TALBOT COUNTY VS. DEPARTMENT OF NATURAL RESOURCES/CRITICAL AREA COMMISSION ON June 11, 2004 Case No. 20-C-04-005095 (Court of Special Appeals)

MSA_S_1831_23

9/13/04

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

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

FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

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

BY: TALBOT COUNTY, Plaintiff

You are hereby requested, pursuant to the Maryland Rules to produce the following documents at the offices of Allen, Karpinski, Bryant & Karp, Suite 1540, 100 East Pratt Street, Baltimore, Maryland, within 30 days of service of this Request for Production of Documents upon you.

INSTRUCTIONS AND DEFINITIONS

A. This Request for Production of Documents covers all documents which are in the possession, control or custody of you or your employees, agents, servants and attorneys, unless privileged.

B. If you do not supply documents in response to a Request for Production herein, give the reason that the documents will not be supplied. If your reason relates to unavailability of records, in your response relate what efforts you have made to locate the documents requested. If you refuse to respond to any request, indicate the factual and legal basis for your refusal.

C. If anything is deleted or redacted from a document produced in response to this Request for Production, state the reasons for the deletion or redaction and the subject matter thereof.

D. If any document is withheld under a claim of privilege, furnish a list identifying each document for which the privilege is claimed including the date, author, recipient or recipients of copies, subject matter and the name and address of the custodian of the document and/or any copies thereof. Also state the basis upon which the privilege is claimed.

E. This Request for Production of Documents is continuing in nature and any responsive documents which are discovered or located after the date of Defendant's response shall be immediately produced.

F. For purposes of this Request for production of Documents, the word "document" refers to the complete original and each non-identical copy (whether different from the original because of notes on the copy or otherwise) of any writing or record, including but not limited to a book, pamphlet, binder, periodical, letter, memorandum, telegram, report, interoffice or intra-office communication, handwritten or other note, working paper, transcription, draft, application, permit, engineering plan, chart, paper, survey, index, tape, disc, photograph, data sheet, data processing card, computer printout, microfilm, microfiche, or any other written, typed, printed, graphic, record or transcribed matter.

G. The term "subject matter of the instant law suit" refers to Local Bill 933 as a local program amendment to Talbot County's Critical Area Program, the investigation, consideration, and decision with respect to Local Bill 933 and Plaintiff's application, the process by which Defendant and any of its representatives investigated, considered, and decided on any issues with respect to Local

Bill 933 and Plaintiff's application, and the facts, circumstances, and circumstances set forth in the Complaint and the Amended Complaint.

H. If a privilege is asserted with respect to any document, please prepare and submit a "privilege log" setting forth the material referred to in Maryland Discovery Guideline 9c.

Request No. 1. All statements which were previously made by the Defendant or any of its present or former Commissioners, officers, agents or employees concerning or in any way relating to the facts, circumstances, and subject matter of the instant law suit.

Request No. 2. All documents, including but not limited to correspondence, notes, reports, synopses, memoranda, journal entries and electronic mail, which relate describe, refer to, summarize or memorialize in anyway any communication, investigation, decision, or activity concerning the subject matter of the instant lawsuit . Your response should include, but not be limited to, documents sent to, received from, reviewed by, or involving:

(a) Critical Area Commission, including any of its Commissioners, employees, or representatives;

(b) Talbot County, including the Talbot County Attorney or any agent, representative or employee of the County Attorney, any member of the Talbot County Council, and any Talbot County employee, agents, or representatives;

(c) Town of St. Michaels, including Town Commission Members and any other Town employees, agents, or representatives, including attorneys, unless privileged;

(d) Town of Oxford, including the Town Commission Members and any other Town employees, agents, or representatives, including attorneys, unless privileged;

(e) Town of Denton, including the Town Commission Members and any other Town

employees, agents, or representatives, including attorneys, unless privileged;

(f) Town of Trappe, including the Town Commission Members and any other Town employees, agents, or representatives, including attorneys, unless privileged;

(g) Any other City or Town, including the Mayor and/or City Council Members and any other City or Town employees, agents, or representatives.

Request No. 3. All handbooks, manuals, rules, regulations, and memoranda relating to policies and practices of the Department of Natural Resources or any other governmental unit in conducting, monitoring and/or regulating the activities of the Chesapeake Bay Critical Area Commission.

Request No. 4. All handbooks, manuals, rules, regulations, and memoranda relating to policies and practices of the Chesapeake Bay Critical Area Commission concerning review, analysis, voting, approval or disapproval of proposed local program amendments to Critical Area Programs.

Request No. 5: Copies of all documents (including but not limited to statutes, regulations, or legislative materials) used by or on behalf of the Chesapeake Bay Critical Area Commission or any of its members, employees, or representatives, to review, analyze, vote on, approve or deny the proposed local program amendment(s) at issue in this case.

Request No. 6. All minutes, including video or audio tapes, of any private or public meetings or hearings concerning the subject matter of the instant law suit.

