13 commenced its public hearing in September of 2003.
14 Those public hearings were heavily participated in
15 by citizens and noncitizens alike; those public
16 hearings ended, I believe, on November 6, 2003, and
17 a written fifty-some page decision was issued, I
18 believe on November 24 of 2003.

19 Now, what the Town didn't know at that
20 time and, in fact, didn't know until today, that on
21 October 29, 2003, the County representatives had

1 contacted the staff at the Critical Area Commission
2 and, in fact, it advised them of the existence of
3 County Bill 933, predicted when it would be
4 introduced, when a hearing would be conducted on it,
5 when it would be adopted and when it would be ready
6 for the State Critical Area Commission.

7 No contact, no consultation, no request
8 for input, no advice even that there was a problem
9 from the County to any of the towns in this county.

10 Subsequent to that there were additional
11 contacts by County representatives with the State
12 Critical Area Commission, and they are in my legal
13 memo and my prepared testimony. Those contacts
14 started, as I said, October 29, 2003, and go into
15 November and December, all relating to either Bill
16 933 or the Easton and Midland projects.

17 Now, I submit to you that 933 has its
18 very existence based upon the County's opposition to
19 the Midland Application and the project known as
20 Miles Point, because none of this even started until
21 it appeared that the Town was going to consider,

1 seriously consider granting growth allocation.

2 As you may know -- let me back up. The
3 fourth Application, which is known as Miles Point
4 II, included 72 acres that was annexed to the Town
5 in 1980 pursuant to an Annexation Agreement, but it
6 also included 18 acres outside of the town that was
7 annexed in the fall of 2003. So, according to State
8 law, the Town cannot change the zoning of land that
9 is newly annexed for five years without the Town's
10 express permission. That's contained in Article
11 23A, Section 9C of the Maryland Code.

12 The Town requested that the County
13 relinquish the zoning control so that this 18 acres
14 could be zoned to fit in with the proposed Miles
15 Point II project. And on December 16, I believe it
16 was, the County refused that request.

17 The County also -- I should back up.
18 There was a Planning Commission hearing on 933, I
19 believe it was on Octob -- November 2. I testified
20 for the Town. I said at that time that there had
21 been no input, no dialogue. And I asked that there

1 simply be dialogue, that we step back, let us know
2 what the problem is and see if we can't find a
3 better solution.

4 The Planning Commission of Talbot County
5 opined to the County commissioners that 933 was not
6 necessary.

7 But the Bill went forward and there was a
8 public hearing on, I believe it was December 16. I
9 testified at that hearing on behalf of the Town. At
10 that time, on that very day, during that very
11 hearing, a new version of 933 was brought out. Now,
12 we were told at that time that there were no
13 substantive changes, and the County Council voted to
14 that effect. But at very least there was a whole
15 new set of whereas clauses.

16 Again I asked that we step back, that we
17 have a dialogue, let us know what the problem is,
18 we'll be happy to sit down, talk about it, try to
19 work it out. What the County Council did on that
20 date was -- and I'm certain now that it was the 16
21 of December, because they voted to postpone the vote

1 on that particular legislation for a week. And, in
2 fact, they did postpone it. On December 23 they
3 voted and passed that bill. Again, no dialog, no
4 contact, no nothing.

5 But as a result of the County refusing to
6 relinquish it's five-year control over that 18 acres
7 that was newly annexed, the developer withdrew it's
8 fourth application known as Miles Point II, redrew
9 it, left out the 18 acres that was annexed, scaled
10 it down to only the 72 acres that had been in town
11 since 1980 pursuant to an Annexation Agreement that
12 described R1 zoning and, in fact, that's what the
13 Town -- that's what was agreed to in that Agreement,
14 R1 zoning. So it's not like anybody thought this
15 land wasn't going to be developed. But, anyway,
16 they scaled down the development. It's now called
17 Miles Point III, it's 72 acres, it's a TND, and it's
18 submitted to the Town in late December or early
19 January of this year.

20 It's very similar to the previous
21 project, except it's smaller, that's all; less

1 units, same features, same environmental stuff, good
2 stuff, really. I mean, we beat each other to death
3 and came out with a pretty good plan.

4 It's processed, the Planning Commission
5 holds it's hearings and so forth. I mean, we are
6 really up to date. As far as 933, that's the end of
7 it; no consultation, no requests, no accommodation
8 into establishing a new process, and that's what
9 that -- I really commend you to read it. It's not
10 talking about participating down the road in future
11 decisions on applications, it's talking about
12 process.

13 And I want to talk about the process that
14 933 throws us into. One of your members asked about
15 it, and I couldn't see which one from the back, but
16 they were good questions, because this supplemental
17 growth allocation process is not the same as what we
18 have been dealing with, what we've been going
19 through all this time when the County let us go
20 through at our expense and then yanks it away from
21 us.

1 It's two separate processes, as I said,
2 that occur at the same time in the same room with
3 different people looking at different laws.

4 In the end, in my opinion, if the County
5 Council doesn't agree to grant growth allocation, it
6 doesn't happen. If either side -- if the County
7 says no, there is no growth allocation; if the Town
8 says no, there is no growth allocation.

9 But the interesting thing in here is that
10 the County in this process, in the County plan it
11 says that the County Council has complete
12 discretion. In other words, they can ignore all the
13 rules and say no.

14
15 PANEL MEMBER BLAZER: We're going to have
16 to kind of wind it up.

17 MR. HICKSON: Okay, I'll try to do that.

18 Counsel for the County pointed to Easton
19 Village. That's what was happening in Easton
20 Village. I've attached the Easton Village decision
21 to my memorandum of law. It shows that there's a

1 dual process, it shows they can ignore it each
2 other. In the end the developer for Easton Village
3 to make it happen went to the County and said what
4 do you want. And what the County wanted was
5 improvements on Glebe Road, which I'm told exceed a
6 million dollars. Glebe Road is at least a mile and
7 a half from the subject project and, in my opinion,
8 has nothing to do with it.

9 That's how -- that's the definition of
10 cooperation, that's the definition of coordination,
11 is the way I've explained to you, totally ignoring
12 us, going to the Critical Area Commission behind our
13 back, yank -- making us twist in the wind when they
14 could have rescued us at that time, and now the
15 yanking away from us when we want to go through with
16 it. That's not my definition of cooperation. And
17 if they can't see it then, how are they going to
18 cooperate in the future? We don't have the same
19 interest.

20 And State law, in Article 66B, gives us
21 control in planning and zoning. The County does not

1 have control in incorporated municipalities, and
2 that's what this is all about. Thank you.

3 PANEL MEMBER BLAZER: Thank you.

4 MR. HICKSON: I will submit by material.

5 PANEL MEMBER BLAZER: Okay.

6 MR. HICKSON: I will also submit a letter
7 that I have from Senator Coulburn.

8 PANEL MEMBER BLAZER: Okay.

9 MR. HICKSON: And a schedule showing that
10 84 percent of our town, 84 percent of the
11 undeveloped land in our town is in the Critical
12 Area; 68 percent of the town as a whole is in the
13 Critical Area.

14 PANEL MEMBER BLAZER: I think we have
15 some questions from the panel members.

16 MR. HICKSON: Yes, absolutely.

17 PANEL MEMBER RICHARDS: With your
18 re-reading of the COMAR regulation, I take it that
19 you challenge Judge North's reading of that
20 particular section.

21 MR. HICKSON: I disagree with his

1 interpretation. And I commend you to read it.

2 PANEL MEMBER RICHARDS: What do you think
3 of his statements that the County abrogated its
4 responsibility by making the allocation in 1989?

5 MR. HICKSON: I don't agree with that.
6 Every award of growth allocation by a local
7 jurisdiction goes to the State Critical Area
8 Commission. The purpose is not to re-decide the
9 case, but oversight to make sure that the local
10 jurisdictions are applying the criteria, not
11 necessarily that you agree with them on the fact
12 that they are applying the law.

13 I think there is already a dual process
14 here. It's not the same process, but it's a dual
15 process. We don't need three processes.

16 PANEL MEMBER RICHARDS: Also, Judge North
17 read the letter from Governor Hughes. And if I
18 heard correctly, Governor Hughes' letter said that
19 Governor Hughes felt that the County has the right
20 to withdraw the allocation. Do you agree with that
21 statement?

1 MR. HICKSON: I think that's a confused
2 area of the law. I think that while the Critical
3 Area laws have been in effect for well over a
4 decade, getting toward two decades, there is a lot
5 of it that is confusing. I will be frank to admit
6 that I had a great deal of time figuring it all out
7 when I had to deal with this because in my town we
8 are dealing with the Zoning Ordinance, a separate
9 local program, the Subdivision Ordinance, the State
10 regs, the State law, and you're trying to figure
11 out what all that means. And sometimes, frankly, it
12 just -- it's not always consistent.

13 I don't necessarily -- I don't know what
14 the answer to that question is, frankly. But if
15 they get it back, if you will, I think it then
16 becomes a common pool that every jurisdiction in
17 this County can draw on by granting growth
18 allocation. I don't think anybody owns it.

19 I think that the -- the determination of
20 how much growth allocation in Talbot County as a
21 whole is, is obviously based on 5 percent of the

1 Critical Area in the County. But it would be
2 inconsistent with not only the critical area laws
3 but some other laws in this state if most of the
4 growth allocation were not granted and used in and
5 around the municipalities. Otherwise, we would be
6 perpetuating sprawl, we would have long, long sewer
7 and water lines, and that's the opposite of what
8 Smart Growth and another initiative that was signed
9 by our current governor in this past October, and
10 it's quoted in my brief but I don't remember what
11 he's calling it, Priority Places or something like
12 that, those two programs, the same thing with
13 different names, attempt to get most development in
14 and around municipalities for environmental reasons
15 and for economic reasons, in my opinion.

16 So they may take it back. But if they
17 take it back, it becomes part of a common pool, in
18 my opinion.

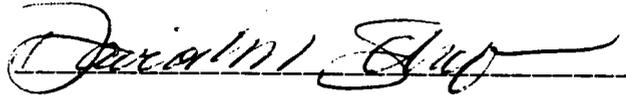
19 PANEL MEMBER RICHARDS: Thank you.

20 PANEL MEMBER BLAZER: Any other
21 questions? Great. Thank you Mr. Hickson.

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I, David M. Schafer, a Notary Public in
and for the State of Maryland, County of Wicomico,
do hereby certify the foregoing excerpt a true and
accurate record of the aforementioned proceeding.

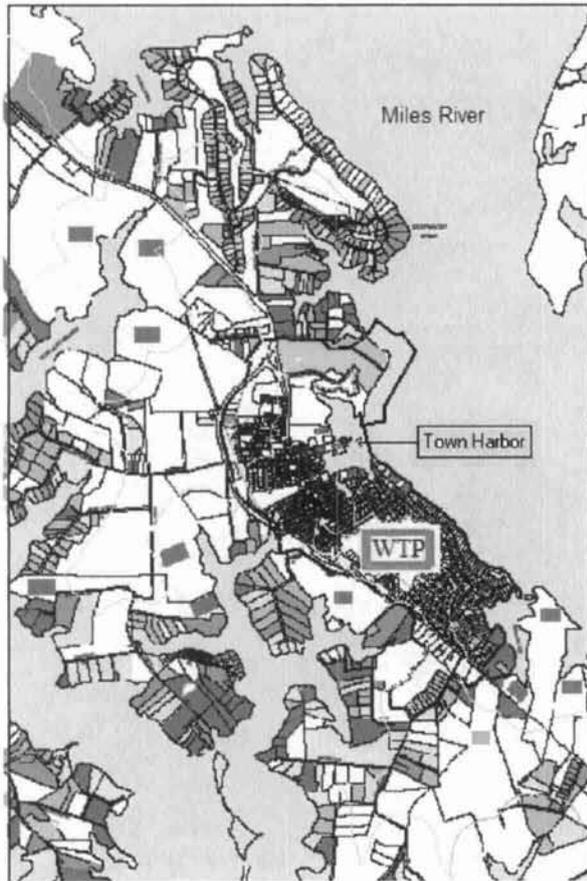
As Witness, my hand and Notarial Seal this
5th day of April 2004, at Delmar, Maryland.



David M. Schafer

My Commission expires August





Area of St. Michaels, Maryland

Residential Structures by Year Built

TOTAL STRUCTURES: 1,203

YEAR BUILT/NUMBER OF STRUCTURES:

1800-1950/422	■
1950-59/114	■
1960-69/140	■
1970-79/272	■
1980-89/382	■
1090-99/253	■
2000-2001/44	■

- Miles Point, LLC Annexation Property
- Miles Point Development Growth Allocation Property
- Talbot County Region No. 2 Wastewater Treatment Plant

Source: Maryland Department of Assessments and Taxation through Maryland 2001 Property View

JANUARY 2004

municipalities prior to attempting to rescind all growth allocation previously allocated to the municipalities, including the Town of St. Michaels.

More to the point, Talbot County, acting through its County Council (and the County attorney), identified the Honorable John C. North ("Judge North") as an agent and spokesperson on behalf of the County in connection with Bill 933. Indeed, at the hearing before the Critical Area Commission on March 24, 2004, Talbot County expressly called upon Judge North to speak to the Commission panel during the time allocated to Talbot County. A transcript containing relevant excerpts from the March 24 hearing is attached hereto as Exhibit 1.¹ It is also noteworthy that Judge North was appointed by this particular County Council and currently serves on the Talbot County Planning Commission. See Exhibit 2 attached hereto. At the public hearing on the Midland/Miles Point growth allocation request before the panel of the Critical Area Commission on April 1, 2004, Judge North acknowledged that Talbot County enacted Bill 933 only after it became apparent that the Commissioners of St. Michaels would grant growth allocation for the Midland/Miles Point Project. A true and correct copy of relevant excerpts from Judge North's statement to the panel of the Critical Area Commission on April 1, 2004 is attached hereto as Exhibit 3 (See page 5 thereof). Specifically, Judge North stated:

I applaud the efforts of the Town Council to have attempted so long and so vigorously to ward off what they very accurately perceived as a gross imposition on this entire community. But after having raised taxes in the Town twice to meet legal expenses exceeding a million dollars, ladies and gentlemen, fending off Mr. Valanos, after doing that they ran out of steam and consequently the Town voted to grant the growth allocation to this project. Fortunately, the County of Talbot, in the form of the County Council, came galloping to the rescue and said this matter should not proceed in this fashion, and consequently they instituted a bill to recover unused growth allocation from all municipalities in the County of Talbot.²

In contrast to Talbot County's recent effort to rescind growth allocation to St. Michaels as a means of thwarting St. Michaels identified growth need, Talbot County previously acted in coordination with St. Michaels in connection with the Midland/Miles Point Project. When the Midland/Miles Point Project was initially proposed, the St. Michaels Planning Commission invited the (then) Talbot County Director of Planning, Dan Cowee, to a work session. An excerpted transcript of the St. Michaels Planning Commission work session dated November 5, 1998 is attached here as Exhibit 4 (and is also Exhibit 4 to my March 19, 2004 letter). With respect to growth allocation for the site proposed for the Midland/Miles Point Project, the Talbot County Director of Planning advised the St. Michaels Planning Commission:

¹ Judge North's opposition to growth allocation for the Midland/Miles Point project is not merely academic. Rather, Judge North's personal residence is on Yacht Club Road, adjacent to the development site. See Exhibit 1, page 2.

² In response to Judge North's baseless assertion that the Commissioners of St. Michaels simply ran out of steam to oppose the project, the Town attorney advised the panel that the Planning Commission voted 5-0 in favor of the current Midland/Miles Point growth allocation request and the Commissioners voted 5-0 in favor of awarding growth allocation.

You're dealing with two separate issues. The first one is growth allocation and I've read your information on it, I read our information on it, and everything that I've seen so far points a finger to the fact that your comprehensive plan, the County's Comprehensive Plan, our zoning ordinance, and your zoning ordinance all basically dictate that that's an area for future growth, and that's the process that we go through every five to ten years. We go through, we review our comprehensive plans, we locate those areas outside town boundaries, inside town boundaries, for future growth. I, I think that's a given. I think you know that's a given. That everything that we read says that's an area to be further developed in one fashion or another. Exhibit 4 at page 10.

The Talbot County Director of Planning went on to say "[you're] going to look at the County's plan and see that it has been approved by the Critical Area Commission and it indicates that growth allocation should be applied to that property at some point in the future" Exhibit 4, page 10.

In summary, the record before the Critical Area Commission on Bill 933 establishes the following indisputable facts:

1. Talbot County allocated 245 acres of growth allocation to the Town of St. Michaels.
2. When Talbot County determined that 245 acres was a suitable amount for St. Michaels, it did so, in part, based upon Talbot County's mapping of the property that is the subject of the Midland/Miles Point request for growth allocation as an area suitable for the award of growth allocation.
3. At the time Talbot County mapped this property as suitable for growth allocation, it was zoned R-1 and an Annexation Agreement was executed (with Talbot County serving as a party to that Agreement) which contemplated a density of development that equals or exceeds the density of development proposed by Midland/Miles Point in connection with the pending growth allocation request.
4. The Town of St. Michaels solicited input from Talbot County, through its Director of Planning, with respect to growth allocation for the Midland/Miles Point Project, and Talbot County's Director of Planning advised that "growth allocation should be applied to that property"
5. The Town of St. Michaels, relying, in part, upon the Talbot County Comprehensive Plan, the Talbot County mapping of this property for growth allocation, and input from the Talbot County Director of Planning, proceeded on a five (5) year growth allocation process before awarding growth allocation for the Midland/Miles Point Project.
6. When it became apparent that the Commissioners of St. Michaels were favorably disposed to award growth allocation for the Midland/Miles Point Project, the Talbot County Council drafted Bill 933 to rescind all growth allocation that had been allocated and available to

St. Michaels continuously for the last fourteen (14) years for the purpose of thwarting the Midland/Miles Point development.

7. The Town of St. Michaels was not consulted prior to the drafting of Bill 933 and the Talbot County Council refused express requests from the Commissioners of St. Michaels to meet to discuss the allotment of growth allocation to St. Michaels before the Talbot County Council enacted Bill 933.

8. A designated representative of Talbot County government, Judge North, has admitted to the Critical Area Commission that the purpose of Bill 933 was to stop the Midland/Miles Point Project when it became apparent that the Commissioners of St. Michaels would award the growth allocation to Midland/Miles Point.

9. The Critical Area Commission is charged with responsibility to apply the Critical Area Criteria. The relevant criteria 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 municipalities. (Emphasis added).

In the instant case, Talbot County did not act in coordination with the Town of St. Michaels. Rather, it is clear that Talbot County refused to coordinate at all with St. Michaels and instead worked in opposition to the Town of St. Michaels. This is particularly true because the Town of St. Michaels initially acted in coordination with Talbot County (inviting Talbot County's Planner to comment early during the growth allocation process) and received a clear indication from Talbot County that the decision was solely at the discretion of the Commissioners of St. Michaels. Similarly, the Talbot County Council did not establish a process to accommodate the growth needs of the Town of St. Michaels. Rather, the Talbot County Council enacted legislation intended specifically to frustrate the only growth need ever articulated by the Town of St. Michaels.

The applicable criteria, COMAR 27.01.02.06A.(2), cannot be applied in a vacuum. The Critical Area Commission and any subsequent reviewing court must apply the criteria in the context of the facts of a particular case. In the instant case, it is indisputable that the purpose and affect of Bill 933 is to frustrate development that the Commissioners of St. Michaels have unanimously approved. Perhaps the President of the Talbot County Council, Phillip Foster, said it best when he stated "[t]his Bill [933] really is about power and it's about control. And I guess I am reacting against this nonsense of a partnership. It isn't a partnership..." See page 37 of the transcript of the County Council meeting dated December 23, 2003. Exhibit 5 hereto.

Respectfully submitted,



Richard A. DeTar
RAD/clm
Enclosures

Comments in opposition to Bill # 933

2003-2004

USA_S_1831_20 (2 of 2)



EXCERPT

MEETING OF A PANEL
OF
THE STATE OF MARYLAND
CRITICAL AREA COMMISSION
FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: Wednesday, March 24, 2004

Time: 7:00 p.m.

Location: Easton High School
Easton, Maryland

Reported by. David M. Schafer, AA, CCR

1 MR. PULLEN: Mr. Chairman, if I may, I
2 would like to yield the balance of the County's
3 presentation at this point to a person who needs no
4 introduction to the Panel, the Honorable John C.
5 North.

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I, David M. Schafer, a Notary Public in and
for the State of Maryland, County of Wicomico, do
hereby certify the foregoing excerpt a true and
accurate record of the aforementioned proceeding.

As Witness, my hand and Notarial Seal this
2nd day of April 2004, at Delmar, Maryland.

David M. Schafer

My Commission expires August 2006



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

OFFICE OF PLANNING & ZONING

Appointed by County Council:

George G. Kinney, *Planning Officer*

Courthouse

11 North Washington St.

Easton, MD 21601

(410) 770-8030

e-mail: gkinney@talbgov.org

web: www.talbgov.org/pz/pz.html

PLANNING & ZONING COMMISSION

Appointed by County Council to 5-year terms:

Richard Hutchison, *Chair (chosen by Commission in Jan., 1-year term), 2006*

Linda Makoski, 2002; William C. Boicourt, 2004; Robert C. Zuehlke, 2006; John C. North II, 2008.

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

ZONING ADMINISTRATION

Mary Kay Verdery, *Assistant Planning Officer* (410) 770-8030

e-mail: mverdery@talbgov.org

DEPARTMENT OF PUBLIC WORKS

Appointed by County Council:

Raymond P. Clarke, *County Engineer*

Talbot County Operations Center

605 Port St.

Easton, MD 21601

(410) 770-8170

e-mail: rclarke@talbgov.org

fax: (410) 770-8176

web: www.talbgov.org/pw/publicworks.html

RECYCLING DIVISION

Derrick Brummell, *Coordinator* (410) 770-8168

e-mail: dbrummel@talbgov.org

SANITATION DIVISION

Raymond P. Clarke, *County Engineer* (410) 770-8170

e-mail: rclarke@talbgov.org

ROADS DEPARTMENT

Appointed by County Council

Richard Ball, Jr., *Superintendent* (410) 770-8150

e-mail: rball@talbgov.org

web: www.talbgov.org/pw/publicroad.html



EXCERPT

MEETING OF A PANEL
OF
THE STATE OF MARYLAND
CRITICAL AREA COMMISSION
FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

Date: Thursday, April 1, 2004

Time: 7:00 p.m.

Location: Steamboat Building
St. Michaels, Maryland

Chesapeake Maritime Museum

Reported by. David M. Schafer, AA, CCR

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MEMBERS OF THE PANEL:

Gary Setzer, Chair

Judith Evans

Joseph Jackson

Dave Blazer

Edwin Richards

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

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

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

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

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

20 About that time the Town ran out of
21 steam, the Town ran out of money, the Town ran out
□

7

1 of determination.

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

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

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

18 I think all the authorities are in
19 agreement that that is perfectly in accord with the
20 COMAR regulations. I don't think there is any real
21 dispute on that point, though there are arguments to
□

8

1 be made about it.

2 So we are in a situation now where the

7 former representatives to the Critical Area
8 Commission -- the three are Bill Corkran, Doctor --
9 come on head -- Doctor Shepard Krech and Paul Jones,
10 Esquire, all had authorized me to say that they
11 would vote against granting growth allocation in
12 this instance.

13 Thank you very much.

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I, David M. Schafer, a Notary Public in
and for the State of Maryland, County of Wicomico,
do hereby certify the foregoing excerpt a true and
accurate record of the aforementioned proceeding.

As witness, my hand and Notarial Seal this
2nd day of April 2004, at Delmar, Maryland.

David M. Schafer

My Commission expires August 2006



Exhibit 165
MP 111

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

RICK MEGAHAN: Steve, would you introduce our guests.

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

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

UNKNOWN MAN: Would you speak up, please.

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

[APPLAUSE]

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

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

UNKNOWN MAN: Thank you.

J:\SMITH\MIDLAND\DEVELOP\NOV5\TAPE.TXT\NORTH.TES
(121098)

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

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

GENE HAMILTON: Yeah.

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



*Talbot County Council Meeting
Taken on December 23, 2003*

Page 1

1 COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND

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Council Meeting

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December 23, 2003

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1:30 p.m.

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County Council Chambers, Easton, Maryland

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COUNCIL MEMBERS:

17

PHILIP FOSTER, President

HOPE HARRINGTON

18

PETER CARROLL

HILARY SPENCE

19

THOMAS DUNCAN

20

21

Reported by

David C. Corbin

*Talbot County Council Meeting
Taken on December 23, 2003*

Page 35

1 it's review and reallocate. Doesn't mean we're
2 going to keep it. Reallocate I think has a
3 very positive meaning. It means that we're
4 working with the municipalities. That indeed
5 can happen. And, again, I think I touched
6 earlier, I'm really concerned about
7 environmental issues and I know that there's a
8 lot of folks in the town are concerned about it
9 and I know there's a lot of folks, even the
10 development folks are concerned about it. But
11 the bottom line is if we all work together
12 we can accomplish something that will make our
13 County a better place to live in. So that's
14 where I'm at. Thank you, Mr. Foster.

15 MR. FOSTER: I would really like to vote
16 for this bill.

17 MR. DUNCAN: Well, do it.

18 MR. FOSTER: It's interesting. But I'm
19 not going to. And I'll tell you why. I guess
20 maybe every once in a while you get struck with
21 this desire for intellectual honesty. And as

*Talbot County Council Meeting
Taken on December 23, 2003*

Page 37

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

MacSORLEY REAL ESTATE, LLC

505 Maryland Avenue
Cambridge, Maryland 21613
Phone: 410/228-9189

RECEIVED

March 29, 2004

APR 1 2004

**CHESAPEAKE BAY
CRITICAL AREA COMMISSION**

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

Re: Talbot County Bill 933

Dear Senator Madden and Members of the Commission:

The *Mid Shore Board of Realtors*, an organization with over 500 members, strongly believes in maintaining the quality of our local area through controlled and well thought out growth within our towns and counties. We do not believe that growth in and of its self is a good thing, nor do we believe that growth is a bad thing. We believe that the right growth, well planned and well thought through will benefit all who live and love the Mid Shore Area.

As a member of the Mid Shore Board, I would like to take this opportunity to reiterate what John Hurt, our President Elect, said at your hearing in Easton on March 24, 2004. The Mid Shore Board of Realtors and I strongly oppose the approval of Talbot County Bill 933 as an amendment to the Talbot County Critical Area Program because:

- 1) It effectively removes planning and zoning powers from the towns since the vast majority of land within the towns that will be impacted is within the Critical Area. As a result the county would have control of most growth within the towns. This is clearly contrary to both Maryland law and to common sense.
- 2) It has created a strong adversarial relationship between the county and the towns. This is also clearly contrary to Maryland law which requires counties to work in coordination and cooperation with municipalities to plan and establish for growth within the municipalities; and

Hon. Martin G. Madden. Chairman
March 29, 2004

Page 2

3) It is a far reaching effort to take complete control over one particular project. Not only will the individual towns suffer a loss, but those who have dealt with the towns in good faith will also suffer if the county is permitted to retroactively usurp the planning and zoning power from the towns.

Thank you for the opportunity to be heard.

Very truly yours,


Marjorie S. MacSorley
Broker


Kathryn M. Kleppinger
Realtor Associate

/m

cc: File

MILES & STOCKBRIDGE P.C.

Richard A. DeTar
rdetar@milesstockbridge.com
(410) 820-0224

March 19, 2004

Martin G. Madden, Chairman
Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD 21401

Ren Serey, Executive Director
Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD 21401

Marianne Mason, Esquire
Department of Natural Resources
590 Taylors Avenue
Annapolis, MD 21404

Mary Owens, Chief, Program Implementation Division
Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD 21401

Re: Talbot County Council Bill 933

Ladies and Gentlemen:

I am writing to you as counsel for the developer of the project known as the Midland/Miles Point development (the "Project") in St. Michaels, Maryland. The status of this Project is that it has received growth allocation approval from the Commissioners of St. Michaels to convert the critical area overlay zone for approximately 72 acres of land within the Town of St. Michaels (the "Property") from Resource Conservation Area ("RCA") to Intense Development Area ("IDA"). The growth allocation request is pending before the Critical Area Commission (the "Commission") for final approval.

I acknowledge at the outset that the purpose of this letter is to persuade you to reject Bill No. 933. My motive is that Bill 933 frustrates the growth allocation awarded for the Midland/Miles Point Project. While that may be my motive, the rationale for your rejection of Bill 933 should be because, as explained below, it violates the critical area criteria. Having disclosed with complete candor my motive, I believe it is unfair that the Talbot County Council does not also concede that the primary purpose of Bill 933 is to defeat the Midland/Miles Point Project.

RECEIVED

MAR 22 2004

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

I write with confidence that the primary purpose of Bill 933 is to defeat the Midland/Miles Point Project because of the timing and unnecessarily rushed nature of Bill 933. Indeed, if the County Council legitimately intended only to create a "joint process" for growth allocation more in conformity with current growth allocation planning, surely the County would have taken the time to confer with the "affected municipalities" in the County concerning future growth plans and needs prior to "rushing this legislation through".¹ Bearing these facts in mind, I submit for your consideration the following applicable law, criteria and facts.

Section 8-1809 (j) of the Natural Resources Article requires that the Critical Area Commission review a proposed amendment to a local critical area program for consistency with: (a) the standards of section 8-1808 (b) (1) through (3), and (b) the criteria adopted by the Commission. The criteria are, of course, contained in the COMAR regulations. In particular, COMAR 27.01.02.06A. (2) provides:

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

This COMAR regulation states that counties "shall" act in coordination with affected municipalities. In the instant case, the Talbot County Council enacted Bill 933, which rescinds all growth allocation to "affected municipalities", without any advance consultation with the affected municipalities. In fact, the County Council expressly rejected requests from the Towns of St. Michaels and Oxford to meet with the County Council to coordinate reallocation of growth allocation acres within the County.

As stated above, although the County may (or may not) have other long term reasons for enacting an amendment to its local program that rescinds growth allocation to the towns, it was the County Council's zeal to try to frustrate the Midland/Miles Point Project that caused it to force Bill 933 on the municipalities without any coordination in violation of the COMAR regulation that the Commission is charged with responsibility to enforce.

In addition, this particular COMAR regulation provides that Counties "shall... accommodate the growth needs of the municipalities." The only growth needs that St. Michaels has ever identified is for the 72 acres of growth allocation awarded for the Midland/Miles Point Project and for approximately 20 acres for the Strausburg project. Even a cursory review of Bill 933 reveals that it was drafted specifically to frustrate St. Michael's growth needs. Indeed, in addition to the rushed nature of Bill 933 (no consultation with any of the Towns), it curiously includes a "vested rights" section enabling the County Council to prevent a town from utilizing growth allocation that was awarded prior to the effective date of Bill 933. It is indisputable that the only growth allocation that this provision in Bill 933 could have been directed to is the growth allocation awarded in St. Michaels because there were no growth allocation applications pending before

¹ Significantly, as set forth below, it is the County Council's failure to coordinate this process with the Towns, and its failure to accommodate the growth needs of the Town of St. Michaels which causes Bill 933 violate the critical area law.

any town other than St. Michaels at the time Bill 933 was drafted.² It is patently obvious that Bill 933 was drafted directly and specifically to frustrate the Midland/Miles Point Project. This point is emphasized mainly because it explains why, in the County Council's desperation, it violated the clear requirements of the criteria that: (1) it act in coordination with affected municipalities; and (2) it accommodate the growth needs of municipalities. The plain fact is that the County Council did not have adequate time to both comply with the critical area criteria and kill the Midland/Miles Point Project.

We are also mindful of the larger question others have raised concerning whether Bill 933 violates the planning and zoning functions reserved for the Towns. These issues have been thoroughly covered in correspondence already submitted to the Commission by attorneys for the Towns of St. Michaels, Trappe and Oxford. We concur with those positions, but reiterate that the Critical Area Commission can, and should, reject Bill 933 on much narrower and more direct grounds at this time. Simply stated, the Critical Area Commission cannot approve an amendment to any local program that blatantly violates its criteria.

We propose that the Critical Area Commission reject Bill 933 and send it back to the Talbot County Council for further work in coordination with "affected municipalities" as required by the criteria. That process will almost certainly result in some growth allocation being returned to Talbot County in instances where up-to-date planning no longer envisions growth allocation in certain areas. Such a process would also enable sufficient growth allocation acreage to remain available to the Towns for their designated "growth needs." This is precisely how the criteria requires that the amendment which the Talbot County Council claims it desires to adopt should be implemented.

Like most of the lawyers associated with this case, I also have a history of working with the critical area law and criteria and with the Critical Area Commission. Dating back to 1993 I participated in a legal action that determined that Anne Arundel County's critical area program at the time violated the critical area law. The Critical Area Commission joined in that litigation, Woods Landing Community Association v. Woods Landing No. 2 Joint Venture, In The Circuit Court for Anne Arundel County, Case No. C-93-2122.AA, and subsequently required Anne Arundel County to amend its local critical area program to conform to the law. It has not been my experience that the Critical Area Commission simply rubber stamps a County's critical area program if it violates the critical area law and criteria. We do not ask for your support of the Midland/Miles Point Project at this time. Your evaluation of that Project will come on the merits of that Project as part of a separate proceeding. We do ask that you apply the critical area criteria as written to Bill 933.

Finally, I am submitting a number of documents for the record. I apologize for adding paperwork to the Commission's file, but because there are specific legal requirements that must be satisfied in order for Bill 933 to be lawfully adopted, and we believe it is clear that Bill 933 fails to satisfy the criteria, we anticipate that there could be further legal proceedings. In this

² An exception to this is, of course, the Easton Village Project in Easton which was done pursuant to the "joint process" that was established between Easton and Talbot County several years ago because Easton utilized all of the growth allocation allocated to it. Bill 933 has no affect on that project.

unfortunate event, we would like to make sure that a complete and accurate record is made. For this reason I am submitting the following documents:

1. Talbot County Planning Commission minutes dated December 3, 2003

-Showing that the Planning Commission recommended against Bill 933 and that representatives from the Towns of St. Michaels, Oxford and Trappe objected to Bill 933, in part, because the County Council failed to consult with any of these municipalities.

2. The Talbot County Council's letter to the Critical Area Commission dated December 1, 2003 along with the attached article from the Star Democrat

-Revealing that the Talbot County Council took the unprecedented action on November 19, 2003 (around the time when Bill 933 was being formulated) of taking a position in opposition to the Midland/Miles Point growth allocation application, although it had no jurisdiction or process in place to consider this Project and despite the fact that the Talbot County Council had not attended a single public hearing nor reviewed a single document associated with the Project.

3. Excerpts from the County Council meeting on December 16, 2003 relating to Bill 933

-Showing that the Towns of Oxford and St. Michaels requested that the County Council delay enactment of Bill 933 in order to allow time for the municipalities to coordinate with the County and perhaps give back growth allocation acreage that is in excess of the growth allocation necessary to accommodate the municipalities' growth needs, and also showing that the debate before the County Council on Bill 933 almost exclusively related to its impact on the Midland/Miles Point Project.

4. Transcript from the St. Michaels Planning Commission hearing on the Midland/Miles Point Project dated November 5, 1998

-Including comments from then Chairman John North referring specifically to the Midland/Miles Point Project as previously proposed, stating "the sort of growth allocation that is being suggested here is entirely lawful but is out of the ordinary" (Page 3), and comments from the Director of Planning and Zoning in Talbot County at that time, Dan Cowee, stating that Talbot County does not need the additional growth allocation acres that is reserved for itself, after allocating acreage to the towns, and is investigating whether Talbot County can sell its retained growth allocation acres to Anne Arundel County.

5. Transcript of Talbot Council meeting dated December 23, 2003 relating to Bill 933

-Comments from the President of the Talbot County Council, Phil Foster, stating "this bill really is about power and it's about control. And I guess I am reacting against this nonsense of a partnership. It isn't a partnership when you grant somebody authority to do something and then take it back from them. It is a retaking." (Page 37).

We hope that the Commission will carefully consider the implications of approving an amendment to Talbot County's local program that clearly violates the criteria.

Sincerely,



Richard A. DeTar
RAD/clm

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

Members Present

**Richard Hutchison, Chairman
John Sewell, Vice Chairman
Officer
William C. Boicourt
Linda Makosky
Robert Zuehkle**

Staff Present

**George Kinney, Planning Officer
Mary Kay Verdery, Assistant Planning
Officer
Debbie Moore, Recording Secretary**

Zoning Text Amendment – Bill 933

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

Mr. George Kinney presented the staff report.

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

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

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

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

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

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

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

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

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

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

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

➤ Steve Florkewicz, East Morango Street, St. Michaels

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

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

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

- Barry Gillman, St. Michaels Town Commissioner

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

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

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

- Michael Hickson

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

- Mr. Robert Amdur, Bozman

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Sewell seconded.

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

Motion passed 3-1

**COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND****TALBOT COUNTY GOVERNMENT BUILDING****142 N. HARRISON STREET
EASTON, MARYLAND 21601****PHONE: 410-770-8001****FAX: 410-770-8007****TTY: 410-822-8735****www.talbgov.org****THOMAS G. DUNCAN, President
PHILIP CARBY FOSTER, Vice President****PETER A. CARROLL
HOPE R. HARRINGTON
HILARY B. SPENCE****December 1, 2003**

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

Re: Midlands/Miles Point Project

Dear Senator Madden:

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

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

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

Hon. Martin G. Madden, Chair
Critical Area Commission

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12/1/2003

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

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

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

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

TALBOT COUNTY, MARYLAND



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

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

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

Talbot Council suggests St. Michaels deny request

By CHRIS WILLIAMS
Staff Writer

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

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

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

St. Michaels Town Manager Cheryl Thomas said the commissioners were notified about the Friday afternoon county council work session at 4 p.m. Thursday and Town Commission President Robert Snyder immediately sent a letter to the council requesting to postpone the meeting.

The town "is in the midst of growth allocation hearings and since a decision has not been reached in that matter, we are not free to attend the workshop and make comments," Snyder wrote. "We ask that the council, therefore, not take a stand without all the information and we hope that you will consider our opinions, and the reasons for them, to be worth your consideration in these matters."

St. Michaels Town Commission President Phil Dinkel appeared at the Friday afternoon session to restate the town's position that it would not be appropriate for the commissioners to discuss the Midland proposal while the application is still being considered. Councilwoman

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

Councilwoman Hilary
Spence

Hope Harrington also questioned the appropriateness of issuing an opinion before the town commission has made a decision.

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

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

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

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

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

"I'm not convinced that the present plan ... is the wisest use of that growth allocation. You only have it once, it's gone forever after that. I would just ask the commissioners to consider long

and hard how they decide to use it and is it in the best interest in of the town?"

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

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

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

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

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

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

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



Talbot County Planning Administration meeting on Friday concerning the growth for the citizens of St. Michaels.

Growth

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

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

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

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

Statue

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

The Frederick Douglass Project stems from a discussion in winter 2002 by staffers, volunteers and board members at the Historical Society of Talbot County of the idea of creating a monument to Douglass in Talbot. In August 2003,

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*Talbot County Council Meeting
Taken on December 16, 2003*

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1 COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND

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Council Meeting

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December 16, 2003

8

9

10

1:30 p.m.

11

12

13

County Council Chambers, Easton, Maryland

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15

16

COUNCIL MEMBERS:

17

PHILIP FOSTER, President

HOPE HARRINGTON

18

PETER CARROLL

HILARY SPENCE

19

THOMAS DUNCAN

20

21

Reported by

David C. Corbin

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1 MR. DUNCAN: Aye.

2 SECRETARY: Ms. Harrison.

3 MS. HARRINGTON: Aye.

4 SECRETARY: Ms. Spence.

5 MS. SPENCE: Aye.

6 SECRETARY: Mr. Carroll.

7 MR. CARROLL: Aye.

8 MR. FOSTER: Thank you. Public hearing on
9 bill 933. Clerk, read bill 933 for second
10 reader.

11 SECRETARY: Bill number 933, a bill to
12 review and reallocate the number of reserved
13 acres of growth allocation allocated among the
14 towns for rezoning in compliance with the
15 requirements of Chapter 190, Talbot County
16 code, zoning, section 190-109D-11.

17 MR. FOSTER: It's my understanding -- are
18 there are any amendments to the bill or the
19 title. Mr. Carroll.

20 MR. CARROLL: Yes, there are. Three
21 amendments. And I would like to ask Mr. Pullen

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Taken on December 16, 2003*

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1 to summarize them.

2 MR. FOSTER: Mr. Pullen.

3 MR. PULLEN: Mr. Foster, there are three
4 proposed amendments to bill number 933. First
5 is to amend the title, the second is to restate
6 the reason for adoption, and the third is to
7 make grammatical changes. The first proposal
8 is to amend title of bill 933 as follows. In
9 line two of the title, strike out the word
10 "in", and follow, "in compliance with the
11 requirements of Chapter 190, Talbot County
12 code, zoning 190-109D-11." And to insert the
13 following, "to comply with the Chesapeake Bay
14 critical area commission four year review
15 requirement." The reason for the proposed
16 amendment is to clarify that the bill is being
17 offered in compliance with the Chesapeake Bay
18 critical area commission four year review
19 requirement. And if Council wants to introduce
20 these individually, I think that would be best
21 and then have a vote to determine whether

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Taken on December 16, 2003*

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1 they're substantive or non-substantive.

2 MR. FOSTER: It's my understanding these
3 amendments are being introduced by Mr. Carroll.

4 MR. CARROLL: Correct.

5 MR. FOSTER: For benefit of the audience,
6 what will happen now is the Council will make a
7 determination as to whether these are
8 substantive amendments or not. If they are
9 substantive amendments, that means we will have
10 to readvertise and hold an additional public
11 hearing. If they are not substantive
12 amendments, that means we will go forward with
13 the public hearing today. The first amendment
14 is the amendment to the title of the bill as
15 read by Mr. Pullen. Any discussion on that
16 amendment. The question is are these
17 substantive amendments. The clerk will take
18 the call.