Request No. 7. All documents (including but not limited to correspondence, notes, memoranda, synopses, reports, journal entries, minutes, video or audio tape, and and electronic mail) which the Chesapeake Bay Critical Area Commission or any of its members, employees, or representatives reviewed, considered, or relied upon in the process of considering, or to make the

decision to disapprove Bill 933 as a local program amendment to Talbot County's Critical Area Program.

Request No. 8. All minutes of all meetings of the Critical Area Commission including but not limited to all committees and subcommittees thereof, whether in open session or executive session, held at any time after February 4, 2004, to the present for the purposes of considering Bill 933 as a proposed local program amendment.

Request No. 9. Copies of all documents submitted to the Critical Area Commission from February 4, 2004, to date by the Plaintiff, any agent or employee of the Town of Oxford, any agent or employee of the Town of St. Michaels, and anyone else, with respect to the subject matter of the instant law suit.

Request No. 10. Please produce copies of any and all program amendment proposals submitted by any County, municipality, or other governmental entity or organization, that the Critical Area Commission, or any member thereof, reviewed, considered, approved or denied, in connection with the subject matter of the instant law suit.

Request No. 11. Please produce copies of any agendas of any and all meetings of the Critical Area Commission and any of its subcommittees from February 2004 to date, concerning the subject matter of the instant law suit.

Request No. 12. Any and all documents listing all persons present at the meeting of the Critical Area Commission, held on May 5, 2004, including but not limited to, all members of the Critical Area Commission, the recorder of minutes, any/all staff, and members of the public.

Request No. 13. All documents upon which you rely for any contention that Defendant's investigation, consideration, and denial of Plaintiff's application for approval of Local Bill 933 as a

local program amendment was timely.

Request No. 14. To the extent not produced in response to any of the preceding Request for Production of Documents, the entirety of each and every file maintained by or on behalf of The Department of Natural Resources, the Critical Area Commission, or any other governmental unit as to which you have custody or control, pertaining or relating in any way to Plaintiff's application for Local Bill 933 as a local program amendment to Talbot County's Critical Area Program, and the consideration thereof.

? does this encompass MPIA file ??

ALLEN, KARPINSKI, BRYANT
& KARP

BY: _____

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Attorneys for Plaintiff

Critical Area Commission

Orig

PANEL REPORT
May 5, 2004

APPLICANT: Talbot County

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

COMMISSION ACTION: Vote

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

PANEL RECOMMENDATION: Pending Panel Discussion

STAFF: Ren Serey

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

DISCUSSION:

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

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

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

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

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

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

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

- The original awards of growth allocation to the towns have "no continued validity for any planning and zoning purpose;"

- The original awards are "inconsistent with current principles of proper planning and the land use goals and policies in the existing and draft Talbot County Comprehensive Plans;" and

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

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

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

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

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

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

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

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

- The applicable sections of the Critical Area Law and Criteria governing growth allocation.

- The effect of Bill 933 on other approved Critical Area Programs, program amendments, or program refinements.

- The interpretation of the growth allocation provisions of COMAR 27.01.02.06.A, particularly the provision that states, "When planning future expansion of intensely

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

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

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

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

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

1. To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

2. To conserve fish, wildlife, and plant habitat; and

3. To establish land use policies for development in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

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

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

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

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

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

Talbot minutes

Panel Meeting – Conference Room B, People's Resource Center, 100 Community Place, Crownsville, Maryland

Panel Members:
David Blazer, Chairman
Joe Jackson
Bill Giese
Ed Richards
Gary Setzer

4/7/04

Commission counsel: Marianne Mason

Staff:
Ren Serey, Executive Director
Lisa Hoerger, CAC planner
Mary Owens, CAC, Chief of Program Implementation
George Kinney, Talbot County Planning Officer

Bill 922

This bill is in regard to notice to contiguous property owners in regard to site plan reviews. Commission staff had no concerns or comments about this bill.

Bill 926

This bill changes, deletes or adds certain definitions in the County Zoning Ordinance. Added definition for specimen tree, forest preservation plan, normal maintenance, marsh creation, mitigation, natural vegetation (relative to clearing in and outside of Buffer), and disturbance. Deletes definition of tree in accordance with sanction letter sent by CAC. Several questions/comments directed at County staff including: When the term "substantial alteration" comes into play? (George Kinney to look into it.); definition of dwelling unit will need to be changed in accordance with the 2004 bill; clarify that Buffer is landward of MHW of tidal waters, tributary streams and the edge tidal wetlands.

Bill 927

This bill amends the land use table in ıding uses in the RCA. Some are new, some have been changed. Staff concerned about parks ..ıd playgrounds and possible intense uses, staff suggest that the allowance of parks and playgrounds be limited to passive recreation. Land application of sludge not permitted within 200 feet of tidal waters and tributary streams. While acknowledging that this is stronger than the criteria, staff suggests that it include tidal wetlands as well.

Bill 929

Amends Zoning Ordinance, Article 11. Adds requirement for forest preservation plan when clearing is proposed in Critical Area and Buffer. The plan must be approved by Planning

Officer. Adds language on permitted clearing. Staff concerned about re-approval for certain activities, e.g., removal of invasives. How long is the approval good for? Staff suggestion to limit approvals to a certain period of time. Entirely new section on Buffer Exemption Areas is generally consistent with the Commission's policies. Maps are not yet approved at the local level. Staff concerned about the unlimited size of new accessory structures in BEAs (George Kinney indicated there was unlimited size, but they are permitted no closer to the water than the existing structure.) Also concerned about lack of mitigation when a structure is placed on top of existing impervious. George Kinney did not think any mitigation would be required in those instances. Staff explained intent behind BEA policy in always providing some mitigation.

Bill 931

Amends Article 12 of Zoning Ordinance relevant to site plan review process. It generally cleans up the language. References to Buffer made consistent with sanction letter, provides provisions for customary maintenance of lawn. It also inserts requirement for Buffer establishment when agricultural uses are changed to development. Inserts language for protection of HPAs and references guidance for protection of FIDs. In regard to afforestation requirements, the program does not require afforestation on properties less than seven acres in size. This is inconsistent with criteria and what all other jurisdictions do. Commission staff has raised this issue on numerous occasions. George Kinney will take the issue back to the Council. Also, there is an inconsistency between the criteria and the County Program in regard to mitigation for clearing between 20 and 30% of a site. Mitigation is supposed to occur at a 1.5 to 1 ratio for the entire area cleared.

Bill 932

This bill adds a new section in regard to the County's growth allocation process.

The above bills together make up the County's comprehensive review. Also required are habitat protection area maps and accounting of growth allocation. The County is working with DNR to update their maps. The growth allocation accounting is consistent with Commission's records except for Cooke's Hope project. The Commission has not approved Cooke's Hope growth allocation yet.

Panel requests that staff put together a staff report or letter with these potential conditions of approval outlined. Panels most significant concerns are in regard to Bill 931 where County Program is inconsistent with criteria.

Bill 933

Each member of the Talbot County panel received a copy of all public comments submitted prior to the close of the record (5:00 pm on April 5, 2004). They also received information (i.e., copies of relevant pages of their respective Critical Area programs or ordinances) on the growth allocation processes of the Towns of Easton, Oxford and St. Michaels. David Blazer, chairman of the panel, received maps associated with Talbot County's Comprehensive Plan. Some were the official, adopted maps, while one was a draft map.

Lisa Hoerger, Commission planner, summarized Bill 933. The Bill amends and deletes certain sections of the County's zoning ordinance pertaining to growth allocation. The County originally gave specific acreage amounts to the Towns within the County. This bill takes back the acreage originally granted and amends the ordinance to require a joint review process for growth allocation requests within the municipalities.

At approximately 10:00 am in Conference Room B of the People's Resource Center at 100 Community Place, Crownsville, Maryland, David Blazer, chairman of the panel, calls for a closed session under the authority of State Government Article 10-508(a)(7), to consult with counsel to obtain legal advice.

Joe Jackson made a motion to close the session to consult with counsel. The chair called for a vote.
Ed Richards – aye
Bill Giese - aye
Gary Setzer - aye
Joe Jackson- aye
David Blazer, chair – aye

Members of the public asked if the session would be opened again for further deliberations and the chair indicated that it was likely that the session would not be opened again due to time constraints but that further open deliberations would occur at the Commission's offices at 9:30 am on April 19, 2004. Members of the public left the room.

The following people were present during the closed session:

Panel members: David Blazer, Ed Richards, Joe Jackson, Bill Giese and Gary Setzer
Commission counsel: Marianne Mason, Assistant Attorney General
Commission Chairman Martin Madden
Commission Staff:
Ren Serey, Executive Director
Mary Owens
Lisa Hoerger
Regina Esslinger
LeeAnne Chandler
Wanda Cole
Shirley Massenburg

Topics of discussion:

1. **To consult with counsel to obtain legal advice on the applicable sections of the Critical Area law and criteria governing the panel's deliberation;**

Discussion: Section 8-1809(j) of the Critical Area Law sets up standards for approval of amendments. Is it approvable? Must be consistent with the three goals of the Critical Area Program as listed in §8-1808(b)(1) through (3) and the Critical Area criteria adopted under §8-1808(e), i.e., COMAR Title 27. Goals of Program are: to minimize adverse

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

2. **To consult with counsel to obtain legal advice on the applicability of other State laws, policies and regulations (including but not limited to Planning and Zoning and Smart Growth) cited by the commenters in the record of the proceedings;**

Discussion: The standards for approval of amendments do not reference to other state laws, policies or programs. The issue has not been litigated. When the Critical Area Law was enacted, planning laws (66B, 25A, 23A) were all on the books. When new laws are enacted, there is a general assumption that they are consistent with existing laws.

3. **To consult with counsel to obtain legal advice about the effect of Bill 933 on any other Critical Area Program, program amendment, or program refinement approved by the Commission;**

Discussion: Look at Bill 933 in terms of the Critical Area Program as a whole (all jurisdictions), its effect on the rest of the Talbot County Program, its effect on any other amendment or refinement approved by the Commission. List of other Counties' processes for working with municipalities on growth allocation was provided.