19 SECRETARY: Mr. Foster.

20 MR. FOSTER: No.

21 SECRETARY: Mr. Duncan.

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1 MR. DUNCAN: No.

2 SECRETARY: Ms. Harrington.

3 MS. HARRINGTON: No.

4 SECRETARY: Ms. Spence.

5 MS. SPENCE: No.

6 SECRETARY: Mr. Carroll.

7 MR. CARROLL: No.

8 MR. FOSTER: Second amendment.

9 MR. PULLEN: The second proposal is to
10 amend the introductory clauses to the bill by
11 deleting the final three introductory clauses
12 and by adding 14 new introductory clauses as
13 follows. And I can read the new language.
14 "Whereas Talbot County had a total of 2554
15 acres of growth allocation under the State
16 formula for calculating the total amount for
17 each County, parens, 5 percent of the total
18 resource conservation area located within the
19 County, end parens, and whereas section
20 8-1808.1C3, the Natural Resources article of
21 the Maryland Annotated Code, provides that if

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1 Talbot County is unable to utilize a portion of
2 the County's total growth allocation within or
3 adjacent to existing intensely or limited
4 development areas, then that portion of the
5 growth allocation which can not be so located
6 may be located in an RCA; and whereas Talbot
7 County has followed this requirement of state
8 law by restricting the use of available growth
9 allocation through Section 190-109D-9A of the
10 Talbot County code, that section provides that
11 not more than 1,213 acres of land lying within
12 the critical areas of the county shall be
13 reclassified from RCA to any other zoning
14 district. The 1,213 acres is derived from the
15 total acreage available for growth allocation
16 in the entire County by the following formula.
17 Five percent of the total acres in resource
18 conservation areas equals 2554 acres, less
19 128 acres reserved for reclassification from
20 limited development areas to intensely
21 development areas, divided by 50 percent. The

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1 calculation is 2554 acres minus 128 acres
2 divided by one half equals 1,213 acres; whereas
3 the County may not utilize the remaining
4 50 percent of available growth allocation,
5 1,213 acres, until the critical area commission
6 grants permission under the exception provided
7 in section 8-1801.1C5, cited above, based upon
8 a showing that the County is unable to utilize
9 that portion of its available growth allocation
10 in the areas adjacent to limited or intensely
11 developed areas; and whereas to trigger release
12 of the withheld 50 percent of the county's
13 growth allocation, section 109-190D-9B provides
14 that when 1,092 acres, 90 percent, of the
15 1,213 acres has been approved for growth
16 allocation by the towns and/or the County, then
17 the County shall request permission from the
18 Maryland Critical Area Commission to double the
19 maximum number of acres that may be
20 reclassified from RCA, from 1,213 to
21 2,426 acres; whereas section 109 -- excuse me,

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1 190-109D-9A of the Talbot County code adopted
2 in 1989 reserved 155 acres of growth allocation
3 for the Town of Easton, 195 acres for the Town
4 of Oxford, 245 acres for the Town of St.
5 Michaels, and 618 acres for Talbot County; and
6 whereas the Town of Oxford has allocated only
7 15.223 acres of growth allocation and the Town
8 of St. Michaels has conditionally allocated
9 only up to 20 acres of growth allocation, the
10 Town of Oxford has 139.777 acres remaining and
11 the Town of St. Michaels has 225 acres
12 remaining. Combined, Oxford and St. Michaels
13 have 364.77 acres of growth allocation; whereas
14 the County currently has a total of
15 316.229 acres of growth allocation, if it
16 grants a pending application for supplemental
17 growth allocation submitted by the Town of
18 Easton for 156 acres, the County will have
19 160.229 acres of growth allocation; whereas the
20 Town of Easton has fully allocated the growth
21 allocation reserved to it, and Talbot County

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1 has worked and continues to work cooperatively
2 with the Town of Easton approving projects for
3 which the town has requested supplemental
4 growth allocation; whereas growth in and around
5 the towns affects not only the particular town
6 but also the County as a whole, then the County
7 should therefore have some ability to protect
8 the County's legitimate interests as they are
9 affected by development in the critical area,
10 as contemplated by state law when it gave this
11 control to the counties under the Chesapeake
12 Bay critical area protection program, section
13 8-1801, Maryland Annotated Code; and whereas
14 section 8-1809G, Natural Resources Article,
15 Maryland Annotated Code, requires that Talbot
16 County review its entire critical area program
17 and propose any necessary amendments to its
18 entire program, including local zoning maps, at
19 least every four years beginning in 1993 and
20 every four years thereafter; where as Talbot
21 County is currently nearing completion of such

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1 a four year review, and as part of that process
2 desires to make the following amendments to the
3 County's critical area program to better
4 reflect the original intent of the state law
5 governing growth allocation, which calculated
6 growth allocation for Talbot County is five
7 percent of the resource conservation area in
8 the County, and gave the County the authority
9 to determine within the limits imposed by state
10 law and regulations how that growth allocation
11 would be utilized and reallocated among the
12 towns and the County, project by project?

13 MR. CARROLL: Mr. Pullen.

14 MR. FOSTER: Would you read that again.

15 MR. PULLEN: I need some water.

16 MR. CARROLL: Go up to line 76. You
17 skipped that.

18 MR. PULLEN: Excuse me. Thank you,
19 Mr. Carroll.

20 MR. CARROLL: We just skipped by one. He
21 now has to fill us in because we didn't have

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1 enough before.

2 MR. FOSTER: Thank you, Mr. Carroll.

3 MR. PULLEN: "And whereas under current
4 law the Town of Oxford or the Town of St.
5 Michaels either separately or in combination
6 could forever block the County from accessing
7 the remaining growth allocation under section
8 190-109D-9B by preventing the total acres
9 utilized to equal or exceed 1,092 acres, the
10 required trigger under 190-109D-9B.

11 MR. FOSTER: Mr. Pullen, it's my
12 understanding that this amendment simply
13 restates the rationale for the bill but doesn't
14 substantively change what the bill itself would
15 do.

16 MR. PULLEN: That's correct, Mr. Foster.
17 This part of the bill does not become part of
18 the operative portion of the bill and therefore
19 in my opinion it's not substantive.

20 MR. FOSTER: Any discussion on the issue
21 whether this is substantive. Hearing none.

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1 DAVID THOMPSON: Since this is a public
2 hearing, might the public have one brief
3 question on this issue.

4 MR. FOSTER: You might.

5 DAVID THOMPSON: Thank you, Mr. President.
6 David Thompson on behalf of the Town of Oxford.
7 I note that the County attorney --

8 MS. HARRINGTON: Mr. Thompson, excuse me,
9 would you come and speak to the microphone.

10 DAVID THOMPSON: I note that the County
11 attorney has a copy of the proposed amendment.
12 I note that members of Council have a copy of
13 the proposed amendment. I note that the public
14 was unable to obtain a copy of the proposed
15 amendment from your web site today. I wonder
16 if you might have a copy available for the
17 public since you're having a public hearing on
18 this bill today.

19 MR. FOSTER: Mr. Thompson, you can take
20 this one.

21 DAVID THOMPSON: Thank you. I suspect

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1 there are other members of the public --

2 MR. FOSTER: Share it with Mr. Hixon if
3 you would.

4 DAVID THOMPSON: Thank you. I've made my
5 point for the record.

6 MR. FOSTER: You have, Mr. Thompson. But
7 as you know, this has no existence until it's
8 offered. And it's now presently being offered.
9 It is at this point the public would be made
10 aware of what it is. How many people would
11 like copies of this? Could somebody go make
12 about 25 copies.

13 MR. DUNCAN: I would suggest we make it to
14 all three amendments.

15 MS. SPENCE: It's all together.

16 MR. FOSTER: Make -- can we have about 25
17 copies of this, Madam Clerk. The question is
18 on whether this is a substantive amendment or
19 not. The clerk will take the call.

20 SECRETARY: Mr. Foster.

21 MR. FOSTER: Aye. No, no.

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1 SECRETARY: Mr. Duncan.

2 MR. DUNCAN: No.

3 SECRETARY: Ms. Harrington.

4 MS. HARRINGTON: No.

5 SECRETARY: Ms. Spence.

6 MS. SPENCE: No.

7 SECRETARY: Mr. Carroll.

8 MR. CARROLL: No.

9 MR. DUNCAN: Mr. President, I might point
10 out in all the amendments and so forth that are
11 proposed and presented by our attorney, Mr.
12 Pullen, that his substantive -- whether or not
13 it's substantive or not, his recommendation is
14 they were not, all three amendments and so
15 forth. Our attorney has recommended that they
16 are in fact not substantive changes.

17 MR. FOSTER: Okay. Mr. Pullen, what is
18 the third amendment.

19 MR. PULLEN: The third proposal is to
20 amend page seven, section two, paragraph 1A,
21 line 5 of the bill as follows. To insert the

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1 words "which has been" before "undertaken in
2 good faith." This is a grammatical change only
3 and it's non-substantive in my opinion.

4 MR. FOSTER: Okay. Is there any
5 discussion about whether this is a substantive
6 amendment. Hearing none, the clerk will take
7 the call on the question of whether this is
8 substantive.

9 SECRETARY: Mr. Foster.

10 MR. FOSTER: No.

11 SECRETARY: Mr. Duncan.

12 MR. DUNCAN: No.

13 SECRETARY: Ms. Harrington.

14 MS. HARRINGTON: No.

15 SECRETARY: Ms. Spence.

16 MS. SPENCE: No.

17 SECRETARY: Mr. Carroll.

18 MR. CARROLL: No.

19 AUDIENCE: A question to the floor.

20 MR. FOSTER: We will get to this in a
21 minute. Ladies and gentlemen, we're now going

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1 to move to the public hearing phase. At the
2 public hearing phase you may comment on the
3 bill itself or any of the amendments or both
4 the bill and the amendments. This is your
5 opportunity to be heard on all of those. And
6 you'll have your -- you will be first one as
7 soon as the staff has presented their views.

8 MR. KINNEY: Mr. President, members of
9 Council, this bill was introduced by Council
10 November 18th and heard by the planning
11 commission on December 3rd. The bill serves
12 to review and reallocate the number of reserved
13 growth allocation acres originally afforded to
14 the towns of Oxford, Easton, and St. Michaels.
15 In 1989 the County was originally awarded 1213
16 acres from the critical area commission for
17 growth allocation. From that acreage 155 acres
18 were awarded to the Town of Easton, 195 acres
19 to the Town of Oxford, and 245 areas to the
20 Town of St. Michaels. The remaining 618 acres
21 remained with the County. As currently

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1 written, this bill would recapture the
2 remaining acres from the towns and require them
3 to approach the County in the even of growth
4 allocation as necessary for a specified future
5 town project. This change would afford the
6 County the opportunity to involve itself in the
7 growth allocation award process and further
8 help to achieve 90 percent threshold necessary
9 to request additional allocation acreage from
10 the critical area commission, as Mike has
11 already pointed out. The planning commission
12 recommendation, for the record, they did
13 recommend the following. They moved to
14 recommend that County Council withdraw bill 933
15 and instead use the existing reallocation
16 process as outlined in the current ordinance.
17 That motion was seconded and passed by a three
18 to one vote. I was asked by one planning
19 commission to articulate her descending vote,
20 and it was her belief it was necessary for the
21 bill to pass in order to prompt a discussion

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1 that all the parties have been requesting.

2 MR. FOSTER: In order to what.

3 MR. KINNEY: To prompt discussion
4 regarding reallocation.

5 MR. FOSTER: We will now take public
6 comment. As I promised, you can be first. If
7 you'll come over to the microphone. If one of
8 you wants to allow a seated microphone.

9 KEN THOMPSON: I don't need a seat, I'll
10 be brief.

11 MR. FOSTER: If there's somebody that
12 needs to sit down, give them that option. Who
13 else would like to speak. Mr. Alspach, you can
14 come take the seat and you'll go after him.

15 KEN THOMPSON: I'm just astounded on the
16 last --

17 MR. FOSTER: If you would identify
18 yourself.

19 KEN THOMPSON: I'm Ken Thompson, we spoke
20 earlier in the day prior to the current
21 meeting. It's a happenstance I showed up

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1 today. But a grammatical change in law, Mr.
2 Council, as you well know, has content and
3 intent in the law, and statutory words do have
4 substantive actions. Grammatical changes in
5 phraseology of statutory text can change the
6 content of the words. And for this Council to
7 sit here and say it's non-substantive, and you
8 as a former counselor, I find appalling. Thank
9 I.

10 MR. FOSTER: Thank you very much.
11 Mr. Alspach. Who would like to be next. Next
12 person just come up to the microphone.

13 THOMAS ALSPACH: I thank you, Mr.
14 President. For the record my name is Tom
15 Alspach. I'm speaking on this bill on behalf
16 of Talbot Preservation Alliance. I think above
17 all else it's most important to step back and
18 recognize exactly what this bill would
19 accomplish as opposed to some of the
20 suggestions about what it might do that have
21 been circulating in the press. The purpose of

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

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

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

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1 is currently assigned to the Town of St.
2 Michaels. Or use-- for use in other areas of
3 the County. If the County were to take back
4 all unused growth allocation, the fact that an
5 area was premapped would mean nothing." He
6 goes on in this vein. I think that is ample
7 recognition by a drafter of the law that this
8 kind of reallocation was certainly
9 contemplated. There have been a lot of
10 comments in the press and elsewhere about the
11 so-called political nature of this bill. This
12 is not, I believe -- I do not believe this is a
13 political matter. I would like to remind
14 everyone that the last County Council, which
15 hardly could be accused of having been
16 anti-growth or anti-development, I believe it
17 was the last County Council that voted
18 unanimously to require Easton to come back to
19 the County for growth allocation and when
20 Easton ran out of their allocation and wanted
21 to have more allocated to them. So there is

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1 precedence for this in the last County Council.
2 I have some other comments but I won't go on
3 any further because a lot of people may want to
4 speak. I think above all else I want the
5 record to be clear that contrary to arguments
6 you'll hear this afternoon, passage of this
7 bill would not mean the midlands project can
8 not go forward or that St. Michaels or Oxford
9 or Easton for that matter are going to be
10 foreclosed in the future from granting growth
11 allocation.

12 MR. FOSTER: Thank you. I neglected when
13 this began to indicate that we want to hear
14 from everyone, we want everyone to have an
15 opportunity to tell us all that you have to
16 say. In order to make sure that we don't have
17 a lot of people speaking at great length in the
18 beginning and some people leaving because they
19 were worried we won't get to them, we're going
20 to ask you to keep your initial comments to
21 about three minutes. Ms. Spence will take the

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1 clock on that. And if after the first go
2 around you have more to say, you can come back
3 and expand upon the comments that you made
4 earlier. Also if anybody here has heard
5 somebody make the argument they intended to
6 make, feel free to get up and give us your name
7 and say, I agree with Mr. Jones and sit down.
8 Judge North. Next and who else would like to
9 speak. Anybody else. Mr. Keller, you can
10 follow Judge North. If you'll both come.
11 Great believer of on deck circle. A lot of
12 time is wasted at hearings while people try to
13 get out of the row and so forth, so I'm going
14 to have an on deck person ready to go after
15 each person finishes. Judge North.

16 JUDGE NORTH: Mr. Chairman, ladies and
17 gentlemen, at the outset I should like to thank
18 each of you for coming to grips with a problem
19 which your predecessors have successfully
20 avoided for the last 14 odd years. It was a
21 source of some embarrassment to me as chairman

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1 of the critical area commission to experience
2 the want of concern and interest demonstrated
3 by Talbot County and complying with the law
4 requiring a quadrennial review of the local
5 critical area program. I'm sure that there
6 were reasons for that. But since I was
7 chairman and this was my home turf, it was a
8 source of some personal embarrassment that the
9 County had not complied with what the law
10 required heretofore. And I'm delighted to see
11 that you ladies and gentlemen are coming to
12 grips with that requirement. With respect to
13 the immediate issue before you, I spoke by
14 phone today with Ren Surry, who is the
15 executive director of the critical area
16 commission, and has been such since I was his
17 chair, to review with him my understanding of
18 the law pertaining to the application of the
19 growth allocation principal. He pointed out
20 several things to me which I was only
21 tangentially aware of. First off that

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1 apparently initially the practice was for the
2 commission to allocate to each County its
3 growth allocation, as determined by 5 percent
4 of the resource conservation area in the
5 County, and the County was then left on its own
6 rather as to how it handled the application of
7 those numbers. Some counties awarded growth
8 allocation to municipalities within the County,
9 some did not. St. Mary's County, Charles
10 County and Caroline County have never, never,
11 granted growth allocation to any municipalities
12 within those counties. Thereby those counties
13 have retained the control which they have
14 today. I would quote to you from COMAR
15 27010206 subparagraph A-2, and I think this is
16 directly on point, "when planning future
17 expansion of intensely developed and limited
18 development areas, counties, in coordination
19 with affected municipalities, shall establish a
20 process to accommodate the growth needs of the
21 municipalities." COMAR, in other words, says,

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1 dictates if you will, that it's the
2 responsibility of the County to work with the
3 municipalities in accommodating municipalities
4 growth needs. So unless you do this, unless
5 you adopt what is being proposed here today,
6 you're not conforming with what the law
7 requires of you.

8 MR. FOSTER: Thank you.

9 JUDGE NORTH: That concludes my
10 commentary.

11 MR. FOSTER: Thank you. Whoever wants to
12 be next, come forward.

13 PHILIP KELLER: Members of the Council.

14 MR. FOSTER: And when no one comes
15 forward, this hearing is over.

16 PHILIP KELLER: I do agree that the County
17 should accommodate the towns with growth
18 allocation. I think on that part Judge North
19 and I agree. Your own planning commission
20 voted three to one against this bill. I
21 believe it takes away self rule in the internal

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1 operations and land that falls within the
2 municipalities. Because towns like St.
3 Michaels have been judicious and careful with
4 their allocation, they're being penalized,
5 whereas the County and other municipalities may
6 have used theirs up is not a good reason to
7 punish those who have to make decisions within
8 the critical area. I think it's disrespectful
9 of the municipalities and it adds another layer
10 of planning commission and veto power to that
11 which goes on inside of our towns. We have
12 known about the sewage problem for decades, and
13 I heard today it's going to take another five
14 years to fix it. I have a hard time believing
15 it's taken the County so long to address this
16 issue. The timing of this on the very day that
17 the commissioners in St. Michaels are
18 considering awarding growth allocation, I find
19 problematic. I'm also going to read very
20 quickly from the annexation agreement which
21 Talbot County Council and Talbot County is a

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1 part of. "Members of the Council for Talbot
2 County hereby consent to the annexation in this
3 agreement and expressly approve the zoning
4 classification of the subdivision of the
5 annexed property under the zoning ordinance and
6 subdivision regulation of St. Michaels as set
7 forth above and approve the concept of the
8 development encompassed in the annexation
9 agreement and full knowledge that the zoning
10 classification allows land use substantially
11 different from the use of the land specified if
12 the current duly adopted master plan of Talbot
13 County." In addition --

14 MR. DUNCAN: Excuse me, Mr. Foster. Is
15 there a date on that agreement.

16 PHILIP KELLER: Yes, sir. I think it says
17 3/2/80.

18 MS. HARRINGTON: 1980.

19 MR. FOSTER: Is that during your time.

20 MS. HARRINGTON: Could you identify
21 yourself.

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1 PHILIP KELLER: I'm Phil Keller, I live in
2 St. Michaels.

3 MR. CARROLL: Do you know the date that
4 the critical areas commission -- the critical
5 areas legislation came on.

6 PHILIP KELLER: Yes, I do. It was several
7 years later. But it doesn't invalidate a
8 contract. It also says, "sewer lines, mains
9 and trunks shall be installed, extended to each
10 lot in the subdivision section and connected to
11 the Talbot County sanitary district sewer
12 system at owners expense." I believe the
13 County has an obligation, since this is all
14 about midland anyway, to live up to its
15 contractual agreement despite the fact that
16 that agreement may be a few decades old. Thank
17 you.

18 MR. FOSTER: Thank you, Mr. Keller. For
19 purposes of information, since I suppose there
20 will be misunderstandings, I met with Sherry
21 Thomas of St. Michaels and Commissioner Dinkle.

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1 How do these things get scheduled on the same
2 day. We actually had scheduled ours, they had
3 some procedural things happen during their
4 process that caused them to reschedule their
5 hearing. They have indicated to me, and I have
6 no reason to doubt, that they did not know that
7 our hearing was scheduled the same -- already
8 scheduled at the time they set theirs up. But
9 I do want to reassure you that the County
10 didn't intentionally set its hearing to
11 conflict with anything going on in St. Michaels
12 or anywhere else. And I accept their assurance
13 that they did not as well. It's just one of
14 those things that happened.