4. **To consult with counsel to obtain legal advice on the conflicting interpretations offered by commenters on the meaning of Commission criteria COMAR 27.01.02.06A.**

Discussion: COMAR 27.01.02.06A requires coordination with towns and a process to accommodate the growth needs of the municipalities. Talbot County says the growth allocation is theirs and previously approved Bill 762 sets out the process and coordination. Towns say coordination is much more. Bill 762 was presented as a supplemental growth allocation process and it recognized that the towns have a pool of growth allocation to use before the supplemental process kicked in. Definition of "supplemental" from Black's Law dictionary on April 7, 2004, "that which is added to a thing to complete it, definition of "supplemental act" "that which supplies a deficiency, adds to or completes or extends that which is already in existence without changing or modifying the original."

At 10:40, David Blazer calls for a continuation of the closed session after the regular Commission meeting ends in the afternoon. All panel members voted in favor of continuing the meeting.

At 3:05 pm, the closed session was continued with all panel members present as well as Commission counsel, Commission Chairman, and staff.

Discussion of 90-day time limit for consideration of amendment: Can approve, deny, approve with conditions or take no action and it is approved by default.

Importance of consistency in State oversight of local Critical Area Programs, one of the stated purposes of the Critical Area Law §8-1801: to implement a 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. Consistency does not necessarily mean exactly the same – as long as they coordinate (as required by Criteria) and accommodate (one of the goals of the Program). Changing growth allocation processes "mid-way" causes conflicts with existing approved Programs and procedures set out in Towns' Programs.

Bill 933 should be looked at independently of other bills. The municipalities' right to annex land, upzone and grow without interference by the County is not the panel's issue. Sewer control is also a side issue.

The chairman moved to have the panel continue discussions in a closed session in the Commission's office at 8:30 am on Monday, April 19, 2004. All voted in favor.

Panel meeting adjourned at 3:50 pm.

Minutes submitted by LeeAnne Chandler, Critical Area Commission.

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

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JAN 14 2003

DNR - LEGAL DIVISION

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.

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[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 <u>any</u> submission on <u>any</u> topic submitted by Talbot County for the Commission's review and/or approval.

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

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

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

4.

Commission Review Of Miles Point III

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

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

Very truly yours,

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

Enclosures:

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

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

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

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

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

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

Hon. Cheryl Lewis, President
Trappe Town Council
P.O. Box 162
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Hon. Philip C. Foster, President and Council Members
Talbot County Council
142 N. Washington Street
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Mr. Ren Serey, Executive Director
Critical Area Commission for the Chesapeake & Atlantic Coastal Bays
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Ms. Marianne Mason, Assistant Attorney General
Critical Area Commission for the Chesapeake & Atlantic Coastal Bays
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Hon. Audrey E. Scott, Secretary
Maryland Department of Planning
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Baltimore, MD 21201-2305

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

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

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

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:

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).~~ TO COMPLY WITH THE CHESAPEAKE BAY 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:

~~WHEREAS, the Town of Easton has requested 156 acres of supplemental growth allocation and has enacted Ordinance No. 461 to approve a Planned Unit Development. Part of that planned development requires the County to grant the Town's application for 58.80 acres of growth allocation for reclassification from Resource Conservation Area (RCA) to Limited Development Area (LDA) and 97.20 acres of growth allocation for reclassification from RCA to Intensely Developed Area (IDA); and~~

~~WHEREAS, the County currently has a total of 316.229 acres of growth allocation available to rezone from RCA to LDA. The Town of Easton is requesting 58.80 acres, which, if granted, would reduce the County's remaining growth allocation under the current ordinance in this category to 257.429 acres; and,~~

~~WHEREAS, the total amount of IDA growth allocation available for the entire county is 128 acres. The 1989 projection reserved 24 acres for the Town of Easton and 36 acres for the County, totaling less than the 97.20 acres of IDA growth allocation requested by the Town in their current application. Therefore, to grant the Town of Easton's pending request for an award~~

~~of supplemental growth allocation requires the County to withdraw IDA growth allocation from other towns and reallocate growth allocation under § 190-109 D 10 (b In light of that, and because of the foregoing, the lack of any continuing usefulness, or validity, of the 1989 maps and projections, for any purpose, is now evident.~~

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

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

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

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

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

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

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

WHEREAS, the Town of Oxford has allocated only 15.223 acres of growth allocation, and the Town of St. Michaels has conditionally allocated only up to 20 acres of growth

allocation. The Town of Oxford has 139.777 acres remaining, and the Town of St. Michaels has 225 acres remaining. Combined, Oxford and St. Michaels have 364.777 acres of growth allocation; and

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

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

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

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

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

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

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.

RECEIVED

JAN 16 2003

DNR - LEGAL DIVISION

The Commissioners of Saint Michaels
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SAINT MICHAELS, MARYLAND 21663-0206

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January 13, 2004

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

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

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.

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 is 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
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Annapolis, MD 21401-1991

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

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Hon. John Ford, President
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Hon. Philip C. Foster, President and Council Members
Talbot County Council
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The St. Michaels Planning Commission
300 Mill Street
St. Michaels, MD 21663

Draft
Revised
12/16/03

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 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.

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

CC: Hon. Delegate Jeanne Haddaway
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Easton, MD 21601

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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).