15 KATHY RADCLIFFE: Kathy Radcliffe,
16 commissioner of Oxford. Mr. Foster and County
17 Council. I gave you a copy of an article by
18 Kathy Daniels a little bit ago about planning
19 from the bottom up. We are just in the process
20 of working on a plan from the bottom up and we
21 will need some growth allocation. I understand

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1 the need for this -- this review, but I would
2 request that you would consider reviewing with
3 municipalities rather than reviewing alone. So
4 when I look at this bill, it says a bill to
5 review, I would like to say who is reviewed,
6 with the County and the municipalities or
7 something to that effect so we could have a
8 part to play in that. And I don't understand
9 how it would work in the future for our plan
10 and how the -- how this growth allocation will
11 be divided out. Thank you.

12 MR. FOSTER: Commissioner.

13 MS. SPENCE: 195 acres is reserved for the
14 Town of Oxford. Do you at this point, I know
15 you can't speak for all the commissioners, do
16 you have a sense of what portion of that 195
17 Oxford might use in the future given the fact
18 that your geographic location and isolation and
19 kind of where you set your boundaries.

20 KATHY RADCLIFFE: I think it would be fair
21 to say that we have a designated growth area.

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1 If we took the number of acres in the
2 designated growth area and the number of acres
3 that the town has already, and that's part of
4 our planning, we would be able to come up with
5 a number to give you. But I don't have it off
6 the top of my head.

7 MR. FOSTER: Thank you. Yes.

8 JIM FRANCOS: My name is Jim Francos, I
9 live in St. Michaels. And I'm not a lawyer so
10 I'm going to attempt to try to do this.

11 MR. FOSTER: Mr. Carroll will like you
12 much better.

13 JIM FRANCOS: Thank you.

14 MR. CARROLL: You're off on the right
15 foot.

16 JIM FRANCOS: I believe that the challenge
17 for every board that's involved in this project
18 that seems to be focusing on midland, okay, has
19 an awesome responsibility. Because no matter
20 what step you take, somebody is going to be
21 upset. But I do believe precedence has some

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1 importance. This board and your predecessors
2 voted to allow this, as I understand it, over
3 five years ago. And to change it today, once
4 again makes other people who want to work with
5 this County in any position, whether they are
6 developing property or anything else, have to
7 wonder how can you possibly plan for the future
8 when commitments are made and then they are
9 changed. And the only thing it could possibly
10 do, and I certainly hope it wouldn't come to
11 this, is drag it out in another legal battle
12 between whatever parties there are. And the
13 only thing that happens in that is that we have
14 people outside of area making decisions because
15 we can't sit down at a table with a developer
16 and with the towns to sit across a table and
17 work it out. Now, your board is very busy. I
18 have attended a great number of meetings in the
19 last six months. I don't believe I've seen any
20 one of you at any of those meetings in the last
21 six months. And that's not being critical,

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

13 (Reporter changed paper.)

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

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

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

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

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

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

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1 situation in Talbot County, the towns are not
2 autonomous as they would presume. We have a
3 shared sewer responsibility, we have a shared
4 school system responsibility. I don't believe
5 the towns can operate unilaterally in matters
6 of development like this and use of growth
7 allocation becomes primary. I think it's very
8 appropriate for the County and the towns to
9 have a shared responsibility for that issues
10 which certainly affect both of the
11 municipalities and the County. I therefore
12 support the use of growth allocation in the
13 manner which you're suggesting so that we do
14 have that combined discussion, we have a
15 sharing of what are our responsibilities, we
16 come to an agreement, the developer is a part
17 of that, you have a chance for negotiations so
18 that we can find a mutually agreeable situation
19 of which the Elm Street proposal outside of
20 Easton is an excellent example of where when
21 all the parties got involved a much better plan

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1 came out. So I heartily support the 933.

2 MR. FOSTER: Thank you. Mr. Thompson.

3 DAVID THOMPSON: Thank you, Mr. President.

4 I am here today on behalf of the commissioners
5 of Oxford. You heard briefly from Kathy
6 Ratcliffe, and Paul Martin is here with her. I
7 had the opportunity --

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

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

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

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

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

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

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

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

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1 Bay Hundred Foundation, which is part of a
2 seven organization coalition to get the County
3 involved actually in decisions that affect us
4 all. There's a ground swell of support, as I
5 mentioned before, for this bill 933. In fact
6 just over the last week a hearty bunch of about
7 40 folks went out and collected 1,037
8 signatures and also stimulated, I believe, as
9 far as I know, 55 e-mails and at least two
10 letters in support of 933. So where is this
11 coming from. Well, I think we have learned a
12 lesson as we have watched the St. Michaels
13 commissioners and the St. Michaels planning
14 commission grapple with a mega development
15 proposal at the north end of town that would
16 affect us all and yet many of us who have
17 signed the petition do not have a voice at the
18 table. And so we look to the County Council to
19 represent us in decisions that will affect us.
20 People have spoken about the sewer implication,
21 the traffic implications, the school

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1 implications, not just for this midland project
2 but for projects of this size throughout the
3 County. We have signers not only from the Bay
4 Hundred and Riverview Terrace and 86 designated
5 St. Michaels residents and then another 70 some
6 who have St. Michaels post office boxes so
7 we're not quite sure yet where they live, but
8 we have people from down the Oxford peninsula
9 who have signed on and a large number of folks
10 from Easton. What we have been hearing is that
11 indeed the way that the County Council has
12 worked with the Easton Town Council in
13 resolving or at least in hearing and
14 considering and improving the Elm Street
15 development that's proposed for 33 and the
16 bypass is a model that we would like to
17 emulate. For the record I would like to give
18 you these petitions.

19 MR. FOSTER: Thank you. Yes, sir.

20 ROBY HURLEY: Thank you, Council, my name
21 is Roby Hurley. I'm not a lawyer, I'm a lowly

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1 critical area planner with Maryland Department
2 of Planning. I am a resident but I would like
3 to speak to this issue as a small town guy.

4 MR. FOSTER: Are you representing the
5 department of planning.

6 ROBY HURLEY: I am not.

7 MR. FOSTER: Where do you live, sir?

8 ROBY HURLEY: Easton. Easton post office,
9 Talbot County. I've been a municipal planner
10 for 13 years with the department of planning.
11 I've worked from Port Deposit to Princess Ann.
12 I currently serve 12 towns on the Mid-shore.
13 Three of those towns are in Talbot County. I
14 would like to give you my thoughts on this bill
15 from the perspective of that municipal
16 Government -- municipal planning. Specifically
17 inconsistency with state regulations or
18 guidance, number one, critical area. The
19 numbers still are misleading even with some of
20 the corrections that are done today. The
21 critical area law, section 8-1809G-4, in

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1 reference to growth allocation, only requires a
2 statement quantifying growth allocation used
3 and remaining, not a wholesale taking of
4 municipal growth allocation. I would also like
5 to point out some of the interjurisdictional
6 cooperation that has taken place between the
7 County and myself representing the three towns.
8 And I refer to a March 29th letter from Dan
9 Cowee to the towns. March 29th, 2000. Once
10 combined, County and town growth allocation
11 usage reaches a specific level, the County may
12 request an additional quantity of acreage that
13 can be used for conservation from RCA. At that
14 time the County may make additional -- may make
15 acreage available for the towns. As Judge
16 North pointed out, there is also reference in
17 the law to interjurisdictional coordination and
18 specifically mandates that for the towns. As
19 the -- your ordinance is currently written,
20 there is coordination existing. And the way it
21 is -- your ordinance is proposed or this 933

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1 basically runs silent or makes the whole
2 ordinance silent and leaves a hole on that
3 process of growth allocation. There's also
4 conflicts with the '92 planning act and general
5 planning principals. The '92 planning act
6 vision states in rural areas growth is directed
7 to existing population centers. There's also a
8 vision saying -- requiring mechanisms --
9 regulatory mechanisms are stream lined. If you
10 take all those strikeouts as you have listed in
11 933, it then becomes silent. Thank you.

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

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

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

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

21 MR. FOSTER: Thank you, Mr. Goetze.

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1 ARNOLD SMITH: This is the first time
2 around.

3 MR. FOSTER: Yes.

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

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1 six years and waiting for improvement, waiting
2 for something else to happen, and having gone
3 through nine successive victories in terms of
4 the town being upheld in rejecting the
5 application, along comes the latest proposal
6 which has been ramrodded through and the one in
7 which I just referenced I was the minority
8 voice. Suffice it to say, the clear
9 evidentiary requirement of having the best
10 example of a critical area -- of a growth
11 allocation award has never met the test in St.
12 Michaels. What has been provided has been
13 minimal on all scores, from the 300-foot buffer
14 which they do not provide, instead going with
15 the legal limit of 100 feet instead of the
16 300 feet, to all the problems associated with
17 such incredible density, traffic, air
18 pollution, water pollution, the septic
19 situation. All of which were never fully given
20 extra pluses. Thus what they supplied was the
21 minimum instead of giving the maximum. And

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

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

11 ARNOLD SMITH: I'm for your 933.

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

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

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1 substantially off the board. I don't know how
2 the plan is going to plan for the future unless
3 there's going to be a joint town and County
4 comprehensive plan for the town. I just don't
5 how this is going to work. You may have
6 something in your mind and there may be some
7 other bills to come after this, at least on the
8 face of it, and that's all the town has to go
9 by. On the face of it I just can't understand
10 how this is going to work. In case there's any
11 doubt, the town is against this bill and would
12 ask that you postpone this and let us all get
13 together and rethink it. In the letter that
14 I've given you, and it's not my letter, it's a
15 letter signed by President Snyder, the town
16 commissioners, we have referenced and give you
17 copies of a 1976 contract between the town and
18 the Talbot County number two sewer district,
19 which was in existence at that time, which I
20 believe you have assumed. And the 1980
21 annexation agreement that was referenced

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Hilary*

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1 earlier by other speakers. I simply ask that
2 you look at them and give them consideration as
3 to what impact they may have on the County,
4 before we get into a can of worms that is just
5 going to be worse than what it is. The town
6 has been considering -- so much of this seems
7 to be about midlands. The town has been
8 considering proposals from midlands since 1998.
9 So when people say this is being ramrodded
10 through to begin with, nothing is through the
11 town of St. Michaels yet. We are going through
12 with the hearing processes. We have considered
13 now four different plans and we have rejected
14 three of them. Being ramrodded through must
15 mean that on the current plan it began being
16 considered with public hearings that started by
17 the planning commission on September the 24th
18 of this year. And there were -- the public
19 hearing started on that date and there were
20 four nights of public hearing that ended on
21 November the 6th. And there were two more

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1 nights of debate and decision making by the
2 planning commission. The town commissioners
3 started their public hearing today. So nothing
4 is being ramrodded through. Issues of the
5 state road alluded to in the other hearing have
6 been considered. The planning commissions
7 recommendation is 54 pages long containing at
8 least, to my memory, 18 conditions, one of
9 which is no building permit gets issued, no
10 earth gets turned until the County has given
11 written assurance to the developer that it will
12 get sewer. And that written assurance is then
13 given to the town.

14 MR. FOSTER: Mr. Hixon, if this thing were
15 postponed for a week or a month or a year or
16 whatever, what is it that the town would say to
17 us that they haven't already said to us. They
18 don't support the bill, and I understand their
19 reasons for not supporting the bill, but I mean
20 what new argument would they make, can you
21 proffer it.

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

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

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

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1 MR. FOSTER: But you can't proffer any
2 particular thing.

3 MR. HIXON: I can not proffer anything.

4 MS. HARRINGTON: I would just like to add.
5 After listening to a number of legal
6 presentations and being married to a lawyer, I
7 have legal presentations made at home as well.

8 MR. DUNCAN: But you overrule him, don't
9 you.

10 MS. HARRINGTON: Well, we work things out.
11 I believe that this bill, I don't quite
12 understand the ^{hus and} human cry. I believe that this
13 bill basically insures that the towns and the
14 County will sit down and work together.
15 Something that, try as we might, has not always
16 happened in the past. I think that that is
17 plain and simple what this is going to do. And
18 I'm surprised that all of you gentlemen are so
19 worried about the fact that -- when all that we
20 propose to do is to make it possible, to make
21 it definitely possible, that the towns and the

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1 County will sit down and talk about this
2 precious commodity of growth allocation before
3 it slips away.

4 MR. HIXON: And like the planning -- I
5 believe that mechanism is in the Talbot County
6 code as we speak.

7 MS. HARRINGTON: Thank you, Mr. Hixon.

8 MR. FOSTER: Thank you very much. And
9 that concludes everybody's extension -- one
10 more.

11 AUDIENCE: I would like to just echo
12 Mr. Hixon's comments about the comprehensive
13 plan and offer my assistance. I have written
14 quite a few growth allocation ordinances in
15 coordination with Queen Anne's County, with
16 Dorchester County for their towns, and I offer
17 my assistance toward that so that we do not end
18 up with just an empty ordinance. Thank you.

19 MR. DUNCAN: Mr. Foster, I'd like --

20 MR. FOSTER: Wait a minute. Is there any
21 other public comment. Okay. The public

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1 hearing is closed. Mr. Duncan.

2 MR. DUNCAN: Yes, there were several
3 interesting comments made during the
4 presentation, both for and against, and some
5 sort of wetted my appetite to find out who's
6 write and who's wrong. And I would suggest
7 that maybe our County attorney could research
8 that and provide the necessary information.
9 And one -- Judge North presented the fact that
10 we would definitely be in violation of COMAR if
11 we didn't pass this legislation. And then
12 there was other testimony that, no, he read the
13 law wrong. And that's a great interest to me,
14 one, who's right and who's wrong. And the
15 second thing is if in fact we do violate COMAR,
16 what sanctions can be imposed to the County if
17 we violate COMAR. The next thing I think is
18 very interesting, and I don't know the answer,
19 I'm not a lawyer, but in 1976 we're dealing
20 with two documents, contractual documents, 1976
21 to 1980. Critical law legislation wasn't

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1 passed until '86.

2 MS. VERDERY: '89.

3 MR. DUNCAN: '89. Thank you. So this is
4 a number of years after the fact. Is there a
5 statute of limitations on contractual
6 agreements when things completely change. I
7 mean the way of doing business in '76 and
8 '80 was entirely different as it is now in
9 1989, and how can we as a Government body sign
10 a contractual agreement to permit something to
11 happen when all the rules through the state
12 agency, not from the local agency, the state
13 agency changed the rules as far as the
14 development process is concerned. And so my
15 question is, I guess, one, is there a statute
16 of limitations, and, two, if so, what is the
17 timeframe. And the second question would be,
18 when there's agreements made and there is state
19 legislation that comes down that more or less
20 changes the tenants of the whole agreement, so
21 to speak, where do we stand.

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1 MR. FOSTER: Mr. Duncan, I think what
2 you're talking about is soliciting legal
3 advice. I don't think this is probably the
4 appropriate place to do that. I think we will
5 have our meeting with our attorney about -- I
6 think what you're basically addressing is the
7 enforceability of that agreement in this
8 situation. And I think we need to take our
9 legal advice in executive session first before
10 we make a determination.

11 MR. DUNCAN: I agree. But those questions
12 were put on the table, Mr. Foster, by the
13 public hearing, and I think any legal advice we
14 get obviously -- we're going to vote on this
15 issue, and I think that the public along
16 with -- is entitled to know are these in
17 fact -- is this true, is the law true, is it
18 not true, is the contractual arrangement true
19 or not true.

20 MR. FOSTER: Unfortunately all the lawyers
21 in the room can tell you it's not that simple.

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1 People have different interpretations of the
2 same statute or the same regulation, and that's
3 why I think the law allows us to take legal
4 advice and gripe it because there may be many
5 different ways you can go and many different
6 consequences to each of those ways. And in
7 order to formulate a strategy, it's difficult
8 to do that in this context. In any event, the
9 matter before us is bill 933. And what
10 Council -- members of the Council want to make
11 comment on this bill. I darn't try to set it
12 for a vote because somebody may make a motion,
13 so I will wait to hear your pleasure on when we
14 should vote on this. Mr. Carroll, it's your
15 bill, do you want to start.

16 MR. CARROLL: I have no comment to make at
17 this time. I would like to have a session with
18 Mr. Pullen and I would hope when we reschedule
19 it for a vote there's an opportunity to make
20 comments.

21 MR. FOSTER: So there's no desire on your

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1 part to schedule this today.

2 MR. CARROLL: I think we should go ahead
3 and schedule it.

4 MR. FOSTER: I'm sorry, to vote today.

5 MR. CARROLL: No, not vote.

6 MR. FOSTER: Hearing that, I will schedule
7 this for a vote on the 23rd of December at
8 the appropriate hour. And we will have an
9 executive session today and perhaps others with
10 Mr. Pullen regarding the questions Mr. Duncan
11 and other members of the audience have raised.
12 Thank you very much for coming in. We will
13 stand in recess for five minutes to allow the
14 reporter to recover use of his fingers.

15 (Short break was taken.)

16 MR. FOSTER: Thank you. We will assume
17 the meeting and move to eligible for vote.
18 There are with some of these bills amendments.
19 Mr. Pullen has indicated that he's prepared to
20 explain each amendment. We have already voted
21 on all of the amendments so far and found them

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1 SECRETARY: Ms. Harrington.

2 MS. HARRINGTON: Aye.

3 SECRETARY: Ms. Spence.

4 MS. SPENCE: Aye.

5 SECRETARY: Mr. Carroll.

6 MR. CARROLL: Aye.

7 MR. FOSTER: There being four votes in the
8 affirmative and one in the negative, bill 933
9 is enacted and will take effect as provided
10 therein. Okay. We will move now to the County
11 Manager's report. Mr. Urbanczyk, assistant
12 County manager.

13 MR. URBANCZYK: Thank you, Mr. President.
14 We are requesting approval to appoint John C.
15 North, II, to the County planning commission
16 for a five year term.

17 MR. FOSTER: Is there a motion.

18 MR. DUNCAN: So moved.

19 MR. FOSTER: Second?

20 MS. HARRINGTON: Second.

21 MR. FOSTER: Moved by Mr. Duncan, second

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1 to create. We will for a short term good,
2 because I think frankly the passing of this
3 bill will result in a short term good in terms
4 of upholding Midlands to a higher standard than
5 maybe it's being held to now. Achieve, I
6 think, a long term loss in terms of public
7 policy and in terms of our relationships with
8 our subdivisions. And so while I would like to
9 vote for this bill, while most of my friends
10 who I looked at the names of people who signed,
11 people I just so respect, I just don't think
12 this is the right way to do it. And I can't go
13 along with it. But doesn't sound like that
14 will matter too much in the final analysis.
15 Any other comments anybody would like to make.
16 Okay. The clerk will take the call and the
17 question is approval of bill 933.

18 SECRETARY: Mr. Foster.

19 MR. FOSTER: No.

20 SECRETARY: Mr. Duncan.

21 MR. DUNCAN: Yes.

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1 establish a relationship of trust with a
2 subdivision, we grant subdivision control, and
3 then we take it back. Are we not creating a
4 potential mentality of use it or lose it any
5 time the County conveys something to a
6 subdivision. And doesn't that go well beyond
7 Midlands, which I am not impressed with I can
8 assure you. And I agree with everything
9 Mr. Duncan said about it, but this is not a
10 Midlands bill. This is a bill for retaking
11 growth allocation. And while it is correct
12 that there's a requirement for review from time
13 to time, it is incorrect to suggest that the
14 review requires you to take back what you've
15 given. There are many analogies that have been
16 made to allowances, and what would your child
17 learn if you gave them so much a week allowance
18 and at the end of the week took back what they
19 hadn't spent. I think they would learn to
20 spend it as quick as they good. And is that
21 the mentality, is that the situation you want

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

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1 you see the arguments on either side, you
2 consider reacting for them, you tend to be
3 reacting against them. We received a lengthy
4 letter from the Town of St. Michaels. There
5 were some good points in the letter but there
6 were also many things in that letter which
7 pushed me the other way actually. This is not
8 a usurping of town zoning, because the state
9 doesn't grant the towns the authority to give
10 out growth allocation. Some counties have
11 given it to towns and some counties have not.
12 Some counties do hybrid situations. Talbot
13 County, for reasons which I'm sure must have
14 seemed appropriate to whoever did it at the
15 time, apparently according to what the -- the
16 way it's been explained to me by the planning
17 officer at the time, just said, come on in and
18 we will give you whatever you ask for, and you
19 can take your chunk and Easton wanted so many
20 and St. Michaels wanted so many and Oxford and
21 they took them. And that was theirs to keep

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1 it's review and reallocate. Doesn't mean we're
2 going to keep it. Reallocate I think has a
3 very positive meaning. It means that we're
4 working with the municipalities. That indeed
5 can happen. And, again, I think I touched
6 earlier, I'm really concerned about
7 environmental issues and I know that there's a
8 lot of folks in the town are concerned about it
9 and I know there's a lot of folks, even the
10 development folks are concerned about it. But
11 the bottom line is if we all work together
12 we can accomplish something that will make our
13 County a better place to live in. So that's
14 where I'm at. Thank you, Mr. Foster.

15 MR. FOSTER: I would really like to vote
16 for this bill.

17 MR. DUNCAN: Well, do it.

18 MR. FOSTER: It's interesting. But I'm
19 not going to. And I'll tell you why. I guess
20 maybe every once in a while you get struck with
21 this desire for intellectual honesty. And as

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1 are many roads that come in and out of Easton.
2 The road system can accommodate Easton, even
3 though in some areas it's very crowded and very
4 congested at times. However, make no mistake
5 about it, in St. Michaels there's only one road
6 in, one way in. And that issue has to be
7 addressed, I think, in some fashion. There's
8 plans on the books for a bypass. Whether that
9 will come to pass, one never knows, but that's
10 not there now as we well know. And for those
11 reasons I'm quite sure there will be some sort
12 of development there, but what type I don't
13 know at this point. And I can assure the town,
14 as we did in Elm Street or any other
15 development process, we will work with them to
16 accommodate not only their needs but needs of
17 the County as a whole and try to get something
18 that can work environmentally and physically as
19 far as the number of homes are concerned. So
20 basically I think that the issue of growth
21 allocation is not a taking. As the bill says,

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1 previously. I have another way to go, another
2 road to take, so to speak. I think this growth
3 is even more important than what Elm Street
4 really is. If you look at Elm Street, they
5 have water and sewer. Easton promised them
6 water and sewer, it was available to them,
7 wasn't a problem, they were upgrading the plant
8 in three or four years, and it will be able to
9 accommodate any development that Elm Street
10 will create. However, St. Michaels is of
11 course a different color. We all know the
12 facts aren't in on St. Michaels and the
13 infrastructure as far as the sewer is
14 concerned, the allocation issues out there, how
15 many allocations are available. So those
16 questions have not been answered. Depends on
17 who you listen to and whose side you're on
18 whether or not they're answered or not.
19 There's another issue here, the Elm Street
20 issue in the Town of Easton. They have many
21 roads that leave to roam, so to speak. There

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1 care of other growth opportunities. I believe
2 that the critical areas legislation affects
3 many in Talbot County, beyond those people that
4 live within the towns. And they have,
5 if you will, the same rights that the town
6 people have to share in the use and protection
7 of that growth allocation. And it seems to me
8 that our job as a County Government is to see
9 that those allocations are made fairly and
10 equally amongst the communities. So I think
11 it's necessary for us to do this and I would
12 like to at least make the town people feel that
13 it's not the intent of the Council to manage
14 the process but to be fairly a partner as we go
15 forward in protecting the waters, protecting
16 habitat, and also allowing for some sensible
17 growth. Thank you.

18 MR. FOSTER: Do you want to go. Want the
19 last word.

20 MR. DUNCAN: Not necessary. I share my
21 concerns with my colleagues who have spoken

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1 the outcome of the Elm Street project. We have
2 had that experience, it worked quite well, and
3 I have no reason to believe that it can't work
4 well in the future.

5 MR. FOSTER: Mr. Carroll.

6 MR. CARROLL: Yes, I very much agree with
7 the comments by the two previous Council
8 members, and particularly what Ms. Spence just
9 said. I think our record in working with
10 Easton is pretty good. And I think that that's
11 the way the County and the towns should work
12 together. Additionally there's some simple,
13 really, bookkeeping problems that if we don't
14 do this that the -- we can never get to our
15 second batch, the other half of the growth
16 allocation, unless we do some reallocation.
17 Reallocation was called for under our current
18 legislation, and it has never been done. Plus
19 the County, after the recent Elm Street or
20 Easton allocation, is left with some 160 acres.
21 And I think we're not in a position to take

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1 us I think at one point or another, met with
2 the developer after the town had sort of gone
3 through their process, put out on the table
4 concerns we had. I had many conversations with
5 commissioners in the Town of Easton and we came
6 to some agreement. We have joint hearings, we
7 have a process that this -- not this Council,
8 the prior Council, established to review
9 jointly growth allocation requests between the
10 towns and the County. We have used it two or
11 three times already with the Town of Easton
12 because they are all out of growth allocation.
13 So I hope that the commissioners will be
14 reassured that this is not a land grab, this is
15 not a money grab, this is not a power grab,
16 this is simply an opportunity for the County
17 Council, who represents a large number of
18 people that will be affected by whatever growth
19 happens in St. Michaels, for those people to
20 have some representation and some input. And I
21 think I feel so positive about this because of

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1 there's been some concern on the part of the
2 commissioners in St. Michaels that there's not
3 a process whereby the town can review with the
4 County some of these issues concerning growth
5 allocation, whether to award it or not, and the
6 town would lose their growth allocation, all
7 the eggs would be in the County's basket. I
8 keep returning to the example of the Elm Street
9 project, which just was approved, growth
10 allocation was approved last week I believe.
11 And the history of that -- let's go back one
12 further step, and that was when that proposal
13 first came forward, the Town Council, prior to
14 the County, didn't -- wasn't in favor of that
15 project and it didn't happen, it was off the
16 table. People went back to work with the
17 developers, worked hand in hand. The town
18 negotiated in good faith with the developers,
19 got everything I think they wanted. A number
20 of conditions were placed on that growth
21 allocation approval. Representatives, all of

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1 create a standard of living that will enable
2 young families will to work and grow here.
3 Turf wars have no place in this equation. What
4 is good for the towns must be good for the
5 County, and vice versa. Fear has no place
6 here. We must try to put ourselves in each
7 others shoes and work for the common good.
8 Bill 933 has angered some who have their own
9 reasons for that. You can never please
10 everyone, and I realize that, so we must listen
11 to all views and be informed of the facts and
12 then make a decision. By a vast majority,
13 constituents in the County and from some towns
14 have indicated their support for being included
15 or having a seat at the table on matters that
16 affect us all. I see great merit in this, and
17 so I will cast my vote today for bill 933.
18 Thank you, Mr. President.

19 MR. FOSTER: Thank you, Mrs. Harrington.

20 Other comments.

21 MS. SPENCE: Just make one. I know

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1 bill is now before you in its amended form for
2 discussion.

3 MS. HARRINGTON: Mr. President, I would
4 like to make some comments about bill 933.
5 What we have before us today is another
6 critical areas matter that has had none of its
7 compulsory reviews for 14 years. In those 14
8 years, Talbot County has gone from being a
9 low-key waterman's and agricultural community
10 to a highly sought after developers dream.
11 Neither the County nor municipal Governments
12 have had a more urgent need to work
13 cooperatively on a long term vision than now.
14 Open land, farm and fowl, clear waters healthy
15 with fish and grasses have quickly become a
16 thing of the past. Ponderous decisions must be
17 jointly made now that will affect the quality
18 of life for yours and my children and their
19 children. We must strengthen and diversify our
20 economic base. We must raise the bar for our
21 children's public education. We must help

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1 MR. FOSTER: It's important for Government
2 to be grammatically correct.

3 MR. PULLEN: I agree, Mr. Foster.

4 MR. FOSTER: Any comments on this
5 amendment. Hearing none, the question is on
6 the approval of the amendment. The clerk will
7 take the call.

8 SECRETARY: Mr. Foster.

9 MR. FOSTER: Aye.

10 SECRETARY: Mr. Duncan.

11 MR. DUNCAN: Aye.

12 SECRETARY: Ms. Harrington.

13 MS. HARRINGTON: Aye.

14 SECRETARY: Ms. Spence.

15 MS. SPENCE: Aye.

16 SECRETARY: Mr. Carroll.

17 MR. CARROLL: Aye.

18 MR. FOSTER: That's it for the amendments
19 then, right?

20 MR. PULLEN: That's correct, Mr. Foster.

21 MR. FOSTER: Members of the Council, the

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1 The clerk will take the call.

2 SECRETARY: Mr. Foster.

3 MR. FOSTER: Aye.

4 SECRETARY: Mr. Duncan.

5 MR. DUNCAN: Aye.

6 SECRETARY: Ms. Harrington.

7 MS. HARRINGTON: Aye.

8 SECRETARY: Ms. Spence.

9 MS. SPENCE: Aye.

10 SECRETARY: Mr. Carroll.

11 MR. CARROLL: Aye.

12 MR. PULLEN: Mr. Foster, the final
13 amendment was a grammatical change on page
14 seven of the bill, which simply inserted the
15 words "which has been" in paragraph --

16 MS. HARRINGTON: Two.

17 MR. PULLEN: Section two, paragraph one
18 A-3. And it's a grammatical change only. I
19 don't believe it has any effect on the meaning
20 of the -- of that particular section. It just
21 simply clarifies the language.

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1 the growth allocation in resource conservation
2 areas has been withheld until the County
3 allocates 90 percent of the first half of that
4 growth allocation. It goes on to further
5 explain that initially the towns were given
6 various amounts of growth allocation. And it
7 explains the usage of the growth allocation by
8 the counties, by the County and by the various
9 towns. It sets forth the amounts that each of
10 the towns have remaining and that the County
11 has remaining. And generally explains the
12 interrelationship of the County ordinance with
13 the state critical areas law.

14 MR. FOSTER: Okay. Any comment.

15 Mr. Carroll.

16 MR. CARROLL: It just seemed to me that
17 these were put in in an attempt to clarify the
18 background and history of it to tie this
19 proposed legislation.

20 MR. FOSTER: Any other comments. Okay.

21 The question is the approval of the amendment.

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1 MS. SPENCE: Aye.

2 SECRETARY: Mr. Carroll.

3 MR. CARROLL: Aye.

4 MR. FOSTER: Okay. Next amendment.

5 MR. PULLEN: Mr. Foster, the next
6 amendment is to strike the last three
7 paragraphs in the whereas clauses, which set
8 out the reasons for the adoption of the bill,
9 and to substitute 11 paragraphs which we read
10 at the last hearing. The 11 paragraphs restate
11 reasons for the adoption of the bill. The
12 Council has introduced them, they have been
13 voted to be non-substantive.

14 MR. FOSTER: Does anyone wish to explain
15 just generally what the purpose of this change
16 is, what will be different about the whereas's.

17 MR. PULLEN: Mr. Foster, generally this
18 change explains the process by which the
19 acreage was calculated initially. It explains
20 the process by which the acreage is allocated.
21 It explains the process by which 50 percent of

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1 be to change the reference to the local zoning
2 ordinance, 190-109D, and substitute the
3 reference to the four-year review requirement
4 under state law for critical area commission
5 review and update.

6 MR. FOSTER: Okay. Might as well ask you
7 a blanket, we voted on all these amendments as
8 to whether they're substantive or
9 non-substantive.

10 MR. PULLEN: That's correct.

11 MR. FOSTER: The question then is whether
12 we wish to make this amendment. Is there any
13 discussion about it. No discussion. Clerk
14 will take the call.

15 SECRETARY: Mr. Foster.

16 MR. FOSTER: Aye.

17 SECRETARY: Mr. Duncan.

18 MR. DUNCAN: Aye.

19 SECRETARY: Ms. Harrington.

20 MS. HARRINGTON: Aye.

21 SECRETARY: Ms. Spence.

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1 the amendment -- if the amendment passes, then
2 that would be part of it. But at this moment
3 it's only a proposed amendment to the bill.

4 MS. SPENCE: Okay.

5 MR. FOSTER: But it's helpful that you've
6 read that so we -- I hope everybody listened,
7 we don't have to read it again. Are there any
8 new amendments to the bill or its title.
9 Somebody was telling me something about one.

10 MR. PULLEN: I don't believe there are,
11 Mr. Foster.

12 MR. FOSTER: Anybody. Okay. I think then
13 we will move to the amendments, and might as
14 well take them up in the order they were
15 introduced. Does the clerk have that.

16 SECRETARY: No, I do --

17 MR. FOSTER: County attorney.

18 MR. PULLEN: Mr. Foster, I can review the
19 amendments in the order in which they appear in
20 the bill. First is the title Ms. Spence just
21 read, which the intent of that amendment would

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1 growth allocation allocated among the towns for
2 rezoning in compliance with the requirements of
3 chapter 190, Talbot County code, zoning section
4 190-109D-11.

5 MR. FOSTER: Okay. We have pending, I
6 think, Mr. Pullen, a number of amendments that
7 have already been introduced.

8 MR. PULLEN: That's correct, Mr. Foster.

9 MR. FOSTER: Are there any new amendments
10 to the bill or to its title.

11 MS. SPENCE: My understanding is we struck
12 out part of the title that has just been read
13 and the title should read as follows: "a bill
14 to review and reallocate the number of
15 preserved acres of growth allocation allocated
16 among the towns for rezoning to comply with the
17 Chesapeake Bay critical area commission
18 four-year review requirement."

19 MR. FOSTER: No, I think the clerk was
20 correct in reading the title as she did,
21 because that's a proposed amendment. And if

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1 you're making a good point. Of course
2 introduction is legislation is not a corporate
3 act, it's the act of individual members, and if
4 any member of the Council decides they have
5 reached a point where they would like it to go
6 forward, even if the other members are not at
7 that point, it would still be introduced and
8 public hearing --

9 MR. CARROLL: I was offering my comments,
10 Mr. Foster, in an attempt to help the process,
11 not to hinder the process. But what I felt
12 needed to take place. Thank you.

13 MR. FOSTER: Great.

14 RAY CLARKE: Did you need any more
15 information on this?

16 MR. FOSTER: Not until next time, which is
17 January 6th, I guess. Okay. Move to third
18 reader on bill 933. Clerk will read 933's
19 title.

20 SECRETARY: Bill No. 933, a bill to review
21 and reallocate the number of reserved acres of

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1 COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND

2

3

4

Council Meeting

5

6

7

December 23, 2003

8

9

10

1:30 p.m.

11

12

13

County Council Chambers, Easton, Maryland

14

15

16

COUNCIL MEMBERS:

17

PHILIP FOSTER, President

HOPE HARRINGTON

18

PETER CARROLL

HILARY SPENCE

19

THOMAS DUNCAN

20

21

Reported by

David C. Corbin

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

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

GENE HAMILTON: Yeah.

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

supplanted by, by verbiage. No, I think you have to have to realize your overall responsibility is to apply regulations appropriately and intelligently and I, I, see the dilemma that you are suggesting here. My response to it is that no one anticipated at the time this language was put into effect that there would be a proposal to increase the size of St. Michaels by sixty percent on this location.

BONNIE KASTENS: But it's been zoned R1 for twenty some years.

GENE HAMILTON: That's the same density as these people are looking for. I, I don't get it.

JOHN NORTH: I, I understand it's zone R1, but you should also understand that the people in the State of Maryland through the legislature has imposed critical areas standard on top of it and those standards take precedence.

GENE HAMILTON: I, I don't understand that.

BONNIE KASTEN: I'd like to hear from the Planning Officer as well on some of these issues we've been addressing them to you, Judge North, and I appreciate your comments and I, I would also like to hear the Planning Commission on it as well.

JOHN NORTH: Yes and you should hear from Ren Serey who's the nuts and bolts man as well as, as me.

BONNIE KASTEN: Okay, thank you very much.

JOHN NORTH: Not at all.

DAN COWEE: I, I think you're dealing with two separate issues. The first one is growth allocation.

RICK MEGAHAN: But is it not designated that way because of what was built on it not that there's anything unique about that piece of land other than the fact that there was nothing built on it?

JOHN NORTH: Oh that's entirely right. You see when Critical Areas came into effect, every county and municipality was required to map their critical area, that is all land within a 1,000 feet of the Bay and its tributaries, and they had to do that mapping upon the basis of what the then current situation was, and the then current situation said that this was agricultural use and that it was properly mapped as resource conservation. Times change and that's why the mechanism of growth allocation was, was initiated in the first place, to take into account changing times and changing circumstances.

JAMES BURNS: I have another question to follow up on that a little bit. We have a spot in our Critical Area Program that says St. Michaels has determined there are several growth areas in which it will request growth allocation in order to permit development of the underlying density and this is one of those places and it's in the critical area. How do we square since we have that in our approved Critical Area Program so St. Michaels is going to do this if we meet all these environmental requirements, how do we square with say what our Program says we are going to do this, but really we're not?

JOHN NORTH: Well, you're going to do it in your best judgment. It doesn't [interrupted].

JAMES BURNS: ~~Inaudible few words~~ it doesn't say that in here [interrupted].

JOHN NORTH: Well, that's that's [interrupted].

[AUDIENCE LAUGHTER]

JOHN NORTH: You're truly, you're not suggesting that your best judgment is to be

and other things but that we have a piece of land that fits most of the criteria in this book, its adjacent its there, the State smart growth policies push development here, the county smart growth policies push development here, we already have a piece of property that's R1 zoned. We have now, 10, 20 years later from its zoning application finally it comes into play. Now there is an overlay zone on here with allocation, but the allocation has been designed to be given out to promote growth in this area and not to have this subdivision put out in the middle of a farm field someplace. Okay. How does your Board react to that scenario?

JOHN NORTH: I, I think our Board would say that [interrupted].

GENE HAMILTON: Oh no, the law, not your Board. I mean how do you as an agency or whatever you know what I'm saying, what [interrupted].

NORTH: I I think that, that if you look at it in a vacuum [interrupted].

GENE HAMILTON: I'm trying not to, I'm saying this is a historical events that we're faced with now.

JOHN NORTH: Well, arguendo, if you look at it in a vacuum, all the circumstances are in place to say, "This is an appropriate and intelligent place to grant growth allocation and to encourage growth." That's looking at it in a vacuum. If you look at it in reality where you take into consideration the effect upon the community with respect to the enormous influx of people and vehicular traffic that is proposed, I think that you can intelligently conclude that growth in this location to this magnitude is disadvantageous to the community and considering all factors should not be encouraged. With respect to the issue of present zoning, that zoning takes a back seat to the Critical Area designation. This is a resource conservation area. It is appropriate. It was considered appropriate originally when it was mapped. For a resource conservation situation which requires that every house built on it have at least 20 acres to occupy.

FEB-11

BONNIE KASTEN: [Laughing] Judge North, where is your property located? Where ~~inappropriate words~~.

JOHN NORTH: I understand that, that [interrupted].

JAMES BURNS: You are aware of why that's funny because [interrupted].

NORTH: I'm aware, but, but [interrupted].

BONNIE KASTEN: The Nimby formula in effect.

JOHN NORTH: I just point out to you that this area, if developed, would create at least potentially a problem with respect to traffic flow. If the development were on the other end of Town you would not have that complicating factor. I'm not advocating growth on the other end of Town either. I'm just saying that you could eliminate in large part the traffic problem which I think concerns us all. With respect to the traffic problem, I'm sure we're all concerned over the proposed bypass around St. Michaels. It is my information that the Corps of Engineers has found that environmental problems are such that they cannot approve the proposed location for the bypass and I don't know if we'll ever see a bypass.

[AUDIENCE APPLAUSE AND WHISTLING]

RICK MEGAHAN: We should have invited the Fire Department.

GENE HAMILTON: Right. Can I ask you one question? We're faced with a situation here, pretend it's not St. Michaels, but the Town Commissioners eons ago, okay, took in an allocation for an application for annexation to a piece of property adjacent to us and has an overlay in existing an overlay zone of residential on it. Prior to the environmental laws being passed, what is your feeling as far as precedent, what rights do these people have with an R1 zoning now in the allocation. It seems that looking at this objectively, that there is and this is what I'd like you people, I understand that there is court issues now that aren't resolved

JOHN NORTH: You are entirely correct.

BONNIE KASTEN: Let me just go in terms of what it says.

JOHN NORTH: There's, there's more.

BONNIE KASTEN: [continues "what it says."] Yeah. New IDAs should be located in existing LDAs or adjacent to existing LDAs, etcetera, etcetera. And one of the things that we've been struggling with is how to live with the intentions of the people of St. Michaels up to this point in time, by virtue of their, by what the Critical Areas Map says as well, as what the ... what our old Comprehensive Plan said around the intention of the Town to grow and where it should grow.

JOHN NORTH: I suggest there is no conflict.

BONNIE KASTEN: Okay.

JOHN NORTH: The reason I suggest that is that we all recognize that if there is to be growth, the intelligent and appropriate place to have it is adjacent to existing infrastructure. That's so very obvious. On the other hand, there is no necessity to have growth at that location or any other location if in the judgement of those who are studying the problem, by so doing you create extraordinary problems for the community. You don't have to grant growth. If you grant it, it is intelligent enough to grant it adjacent to areas where growth already exists. If in doing so, in this situation for example, you create a community with the potential for extraordinary community problems, transportation problems, environmental problems, the question is why you should permit growth at all. Perhaps the growth allocation would be more intelligently applied at the other end of St. Michaels where people coming and going don't have to go through St. Michaels.

[AUDIENCE LAUGHTER]

enforcing the Critical Area law would then review and consider whatever application was made for growth allocation. I cannot of course say what action that group would take on this particular situation but I know that you are aware that this is a conservative group having as its responsibility principally the preservation of and intelligent development of areas which surround the Bay and which impact it. It's a conservative group in short, but what its response would be to this overall situation I would not predict. I hope I've answered some of your questions.

BONNIE KASTEN: In the Critical Area Plan, and I realize that there are no standards. I realize that we have an old Critical Area Plan that has not been updated.

JOHN NORTH: It is in the process of being updated.

BONNIE KASTEN: Correct, correct, but we are still operating on the old one at this point in time. There lists a certain number, or certain kinds of criteria where the Town, that the Town put into place. I assume this is State, State verbiage but nonetheless it's still been approved by the Town of St. Michaels as far as I know and it says "*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 development areas*" and it is my understanding at least that Perry Cabin is an intensely developed an IDA area. Is that correct?