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

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Hon. John Ford, President
Easton Town Council
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Hon. Cheryl Lewis, President
Trappe Town Council
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GROWTH ALLOCATION COORDINATION BETWEEN COUNTIES AND MUNICIPALITIES
April 6, 2004

Anne Arundel County
(Currently undergoing comprehensive review, to be completed in April 2004)

The County allocated 11 acres of growth allocation to the City of Annapolis which represents five percent of the RCA lands within the City. The City controls the use of this growth allocation and may use it without County review or action. To date, the Commission has not reviewed any growth allocation applications within the City.

Baltimore County

Baltimore County does not have any municipalities with Critical Area Programs.

Calvert County
(Last comprehensive review completed February 1997, currently undergoing third round)

Calvert County allocated 100 acres of growth allocation to Chesapeake Beach and 20 acres to North Beach. The respective Towns control the use of this growth allocation and may use it without County review or action. To date, the Commission has not reviewed any growth allocation applications within the Towns.

Caroline County
(Comprehensive review initiated)

Caroline County did not allocate any growth allocation to the towns of Denton, Federalsburg, Greensboro or Hillsboro. The County did adopt procedures for the consideration and award of growth allocation, which are applicable to the Towns. The County would have to approve the use of growth allocation within any of the Towns. To date, no growth allocation has been used within the Towns.

Cecil County
(Last comprehensive review completed in July, 1994)

Cecil County did not allocate any growth allocation to the towns of Charlestown, Chesapeake City, Elkton, Northeast, Perryville, and Port Deposit. The County did adopt procedures for the consideration and award of growth allocation, which are applicable to the Towns. The County would have to approve the use of growth allocation within any of the Towns. When Towns approve growth allocation applications, they submit a request for growth allocation to the County with information about the project. To date, Charlestown, Northeast, and Port Deposit have not used any growth allocation, Chesapeake City has used 23.87 acres, Elkton has used 76.50 acres, and Perryville has used 58.66 acres.

Charles County
(Last comprehensive review completed in July 2001)

Charles County includes provisions in the County's Program stating that Indian Head and the County divide growth allocation acreage on the basis of population, i.e. if Indian Head has

3.5% of the population, then the Town is entitled to 3.5% of the growth allocation. The calculations must be updated regularly, especially when a growth allocation application is submitted. To date, Indian Head has used 9.00 acres of growth allocation.

Dorchester
(Last comprehensive review completed in February 2001)

Dorchester has allocated 240 acres of growth allocation to the City of Cambridge, 30 acres to Vienna, 20 acres to Secretary, and 20 acres to be used jointly by Church Creek, Eldoardo, Brookview, and Galestown. The respective Towns control the use of this growth allocation and may use it without County review or action. These allocations reflected coordination between the municipalities and the County to identify the growth allocation needs of the municipalities an amendment to the County's Critical Area Program which was approved by the Commission in July 2001.

Harford County
(Last comprehensive review completed in August 2001)

Harford County did not allocate any growth allocation to the Town of Havre de Grace; however, the County's zoning ordinance includes provisions for using growth allocation for land proposed to be annexed by a municipality. These provisions require the review of applications through the County's procedures.

Kent County
(Last comprehensive review completed in March 2003)

Kent County has allocated 82.78 acres of growth allocation to the Town of Betterton, 84.00 acres to Chestertown, no acreage to the Town of Millington, and 66.73 acres to the Town of Rock Hall. The respective Towns control the use of this growth allocation and may use it without County review or action. Once this acreage is used, the Kent County Growth Allocation Policy would apply. It states, "It is policy to grant growth allocation to the incorporated towns of Betterton, Chestertown, Millington, and Rock Hall." The County would be involved in the review of projects requiring growth allocation in excess of the initial allotment.

Prince George's County

Prince George's County does not have any municipalities with Critical Area Programs.

Queen Anne's County
(Last comprehensive review completed in April, 1996)

The County has set aside 189 acres of growth allocation for Centreville, and 160 acres for Queenstown. The respective Towns control the use of this growth allocation and may use it without County review or action. To date, Centreville has not used any growth allocation and Queenstown has used 15.06 acres. The County's Program states that, "The Queen Annes' County Critical Area Program may be amended to provide that the remaining acres of municipal set aside may be reallocated to the County if any municipal set aside is not assigned within five years." At this time, the County has not reallocated any growth allocation set aside for the municipalities. Additional growth allocation may be used by these Towns, as well as Church Hill and Queen Anne, on a project-by-project basis, subject to review and approval by the County.

St. Mary's County
(Last comprehensive review completed in July 2002)
The County allocated 4 acres of growth allocation to the Town of Leonardtown, which represents five percent of the RCA lands within the Town. The Town controlled the use of this growth allocation and used it in 1998 for the Tudor Hall Village Project. The Town has requested additional growth allocation from the County for another part of the Tudor Hall Project and the Leonardtown Landing Project. In the Tudor Hall Project, the Town become an applicant to the County and went through the same formal review and approval process as a private landowner. Since that time, the County has completed their comprehensive review and amended their growth allocation process. Now the Town requests growth allocation from the County Commissioners, and the Commissioners may approve the request if it is consistent with the County's comprehensive plan. The Town is not required to submit the request with a specific project; however, the most recent growth allocation request was made specifically to accommodate the Leonardtown Landing Project, and specific plans were provided to the County with the Town's request.