STEVE DEL SORDO: That is correct.

BONNIE KASTEN: Okay, that is correct.

RICK MEGAHAN: It's mapped as such.

BONNIE KASTEN: It's mapped as such. Okay. I thought it was. Okay. So, in that regard, an IDA or LDA would be appropriate for that specific piece of ground because it is in fact and it says it is the intent of the Town to create that.

allocation is detrimental and deleterious to the community, and if you in your wisdom find that to be the case, all you have to do is say, "We think that growth allocation would be inappropriate in this situation. We wish to preserve our growth allocation for a situation that would be more beneficial to the community than we perceive this to be." In other words, if you believe that granting growth allocation in any instance would create problems, would adversely affect the community as a whole, would tend to create traffic problems and pollution problems or other difficulties, all you have say is we don't think growth allocation is appropriate. Growth allocation was made available to counties and municipalities as a result of an early determination when Critical Area legislation was being considered to give these areas a degree of flexibility. In other words, ~~[CHANGE TAPE TO SECOND SIDE and inaudible couple of words at beginning of second side]~~ and to intensify them from resource conservation to more concentrated forms of use in appropriate areas so as to permit a community to grow intelligently and appropriately, that the legislature in its wisdom did not set forth standards by which the community was to gauge applications for the growth allocation. You should understand that the great majority of applications for growth allocation are on a very modest basis, an acre here, two acres there, three acres here. The sort of growth allocation that is being suggested here is entirely lawful, but it is out of the ordinary. You should also understand that even if growth allocation were to be recommended by you and granted by the Town of St. Michaels, that issue would ultimately come before the Critical Area Commission for review. Normally these matters are more or less rubber-stamped by the Critical Areas Commission because they involve applications very minor in geographical nature which generally have little or no impact upon a community and so there is no public interest, no great public concern. You have an entirely different situation here, where this application, if granted, could have the effect of changing the entire character of this community and could possibly burden this community with immense problems, some of which are foreseeable and some are not. In a situation of this sort, the Critical Area Commission would welcome, as it always welcomes, information from and concern by citizen groups that would be free to appear before the Commission to make known its concerns. Those concerns would be weighed and considered by the 26 member Critical Area Commission at its public meeting in Annapolis. Those meetings occur on the first Wednesday of every month, and that group charged with the responsibility of

UNKNOWN MAN: Thank you for coming.

RICK MEGAHAN: I had a question for Dan but does anybody want to tie in our last discussion to that Critical Areas ~~fraudible couple of words before end of sentence~~ ~~fraudible sentence~~. We had talked a little bit in our Executive Session about the type of decision that this growth allocation will be and maybe the critical areas folks can clarify it a little better for us in terms of granting any growth allocation. How would you term the, say the legislative versus the political aspect of granting growth allocation as regards to the specific environmental assurances that need to be made?. Do you know what I'm asking?

JOHN NORTH: I've heard what you said. I'm not sure exactly sure what you're asking.

JAMES BURNS: In other words, if we have a set of findings here ... we, we have some rules in our book and we have a set of findings that they meet this, they meet this, they meet this and they meet this. Are we then obligated to approve it or can we say "Yes, they meet these but we don't think, we don't want growth allocation here so we don't approve it."

JOHN NORTH: All you have to do is just say "No."

[AUDIENCE LAUGHING, WHISTLING, APPLAUDING]

GENE HAMILTON: So you're saying that it is a political, a political decision.

JOHN NORTH: No, I'm saying that it is a decision with respect to the recommendation that rests with you ladies and gentlemen. If you feel that growth allocation is inappropriate, all you have to do is deny the request. That's the end of it.

JAMES BURNS: But do we have to have grounds to feel that way?

JOHN NORTH: No. Well, you have to have some intelligent ground to act upon anything, I suppose. You may determine in your wisdom that the overall effect of granting growth

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

RICK MEGAHAN: Steve, would you introduce our guests.

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

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

UNKNOWN MAN: Would you speak up, please.

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

[APPLAUSE]

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

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

UNKNOWN MAN: Thank you.

J. PHILLIP KELLER, LLC
ATTORNEY AT LAW
22 WEST DOVER STREET
EASTON, MARYLAND 21601
TEL. 410-822-7993

FACSIMILE: 410-822-6420
E-MAIL: pkeller@goeaston.net

SAINT MICHAELS OFFICE:
104A WEST CHESTNUT STREET
ST. MICHAELS, MARYLAND 21663

April 4, 2004

HAND DELIVERED

The Honorable Martin G. Madden, Chairman
And Panel Members
Critical Area Commission for the
Chesapeake Bay and Atlantic Coastal Region
1804 West Street, Suite 100
Annapolis, MD 21401



Re: Opposition to Bill 933 and
In Favor of the Grant of Growth Allocation for St. Michaels

Dear Mr. Madden and Committee Members:

We are writing to you as citizens of Saint Michaels, Maryland concerning the recent actions of the Talbot County Council in respect to thwarting growth in the critical area. The most vocal opponents and architects of efforts to block growth happen to be those individuals whose lands abut the proposed development. These individuals have invested substantial sums of money in their waterfront homes. Most knew of the development for years when the land was annexed to the town for growth, or just recently moved in during the continued controversy about Midland.

Attached are exhibits which show the location of their properties in relation to the proposed project, including US Geological Survey photos, aerial photos and Maryland SDAT land/tax records.

EXHIBIT 1 shows a USGS photo of the site, highlighted in yellow. The site is in Saint Michaels and is bounded by Route 33, Yacht Club Road, Tide Mill Cove, and in the lower portion of the picture, Fogg Cove. Ironically, many opposed to the grant of growth allocation and in favor of Bill 933, actually live in Fogg Cove Townhomes which is Phase I of the original development. The remainder reside in Talbot County off Route 33 and Yacht Club Road. All live in waterfront homes, some with pools, piers and recreational land and fertilized lawns up to the water's edge.

EXHIBIT 2 evidences the real property tax records for key figures that have organized, spoken out publicly and/or filed appeals and law suits in relation to this development.

a. John North II, et ux, own three Parcels of record, Nos. 20, 31 and 43 off Tide Mill Cove, just west of the site (or above it on these photos).

b. Beth and Phillip Jones reside on Route 33, near the intersection of Yacht Club Road, Parcel 13.

c. Mr. Robert Fletcher also lives in Talbot County, he entrance to his home being across the street from the site.

d. John Wolfe, et ux, live in the Perry Cabin Townhomes on Fogg Cove, Unit Nos. 12 and 13.

e. Mr. and Mrs. Bedford also reside at Fogg Cove Townhomes, Unit 18.

f. Mr. Ted Doyle and Ellen Doyle reside in a Fogg Cove Townhome, Unit 26.

g. R. Ueno and K. Sachiko have a house on Parcel 51, off Tide Mill Cove, next to one of the Norths' parcels and abutting the proposed development.

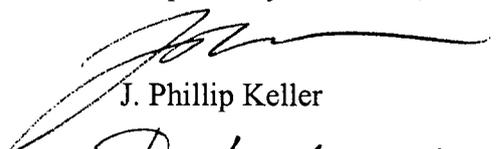
EXHIBIT 3 is a color aerial photo of more recent vintage showing the site, surrounded by the lands owned by the aforementioned individuals.

EXHIBIT 4 is a USGS overhead photo showing a portion of the site highlighted in yellow, with a closer rendition of the John North properties (Parcels 31, 43 and 20), pool and piers, as well as the homes of Ueno/Sachiko (Parcel 51) and Mr. Fletcher (Upper left corner, Parcel 19).

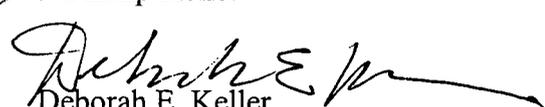
I believe that for many people who are against any growth that traffic, property values and other personal interests play just as much if not more of a role in their opinions than the environmental issues. I do not doubt that some opponents of growth truly believe that "no growth" on this land (already zoned for development years ago) is in the best interests of the Miles River and Chesapeake Bay in general. Many of the leaders here have very strong opinions about critical area preservation, particularly when it's in their "back yards".

We oppose Bill 933 for reasons we have enumerated in previous correspondence. We believe that most people in the Town of Saint Michaels see the Midland project as inevitable and the best growth solution under the circumstances. We are particularly pleased with the wetland restoration and open space concepts (park). For these reasons, Bill 933 should not be approved as an amendment to the Talbot County Critical Area Program and the committee should also grant Saint Michaels' request for Growth Allocation. Thank you for you time and consideration in the matter.

Respectfully submitted,



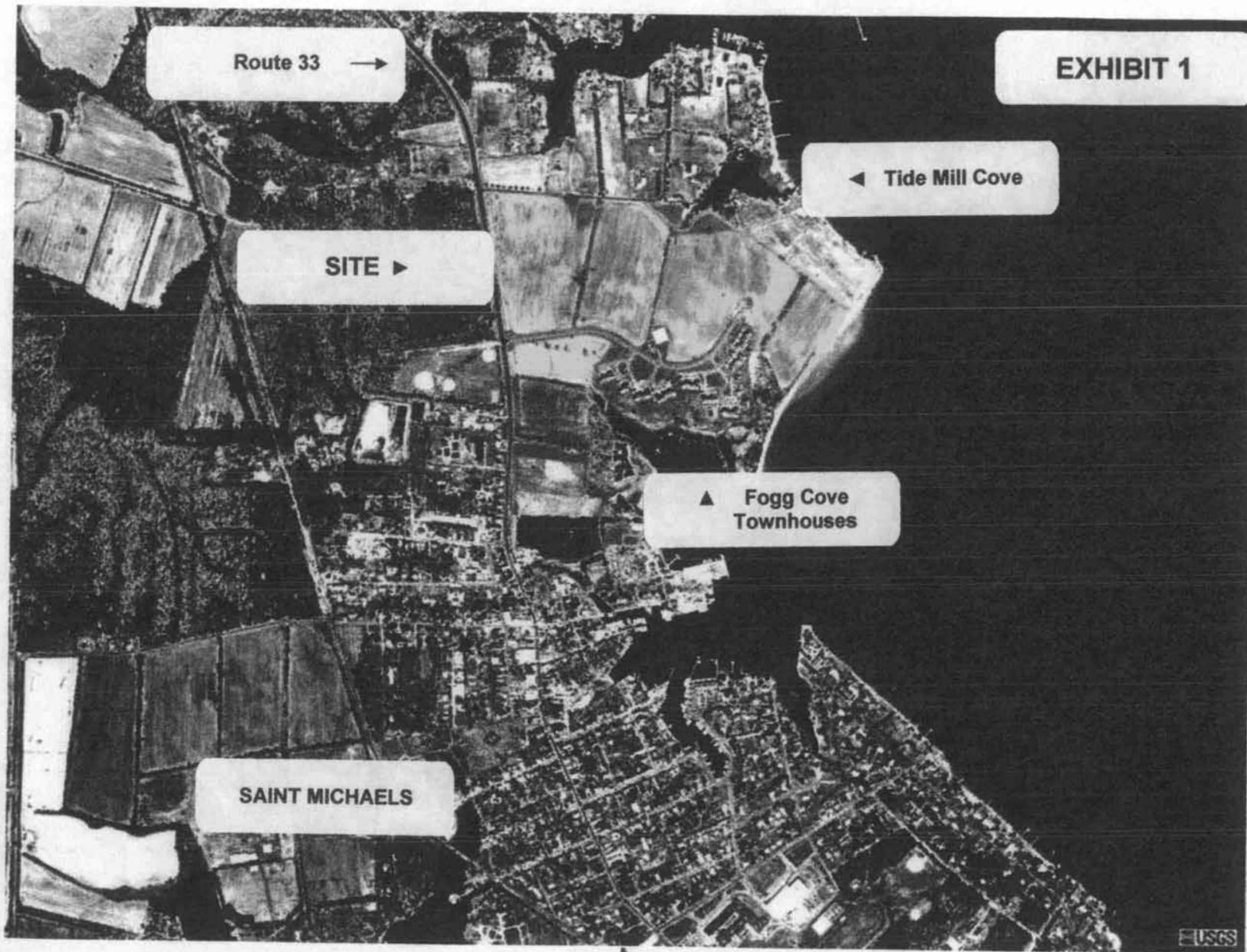
J. Phillip Keller



Deborah E. Keller

Saint Michaels Residents
104A West Chestnut St.

Enclosure (Exhibits 1-4)
7 Copies provided



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Maryland Department of Assessments and Taxation
TALBOT COUNTY
 Real Property Data Search

Account Identifier: District - 02 Account Number - 080079

Owner Information

Owner Name: NORTH, JOHN C II
 NORTH, ETHEL T
Use: RESIDENTIAL
Principal Residence: NO
Mailing Address: PO BOX 479
 EASTON MD 21601
Deed Reference: 1) / 1051/ 885
 2)

Location & Structure Information

Premises Address: WATERFRONT
Legal Description: 2.45 AC
 MILES RIVER YACHT CLUB R

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No: Plat Ref:
23	15	31						81	

Special Tax Areas	Town Ad Valorem Tax Class	Primary Structure Built	Enclosed Area	Property Land Area	County Use
		1930	2,157 SF	2.45 AC	
Stories	Basement			Type	Exterior
1 1/2	NO			STANDARD UNIT	WOOD SHINGLE

Value Information

	Base Value	Value As Of 01/01/2002	Phase-in Assessments	
			As Of 07/01/2003	As Of 07/01/2004
Land:	314,750	412,250		
Improvements:	153,350	225,380		
Total:	468,100	637,630	581,120	637,630
Preferential Land:	0	0	0	0

Transfer Information

Seller: NORTH, JOHN C II
Type: NOT ARMS-LENGTH
Date: 03/05/2002
Deed1: / 1051/ 885
Price: \$0
Deed2:
Seller: NORTH, JOHN C. AND MARY L.
Type: MULT ACCTS ARMS-LENGTH
Date: 12/03/1982
Deed1: / 569/ 185
Price: \$0
Deed2:
Seller:
Date:
Deed1:
Price:
Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

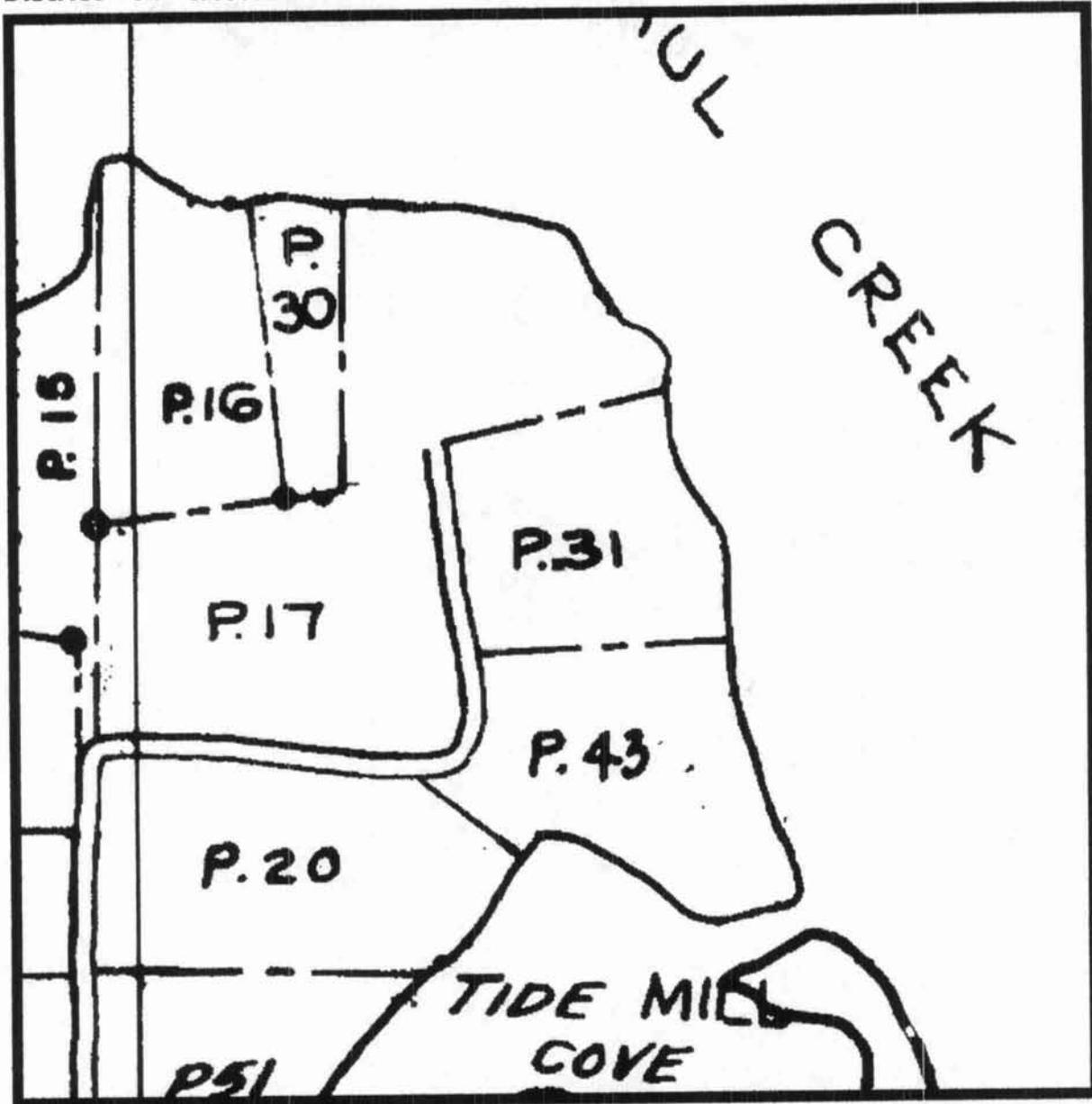
* NONE *



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TALBOT COUNTY
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Account Identifier: District - 02 Account Number - 070898

Owner Information

Owner Name: NORTH, JOHN C II, ETHEL T,
 DAVID J AND DANIEL C NORTH Use: RESIDENTIAL
 Principal Residence: YES
 Mailing Address: PO BOX 479 EASTON MD 21601 Deed Reference: 1) / 643/ 654
 2) / 1051/ 881

Location & Structure Information

Premises Address: 24741 YACHT CLUB ROAD
 Legal Description: 3.438 AC
 NR MILES RIVER YACHT CLU
 NR ST MICHAELS
 WATERFRONT

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No: Plat Ref:
23	15	43						81	

Special Tax Areas	Town Ad Valorem Tax Class	Primary Structure Built	Enclosed Area	Property Land Area	County Use
		1930	2,607 SF	3.43 AC	
Stories	Basement			Type	Exterior
2	YES			STANDARD UNIT	FRAME

Value Information

	Base Value	Value As Of 01/01/2002	Phase-in Assessments	
			As Of 07/01/2003	As Of 07/01/2004
Land:	275,720	398,400		
Improvements:	253,110	385,780		
Total:	528,830	784,180	699,062	784,180
Preferential Land:	0	0	0	0

Transfer Information

Seller: NORTH, DAVID J AND DANIEL C Date: 11/30/1987 Price: \$20,000
 Type: NOT ARMS-LENGTH Deed1: / 643/ 654 Deed2: / 1051/ 881
 Seller: DANN, WILLIAM J JR AND MABEL M Date: 07/08/1986 Price: \$530,000
 Type: IMPROVED ARMS-LENGTH Deed1: / 616/ 723 Deed2:
 Seller: Date: Price:
 Type: Deed1: Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