2 sets of hearings

Since 2002: no double review process

Somerset County
(Last comprehensive review completed in December 1995)

Somerset County allocated 100 acres of growth allocation to Princess Anne and 100 acres to Crisfield. The respective Towns control the use of this growth allocation and may use it without County review or action. To date, the Commission has reviewed and approved the use of 17.12 acres of growth allocation within the Town of Crisfield.

Talbot County
(Currently undergoing a comprehensive review to be completed in 2004)

Talbot County allocated 155 acres of growth allocation to the Town of Easton, 195 acres to the Town of Oxford, and 245 acres to the Town of St. Michaels. The County's Critical Area provisions state that this reserved acreage shall be reviewed by June 1, 1993 for possible reallocation, and at least every four years thereafter. The respective Towns control the use of this growth allocation and may use it without County review or action. In May 2000, the County amended their Critical Area Program to provide for the award of supplemental growth allocation through a joint review process in which both the Town and County would participate. Easton has used 147.34 acres of its original allocation, plus an additional 156.0 acres through the "supplemental growth allocation" process. Oxford has used 15.22 acres of growth allocation, and St. Michaels has not used any growth allocation acreage.

Wicomico County
(Last comprehensive review completed in November 2001)

Wicomico County originally allocated half of its growth allocation to the City of Salisbury and the towns of Mardela Springs and Sharptown. The County's Program specified that after four years, any of this growth allocation that had not been used would become part of the countywide growth allocation pool. No growth allocation was used by Salisbury, Mardela Springs, or Sharptown during the four years, so all growth allocation has been consolidated in the countywide pool. At this time, the municipalities would have to request approval of the use of growth allocation by the County.

Worcester County – Chesapeake Bay
(Last comprehensive review completed in November 2003)

Worcester County did not allocate any growth allocation to the Town of Snow Hill. The Town must apply to the County to use growth allocation after the request is approved by the Town Council. The County reviews the application and holds a public hearing on the application. To date 1.63 acres of growth allocation have been used by Snow Hill.

Worcester County – Coastal Bays
(Program adopted in November 2002)

The only incorporated municipality in the Coastal Bays Critical Area of Worcester County is Ocean City. All of Ocean City is designated IDA, so no growth allocation would be needed unless additional land was annexed.

b) That the water body upon which these activities are proposed has adequate flushing characteristics at the site;

c) That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;

d) That adverse impacts to water quality that may occur as a result of these activities, such as non-point source run-off, sewerage discharge from land activates or vessels, or from boat cleaning and maintenance operations are minimized;

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

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

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

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

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

11. Growth Allocation District - GA

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

for award of the Critical Area Growth Allocation are eligible for the floating zone designation.

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

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

1) Submission Requirements

a) Five (5) copies of the request for growth allocation and "GA" floating zone classification and all required items for submission shall be submitted to the Town of St. Michaels Planning Commission.

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

2) Procedure for Processing GA District Applications:

a) All grants of the floating zone district by the Town Commissioners shall meet the same procedural requirements as for amending the Critical Area Overlay District, contained in Section 14.

b) All applications for the GA Growth Allocation District Classification shall be accompanied by a preliminary site plan or subdivision plat prepared as per the requirements of the St. Michaels Zoning Ordinance and the Subdivision Regulations.

c) All applications will be reviewed by the Planning Commission for consistency with the Town of St. Michaels Comprehensive Plan, the Town of St. Michaels Critical Area Program, and the Town of St. Michaels Zoning Ordinance. The Planning Commission shall make a determination of consistency and make additional recommendations concerning conditions of approval.

d) After revising the site plan or plat based on the Planning Commission Review, the developer shall submit a preliminary site plan or plat.

e) The Planning Commission shall then hold a public hearing on all submissions. Submissions shall include the following:

i) Presentation of projects by the developers;

ii) Staff review comments; and

iii) Public comments.

f) The Planning Commissioners will then make its final recommendation and forward the application to the Critical Area Commission for review and approval.

g) Following approval of the application by the Critical Area Commission the Town Commissioners shall hold a public hearing on the proposed development projects. The hearing shall include the following:

i) Presentation of projects by the developers;

ii) Planning Commission recommendations;

iii) Critical Area Commission recommendations; and

iv) Public comments.

h) The Town Commissioners will then make the final decision on awarding growth allocation and may grant the floating zone request. The Town Commissioners may also establish conditions of approval to accompany the "GA" district classification, including a time limitation for completion of the proposed project.

3) Recording the GA Growth Allocation District

a) The Official Critical Area Map(s) will be amended to reflect the new "GA" district classification along with a notation of the new land management classification.

b) Successful projects granted the "GA" district classification will be submitted for final site plan or final subdivision approval as per the requirements of the Zoning and/or Subdivision

Regulations and shall delineate the Growth Allocation District on the record plat or site plan.