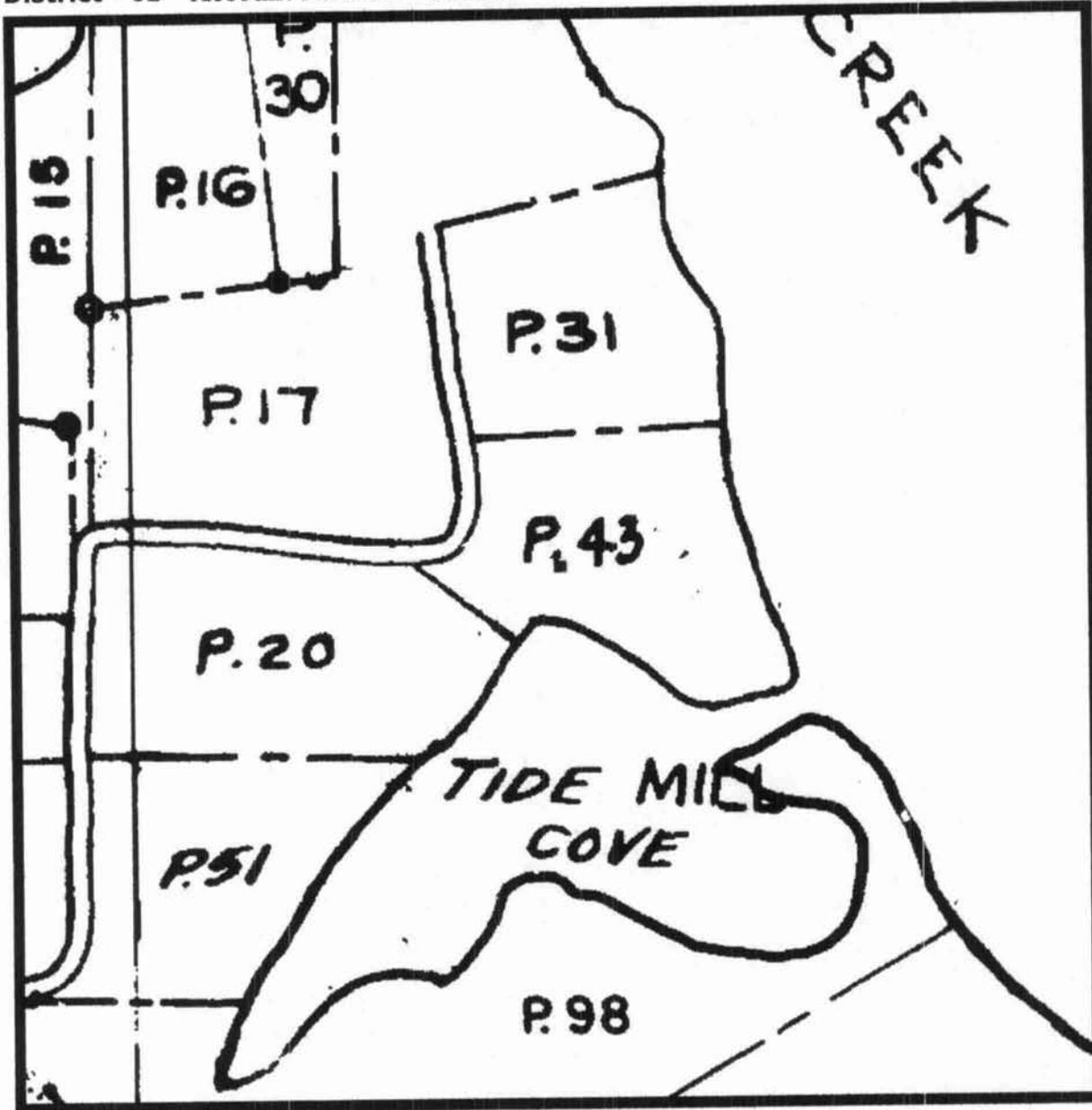
Tax Exempt: NO
 Exempt Class:

Special Tax Recapture:

* NONE *

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District - 02 Account Number - 070898



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Maryland Department of Assessments and Taxation
TALBOT COUNTY
 Real Property Data Search

Account Identifier: District - 02 Account Number - 070901

Owner Information

Owner Name: NORTH, JOHN C II, ETHEL T,
 DAVID J AND DANIEL C NORTH Use: RESIDENTIAL
 Principal Residence: NO
 Mailing Address: PO BOX 479 EASTON MD 21601 Deed Reference: 1) / 643/ 654
 2) / 1051/ 881

Location & Structure Information

Premises Address: WATERFRONT Legal Description: 3 AC
 MILES RIVER YACHT CLUB R
 PLAT 15/98

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
23	15	20						81	Plat Ref:

Special Tax Areas: Town Ad Valorem Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		3.00 AC	Exterior
Stories	Basement	Type	

Value Information

	Base Value	Phase-in Assessments		
		Value As Of 01/01/2002	Value As Of 07/01/2003	Value As Of 07/01/2004
Land:	178,000	224,000		
Improvements:	0	0		
Total:	178,000	224,000	208,666	224,000
Preferential Land:	0	0	0	0

Transfer Information

Seller: NORTH, DAVID J AND DANIEL C Date: 11/30/1987 Price: \$20,000
 Type: NOT ARMS-LENGTH Deed1: / 643/ 654 Deed2: / 1051/ 881
 Seller: DANN, WILLIAM J JR AND MABEL M Date: 07/08/1986 Price: \$530,000
 Type: IMPROVED ARMS-LENGTH Deed1: / 616/ 723 Deed2:
 Seller: Date: Price:
 Type: Deed1: Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

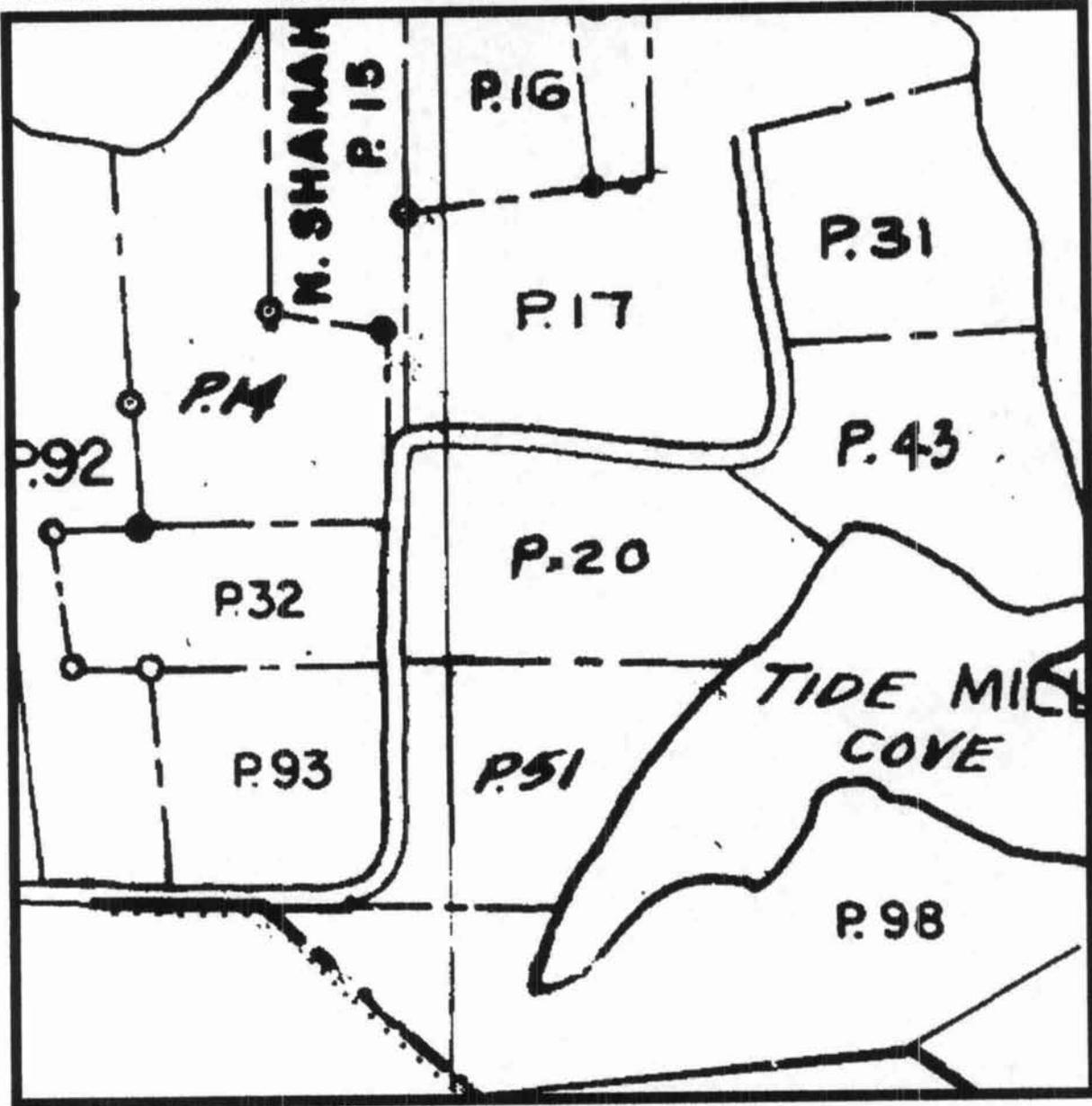
Tax Exempt: NO
 Exempt Class:

Special Tax Recapture:

* NONE *

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District - 02 Account Number - 070901



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Account Identifier: District - 02 Account Number - 086468

Owner Information

Owner Name: JONES, PHILLIP H. AND ELIZABETH D. **Use:** RESIDENTIAL
Principal Residence: YES
Mailing Address: 9005 ST. MICHAELS RD. **Deed Reference:** 1) / 936/ 525
 ST. MICHAELS MD 21663 2)

Location & Structure Information

Premises Address							Legal Description			
9005 ST MICHAELS ROAD ST MICHAELS							7.009 AC RT 33 NR ST MICHAELS			
WATERFRONT										
Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No: Plat Ref:	
23	14	13						81		
Special Tax Areas			Town Ad Valorem Tax Class		Property Land Area		County Use			
Primary Structure Built			Enclosed Area		7.00 AC					
1948			1,784 SF							
Stories	Basement		Type			Exterior				
1	NO		STANDARD UNIT			FRAME				

Value Information

	Base Value	Phase-in Assessments		
		Value As Of 01/01/2002	As Of 07/01/2003	As Of 07/01/2004
Land:	205,000	260,000		
Improvements:	65,420	111,010		
Total:	270,420	371,010	337,480	371,010
Preferential Land:	0	0	0	0

Transfer Information

Seller: WRIGHT, MARY R TRUSTEE OF REIDUARY **Date:** 07/12/1999 **Price:** \$362,000
Type: IMPROVED ARMS-LENGTH **Deed1:** / 936/ 525 **Deed2:**
Seller: WRIGHT, ERNEST C. AND MARY R. T/C **Date:** 05/28/1997 **Price:** \$0
Type: NOT ARMS-LENGTH **Deed1:** / 857/ 580 **Deed2:**
Seller: **Date:** **Price:**
Type: **Deed1:** **Deed2:**

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

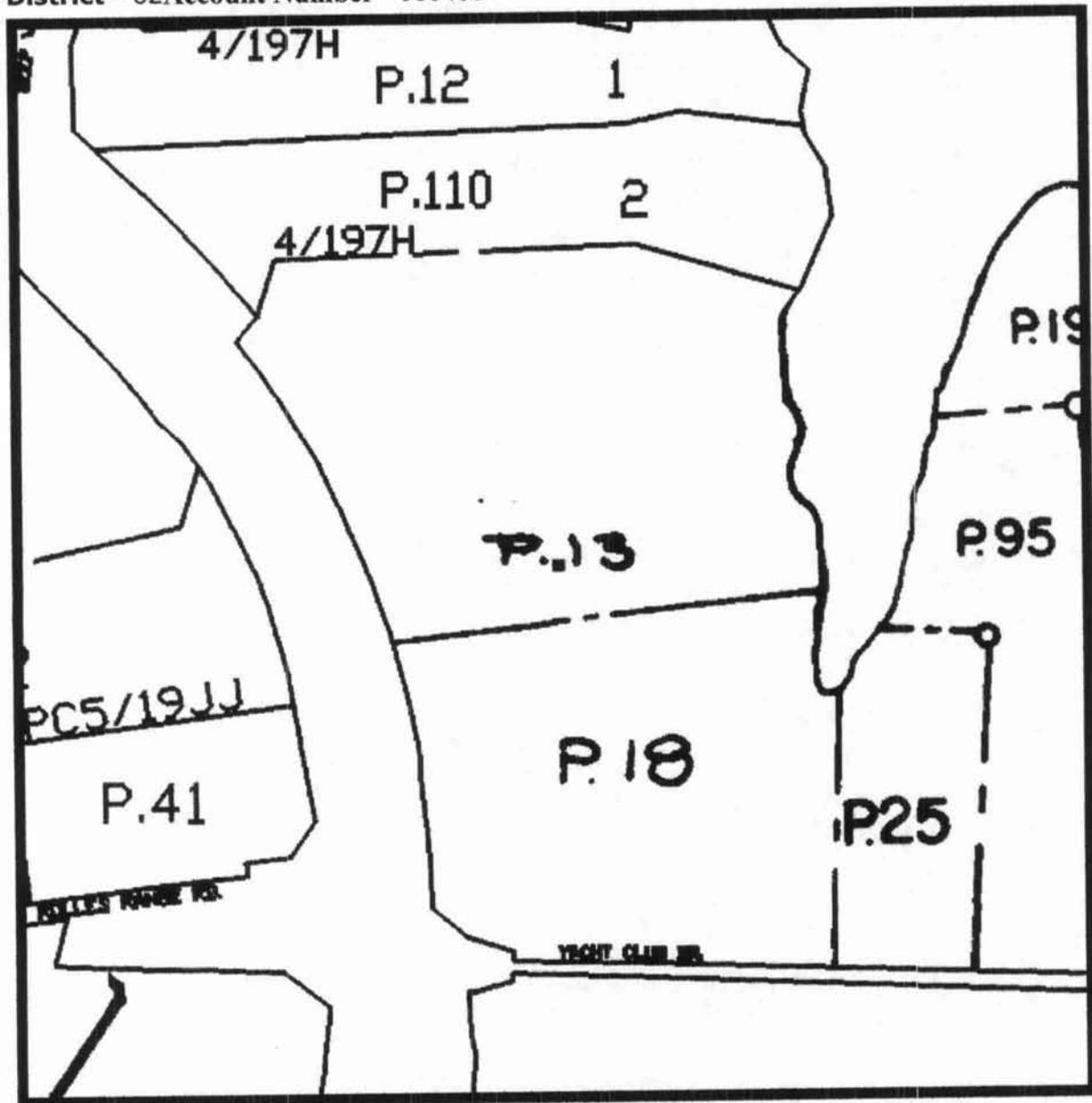
Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

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District - 02 Account Number - 086468



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Maryland Department of Assessments and Taxation
TALBOT COUNTY
 Real Property Data Search

Account Identifier: District - 02 Account Number - 085313

Owner Information

Owner Name: UENO, RYUJI AND SACHIKO, KUNO
Use: RESIDENTIAL
Principal Residence: NO
Mailing Address: 4733 BETHESDA AVE STE 348 BETHESDA MD 20814-5296
Deed Reference: 1) / 922/ 575
 2)

Location & Structure Information

Premises Address: 24687 YACHT CLUB ROAD
Legal Description: LOT 3 AC YACHT CLUB RD

WATERFRONT

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No: Plat Ref:
23	15	51						81	

Special Tax Areas	Town Ad Valorem Tax Class
Primary Structure Built 1900	Enclosed Area 2,613 SF

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1900	2,613 SF	3.00 AC	
Stories	Basement	Type	Exterior
2	NO	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2002	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	193,000	244,000		
Improvements:	133,010	213,680		
Total:	326,010	457,680	413,790	457,680
Preferential Land:	0	0	0	0

Transfer Information

Seller: BULL, STEPHEN B. **Date:** 03/12/1999 **Price:** \$525,000
Type: IMPROVED ARMS-LENGTH **Deed1:** / 922/ 575 **Deed2:**
Seller: BULL, STEPHEN B AND JEANNE F **Date:** 02/18/1999 **Price:** \$0
Type: NOT ARMS-LENGTH **Deed1:** / 920/ 60 **Deed2:**
Seller: TIDE MILL COVE 88 JOINT VENTURE **Date:** 01/31/1989 **Price:** \$345,000
Type: IMPROVED ARMS-LENGTH **Deed1:** / 664/ 839 **Deed2:**

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

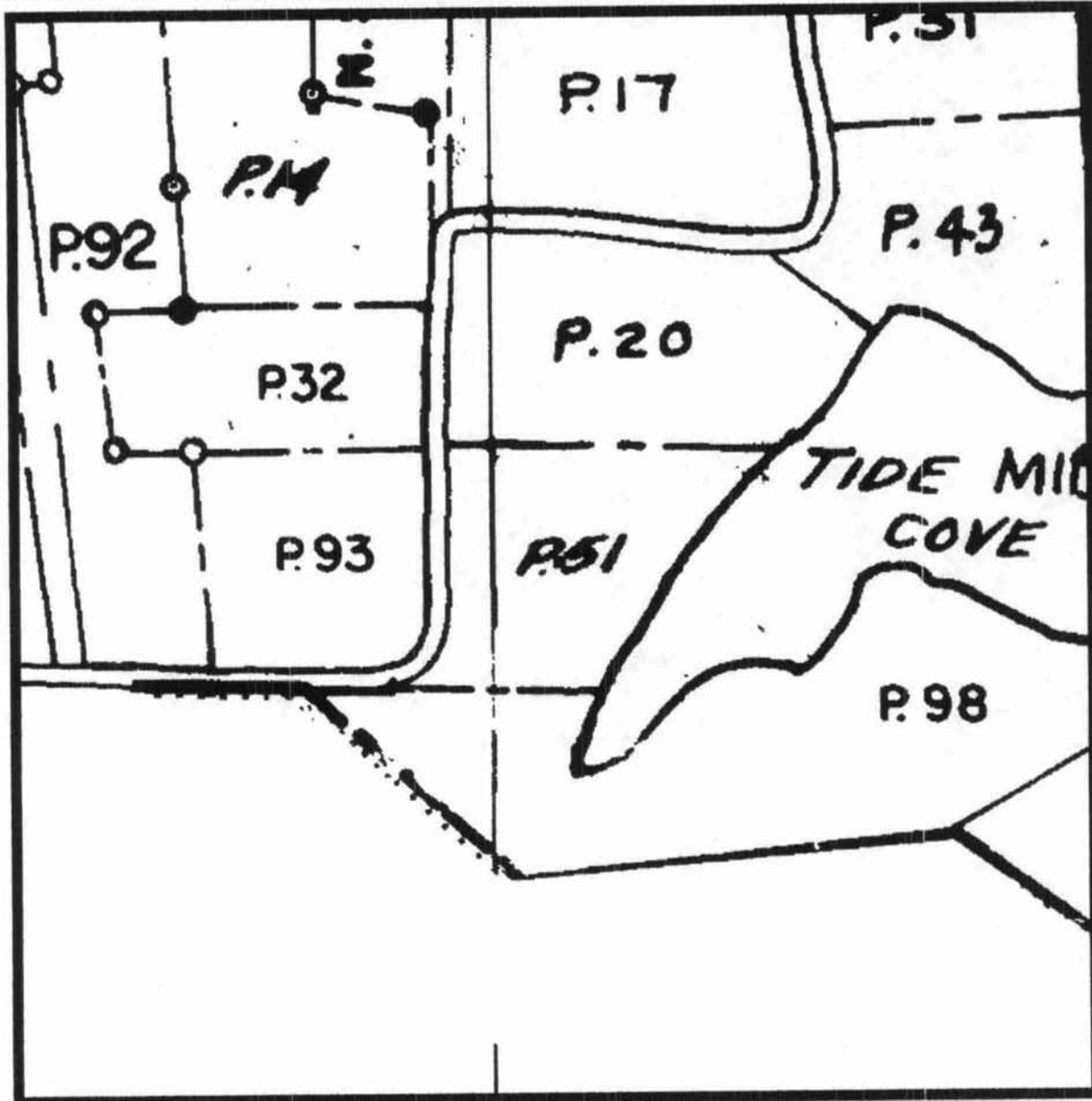
Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

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District - 02 Account Number - 085313



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[Ground Rent](#)



Maryland Department of Assessments and Taxation
TALBOT COUNTY
 Real Property Data Search

Account Identifier: District - 02 Account Number - 080095

Owner Information

Owner Name: FLETCHER, ROBERT D. Use: RESIDENTIAL
 Principal Residence: YES
 Mailing Address: 24640 YACHT CLUB RD Deed Reference: 1) / 806/ 437
 SAINT MICHAELS MD 21663-2165 2)

Location & Structure Information

Premises Address: 24640 YACHT CLUB ROAD
 ST. MICHAELS 21663
 Legal Description: 3.10 AC
 N/S YACHT CLUB RD
 NR ST MICHAELS

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
23	14	19						81	Plat Ref:

Special Tax Areas	Town Ad Valorem Tax Class
Primary Structure Built 1910	Enclosed Area 2,368 SF

Property Land Area	County Use
3.10 AC	

Stories	Basement	Type	Exterior
2	NO	STANDARD UNIT	WOOD SHINGLE

Value Information

	Base Value	Value As Of 01/01/2002	Phase-in Assessments	
			As Of 07/01/2003	As Of 07/01/2004
Land:	305,500	396,750		
Improvements:	117,630	260,410		
Total:	423,130	657,160	579,150	657,160
Preferential Land:	0	0	0	0

Transfer Information

Seller: NOVAK, CHARLES F. Date: 07/06/1995 Price: \$340,000
 Type: IMPROVED ARMS-LENGTH Deed1: / 806/ 437 Deed2:
 Seller: Date: Price:
 Type: Deed1: Deed2:
 Seller: Date: Price:
 Type: Deed1: Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
 Exempt Class:

Special Tax Recapture:

* NONE *

	Maryland Department of Assessments and Taxation TALBOT COUNTY Real Property Data Search	Go Back View Map New Search
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District - 02 Account Number - 080095



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 Maryland Department of Assessments and Taxation TALBOT COUNTY Real Property Data Search	Go Back View Map New Search Ground Rent
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Account Identifier: District - 02 **Account Number - 107139**

Owner Information

Owner Name:	WOLFE, JOHN R & MARY G	Use:	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	246 PERRY CABIN DR ST MICHAELS MD 21663-2116	Deed Reference:	1) / 1159/ 859 2)