12. MARITIME MUSEUM ZONE - MM

The intent and purposes of the Maritime Museum Zone are to:

1. Preserve and perpetuate the character and orientation of the Town to the Chesapeake Bay and its tributaries (hereinafter collectively the Chesapeake Bay) on land that is adjacent to or near the St. Michaels Harbor; and

2. Control and limit the intensity of land use adjacent to and near the Harbor so that there is an atmosphere of openness; and

3. Encourage appreciation, understanding, collection, preservation, perpetuation, exhibition and education concerning the history of the Chesapeake Bay, the animal life, marine life and plant life indigenous to the Chesapeake Bay, and man's commercial, recreational and other activities directly related to the Chesapeake Bay by means of artifacts, exhibits, models, displays, examples, art, writings, and teachings regarding vessels, equipment, customs, methods and heritage; and

4. Encourage maritime museums which have as their purposes preservation and education; and

5. Encourage, perpetuate and protect the existence of residential uses adjacent to the Harbor, adjacent to maritime museums, and in areas of the Town through which maritime museum visitors must travel for ingress and egress; and

6. The maritime museum zone is intended to contain restrictions and provisions which make it compatible with residential uses and adjacent residential zones, without the need for controls generally imposed through the special exception process.

a. Permitted Principal Uses:

1. Maritime Museums which meet all or part of (but do not go beyond) the criteria set forth in sub-paragraphs 3 and 4 of the intent and purposes paragraph of the MM Zone. A maritime museum is so defined.

2. Single family detached dwellings.

3. Two-family dwellings.

4. Semi-detached dwellings.

5. Public parks.

CTION 34. "GA" GROWTH ALLOCATION DISTRICT

Extract Program

34.01 - Purpose and Intent

Growth Allocation is an area of land calculated as five (5%) percent of the total Resource Conservation Area (excluding tidal wetlands and federally owned land) in the County, a portion of which the Town may convert to more intense management areas to accommodate land development. The Growth Allocation District is designated for use within the Critical Area District on lands classified as Resource Conservation Areas (RCA) and/or Limited Development Areas (LDA). The purpose of the "GA" District is to designate areas of the Critical Area District where the Planning Commission and Town Commissioners may approve a change in the current land management classification on specific sites and for specific development projects that they may be developed to the extent permitted by this ordinance and the new land use management classification. Only specific development projects, for which the preliminary plat has been approved by the Planning Commission, shall be approved for the "GA" Growth Allocation District reclassification and thereby receive Critical Area Growth Allocation.

34.02 - Location.

The granting of the "GA" Growth Allocation District reclassification shall be consistent with the Town of Oxford Critical Area program. When approving the "GA" Growth Allocation District, the Planning Commission and the Town Commissioners shall use the following guidelines to determine if the location of the proposed land management classification under the "GA" District classification is consistent with the Town of Oxford Critical Area Program:

1. New IDA will be located in existing LDA or adjacent to existing IDA;

2. New LDA will be located adjacent to existing LDA or IDA;

3. To the extent possible no more than half of the growth allocated will be located in the RCA.

4. If the Town is unable to utilize any portion of its Growth Allocation within or adjacent to existing IDA or LDA, that portion of the Growth Allocation which cannot be so located may be located in the RCA;

5. New IDA and LDA will be located so as to minimize impacts to Habitat Protection Areas and in a manner that optimizes benefits to water quality.

6. New IDA or LDA located in the RCA will conform to all criteria of the Town of Oxford Critical Area Program for such areas; and

7. When Growth Allocation is permitted in RCA not adjacent to IDA or LDA the developer will be required to minimize the impact of the development on water quality and wildlife habitat and provide for resource enhancement in the design of such development.

34.03 - Conditions of Approval.

1. A condition of approval shall be that the projects approved for the "GA" Growth Allocation District shall be substantially completed within three (3) years of the date of approval. If after three years the project is not completed, the "GA" Growth Allocation District classification shall be withdrawn.

2. The Supervisor of Public Works shall determine whether a project is substantially completed or not. Substantially completed projects are defined as projects in which all public improvements, such as roads, community sewer and/or water facilities, etc., have been built, as required by the Town or State.

3. The development of a proposed project must demonstrate to the Planning Commission that the following design standards will be met or exceeded in order to be approved:

   a. All applicable requirements of the Town of Oxford Critical Area Program, the Zoning Ordinance and the Subdivision regulations.

   b. Limit the area of disturbance for non-residential development to no more than 60 percent of the total site area.

   c. The design of the development enhances the water quality and resource and habitat values of the area, e.g., results in additional planting of forest cover in the Buffer or implementation of Best Management Practices on portions of the site to be retained in agriculture use.

   d. The development incorporates the comments and recommendations of the Planning Commission and the Maryland Department of Natural Resources in the project design.

   e. The developer executes covenants that guarantee maintenance of the required open space areas.

34.04 - Computing the Use of the Growth Allocation.