Location & Structure Information

Premises Address 246 PERRY CABIN DRIVE ST MICHAELS 21663	Legal Description BLDG 4; UNITS 12, 13 PERRY CABIN ST MICHAELS PLAT 61/28
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Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
200	21	2168					12	81	Plat Ref:

Special Tax Areas	Town Ad Valorem Tax Class	ST. MICHAELS
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Primary Structure Built	Enclosed Area	Property Land Area	County Use
1984	3,610 SF	4,563.00 SF	
Stories	Basement	Type	Exterior
2	NO	END UNIT	BRICK

Value Information

	Base Value	Value			Phase-in Assessments		
		As Of 01/01/2002	As Of 07/01/2003	As Of 07/01/2004	As Of 01/01/2002	As Of 07/01/2003	As Of 07/01/2004
Land:	154,250	250,000					
Improvements:	361,830	586,440					
Total:	516,080	836,440	729,652	836,440			
Preferential Land:	0	0	0	0	0	0	

Transfer Information

Seller: WOLFE, MARY G.	Date: 06/17/2003	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: / 1159/ 859	Deed2:
Seller: CONAWAY, NORMA LEE	Date: 12/31/1997	Price: \$320,000
Type: IMPROVED ARMS-LENGTH	Deed1: / 875/ 559	Deed2:
Seller: CONAWAY PROCESSING EQUIPMENT CO	Date: 09/08/1994	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: / 786/ 441	Deed2:

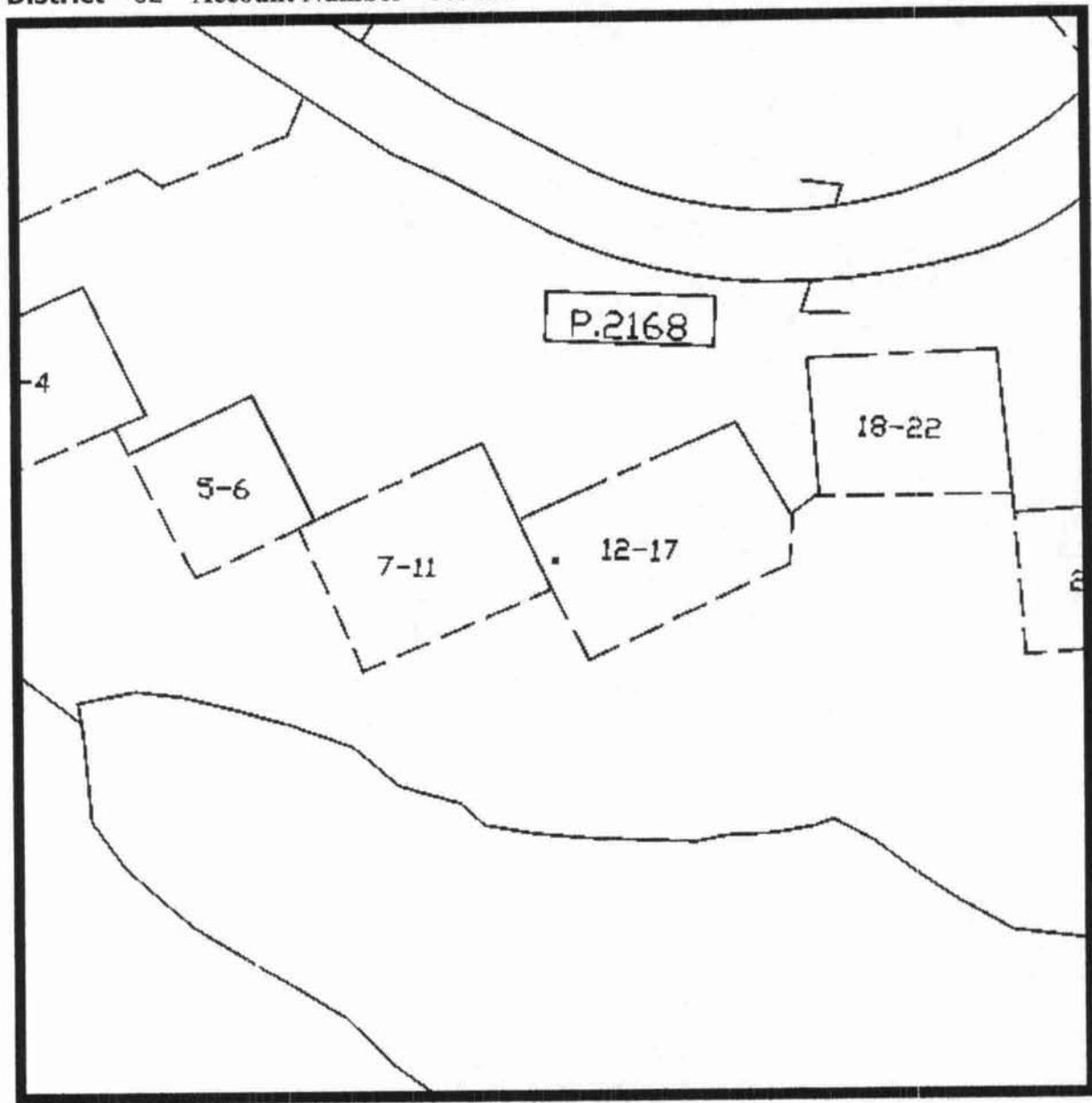
Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO **Special Tax Recapture:**
Exempt Class: * NONE *

	Maryland Department of Assessments and Taxation TALBOT COUNTY Real Property Data Search	Go Back View Map New Search
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District - 02 Account Number - 107139



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 <div style="display: inline-block; vertical-align: middle; margin-left: 10px;"> <p>Maryland Department of Assessments and Taxation TALBOT COUNTY Real Property Data Search</p> </div>	Go Back View Map New Search Ground Rent
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Account Identifier: District - 02 Account Number - 107155

Owner Information

Owner Name:	BEDFORD, ANN L. TRUSTEE	Use:	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	300 PERRY CABIN DRIVE ST MICHAELS MD 21663	Deed Reference:	1) / 794/ 164 2)

Location & Structure Information

Premises Address	Legal Description
300 PERRY CABIN DRIVE	BUILDING 5 UNIT 18 PERRY CABIN ST MICHAELS PLAT 61/68

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
200	21	2168					18	81	Plat Ref:

Special Tax Areas	Town Ad Valorem Tax Class	ST. MICHAELS
Primary Structure Built	Enclosed Area	Property Land Area
1984	2,748 SF	6,201.00 SF
County Use	Stories	Basement
	2	NO
	Type	Exterior
	END UNIT	BRICK

Value Information

	Base Value	Value As Of 01/01/2002	Phase-in Assessments	
			As Of 07/01/2003	As Of 07/01/2004
Land:	120,000	160,000		
Improvements:	281,910	472,400		
Total:	401,910	632,400	555,570	632,400
Preferential Land:	0	0	0	0

Transfer Information

Seller: BEDFORD, BRUCE P.	Date: 12/30/1994	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: / 794/ 164	Deed2:
Seller: BEDFORD, BRUCE P AND ANN L	Date: 12/30/1994	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: / 794/ 160	Deed2:
Seller: MILES RIVER HOMES INC	Date: 12/05/1986	Price: \$262,000
Type: IMPROVED ARMS-LENGTH	Deed1: / 624/ 781	Deed2: / 678/ 819

Exemption Information

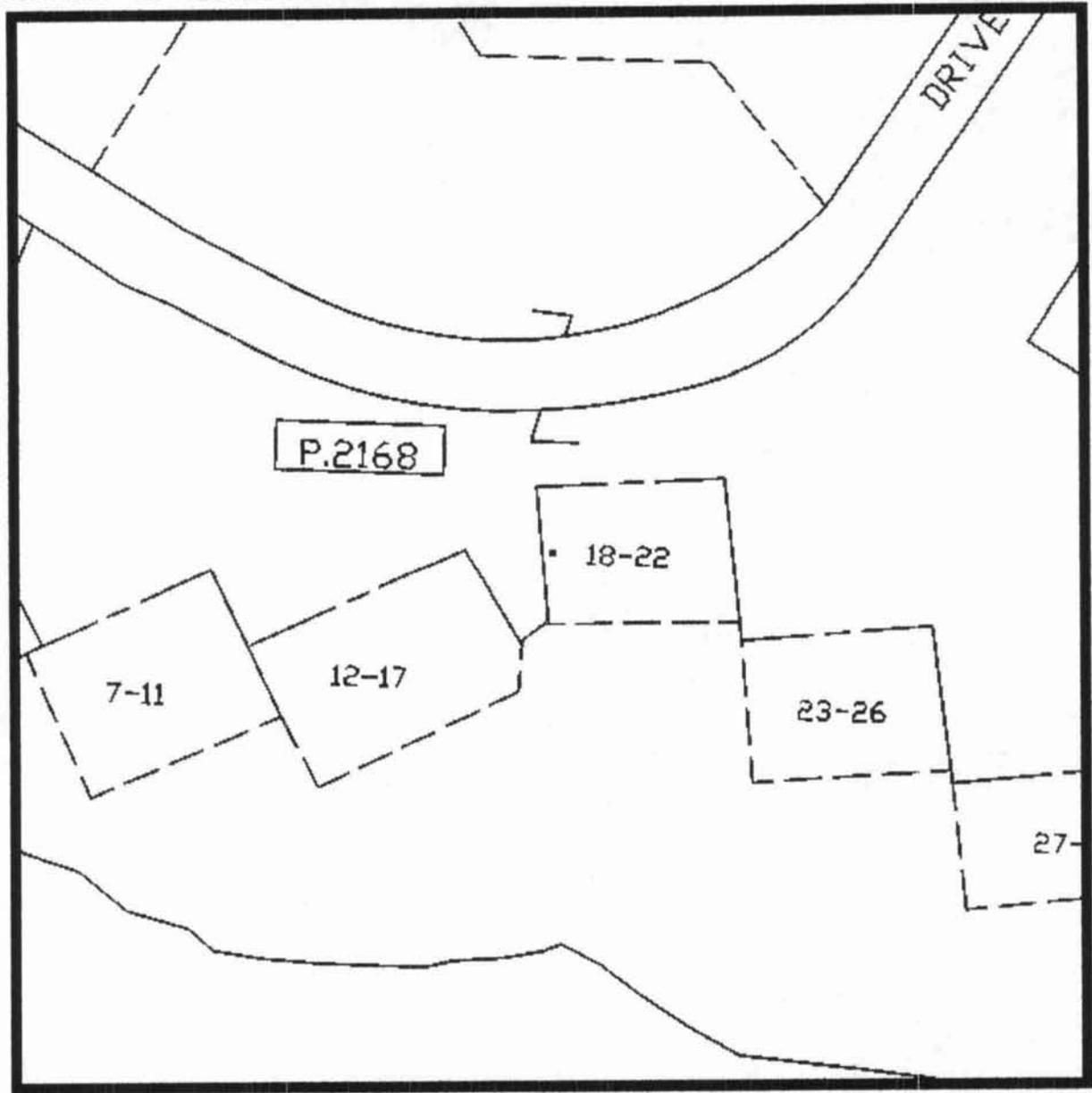
Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO **Special Tax Recapture:**

Exempt Class: * NONE *

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District - 02 Account Number - 107155



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 Maryland Department of Assessments and Taxation TALBOT COUNTY Real Property Data Search	Go Back View Map New Search Ground Rent
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Account Identifier: District - 02 **Account Number - 107252**

Owner Information

Owner Name:	DOYLE, EDWARD J, JR AND ELLEN JEAN	Use:	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	316 PERRY CABIN DR ST. MICHAELS MD 21663	Deed Reference:	1) / 838/ 208 2)

Location & Structure Information

Premises Address 316 PERRY CABIN DRIVE	Legal Description BUILDING 6 UNIT 26 PERRY CABIN ST MICHAELS PLAT 61/28
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	WATERFRONT								
Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
200	21	2168					26	81	

Special Tax Areas	Town Ad Valorem Tax Class ST. MICHAELS
--------------------------	--

Primary Structure Built 1984	Enclosed Area 3,024 SF	Property Land Area 6,201.00 SF	County Use
Stories 2	Basement NO	Type END UNIT	Exterior BRICK

Value Information

	Base Value	Value As Of 01/01/2002	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	120,000	160,000		
Improvements:	301,180	504,710		
Total:	421,180	664,710	583,532	664,710
Preferential Land:	0	0	0	0

Transfer Information

Seller: WORSHAM, BRANCH A AND NANCY M	Date: 09/11/1996	Price: \$429,000
Type: IMPROVED ARMS-LENGTH	Deed1: / 838/ 208	Deed2:
Seller: WALLACE, MAURICE F AND CONSTANCE I	Date: 04/25/1988	Price: \$365,000
Type: IMPROVED ARMS-LENGTH	Deed1: / 649/ 967	Deed2:
Seller: MACARTNEY, JOHN T AND JANE H	Date: 01/14/1988	Price: \$300,000
Type: IMPROVED ARMS-LENGTH	Deed1: / 645/ 494	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

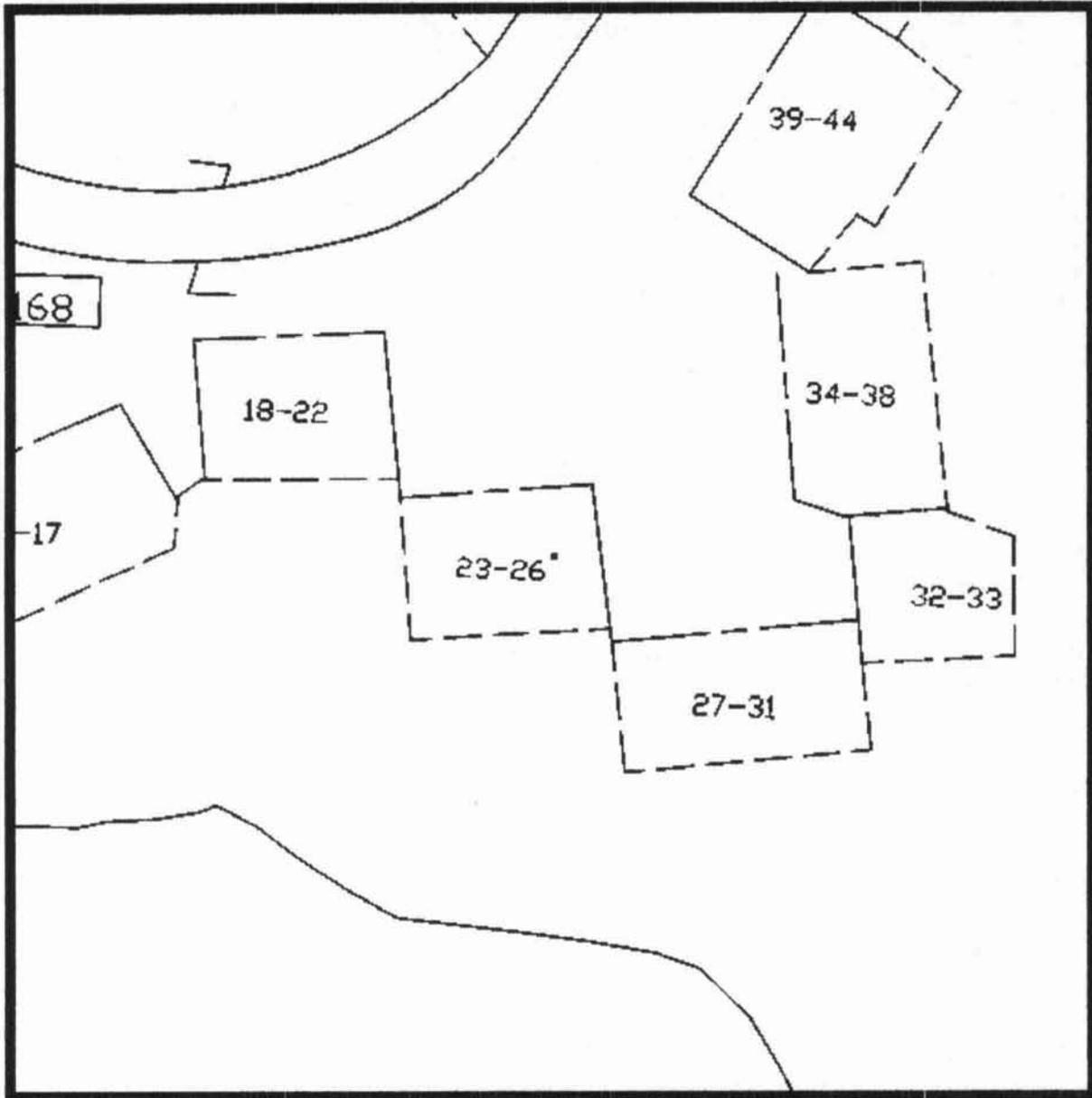
Tax Exempt: NO	Special Tax Recapture:
Exempt Class:	* NONE *



Maryland Department of Assessments and Taxation
TALBOT COUNTY
Real Property Data Search

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District - 02 Account Number - 107252



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Jones Residence ►

Fletcher Residence ▼

SITE ►

◄ North Residences

◄ Ueno & Sachiko House

▲ Wolfe, Bedford
and Doyle Townhomes



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Show Grid Lines

Change to Landscape

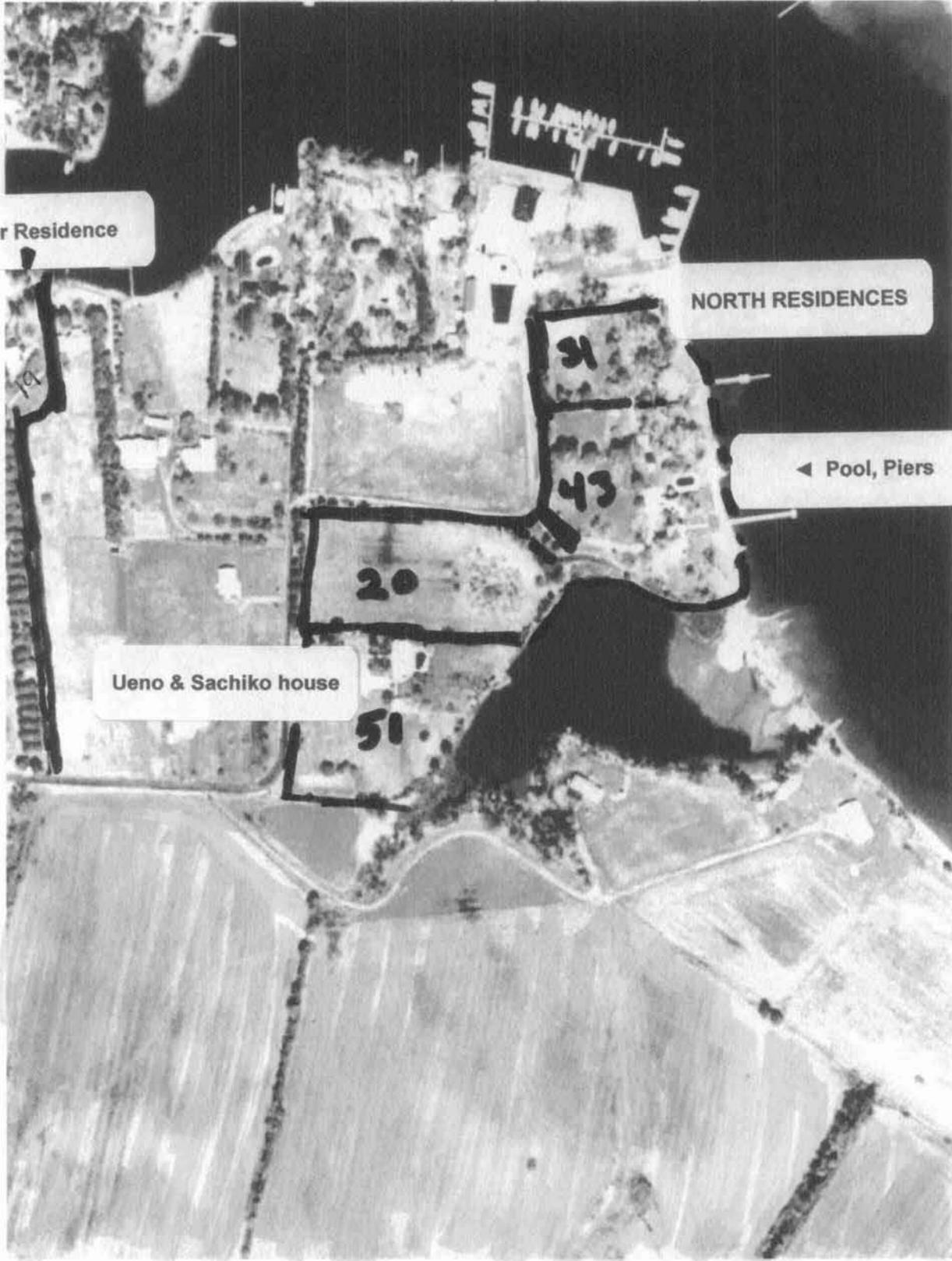
USGS 2 km N of St. Michaels, Maryland, United States 08 Apr 1994

Fletcher Residence

NORTH RESIDENCES

Pool, Piers

Ueno & Sachiko house



0 100M

0 100yd

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