1. Subdivision of any parcel of land that was recorded as of December 1, 1985, and classified as RCA or LDA, where all or part of the parcel is identified by the Town of Oxford as a Growth Allocation area, shall result in the acreage of the entire parcel counting against the Growth Allocation, unless conditions such as the following obtain:

   a. On Qualifying Parcels as described in d below, on which a change in classification is requested, a single development envelope will be specified, the acreage of which would be counted against the Growth Allocation. The envelope will include: 1) individually owned lots; 2) any required buffers; 3) impervious surfaces, utilities,

stormwater management measures, on-site sewage disposal measures; 4) any areas subject to human use such as active recreation areas; and, 5) any additional acreage needed to meet the development requirements of the criteria.

b. The remainder of the parcel may not count against the Town's growth allocation if it is contiguous and at least 20 acres in size, retained its natural features or its use by resource utilization activities (agriculture, forestry, fisheries activities, or aquaculture) and was restricted from future subdivision and/or development through restrictive covenants, conservation easements, or other protective measures approved by the Planning Commission. A Forest Management Plan is required for any forested areas in the undeveloped portion of the parcel. Replanting should be accomplished on lands abandoned from agriculture.

c. A minimum 100 foot naturally vegetated Buffer must be established and included in any acreage deductions. In the case of Growth Allocation being applied in an RCA area, a 300 foot naturally vegetated Buffer is strongly encouraged, and in the case where it is provided, the Buffer shall not be deducted from the Town's Growth Allocation, even if that Buffer does not meet the 20-acre minimum.

d. Qualifying Parcels: Parcels of land that qualify for application of the above accounting guidelines are the following:

(1) Those parcels designated as new IDA's which are located within an LDA or adjacent to an existing IDA, where the development on the parcel is located at least 300 feet from the edge of tidal waters, tidal wetlands or tributary streams providing such designation:

(a) minimizes adverse impacts to agriculture, forest lands, fisheries or aquaculture;

(b) minimizes adverse impacts to Habitat Protection Areas; and

(c) optimize benefits to water quality.

(2) Those parcels designated as new LDA's which are located adjacent to existing LDA's or IDA's and where the development on the parcel is located at least 300 feet from the edge of tidal waters, tidal wetlands, or tributary streams providing such designation conforms to the requirements of 1 (b) and (c) above.

e. On all other parcels that receive Growth Allocation and that do not meet these qualifications the entire parcel of record as of December 1985 will be deducted from the total Town Growth Allocation.

34.05 - Process.

The Town's Growth Allocation may be used on a proposed development site to permit densities that are consistent with the Comprehensive Plan, the Critical Area Program, and the existing zoning when a specific development project is proposed. The procedures set forth in Section 15.10 and following procedures will be followed in determining if a site and/or project qualifies for Growth Allocation.

1. All applications for Growth Allocation shall be submitted to the Planning Commission for investigation and recommendation to the Town Commissioners for Growth Allocation.

2. All applications for the Growth Allocation District Classification shall be accompanied by a sketch plan, or development plan which provides sufficient information to permit Planning Commission review for consistency with Critical Area Program requirements.

3. The Planning Commission will review concept, sketch, or comprehensive development plans submitted for consistency with the Critical Area Program and will provide technical comments and recommendations to the applicant prior to submission of preliminary plats consistent with the requirements of Town Subdivision regulations. Permitted development density or intensity will be determined at this time, subject to the applicant obtaining approvals from local, State and Federal authorities for such things as sewer, water, access, dredging permits, and forest management plans.

4. After the applicant has addressed the Planning Commission's recommendations, a sketch plan may be revised and submitted for review with respect to Growth Allocation District designation.

5. A public hearing on the application for Growth Allocation amendment will be held by the Town Commissioners.

6. In approving an application for Growth Allocation, the Town Commissioners may establish conditions of approval that are consistent with the intent of the Oxford Critical Area Program.

7. Applications for Growth Allocation will be forwarded to the Critical Area Commission after the Town Commissioners have conducted their public hearing and granted an approval subject to Critical Area Commission review (conditional approval). The Town Commissioners may only adopt Growth Allocation requests that have been approved by the Critical Area Commission.

8. Following adoption by the Town Commissioners, the applicant may proceed to the preparation of the final site plan or subdivision plat for recordation.

9. Prior to approving the final site plan or subdivision plat, the Planning Commission will ensure that all conditions of approval are incorporated into the final plan, public works agreement, deed covenants, etc.

10. Final Subdivision Plats and Site Plans shall be processed as per the requirements of this Ordinance and/or the Town of Oxford Subdivision Regulations.

34.06 - <u>Recording a change in the "GA" Growth Allocation District.</u>

1. The Official Critical Area Map(s) will be amended to reflect the new "GA" district classification along with a notation of the new land management classification.

2. Successful projects granted the "GA" district classification will be submitted for final site plan or final subdivision approval as per the requirements of the Zoning and/or Subdivision Regulations and shall delineate the Growth Allocation District on the record plat or site plan.

disturbances are essentially consistent with the State Criteria (see description of overlay zone in Chapter Three - Implementation).

2. Preparation of a site plan review check list and guidance for use by the developers as well as Town staff approval authorities. The check list will serve to familiarize users with all information necessary to be shown or identified on a specific site proposed for development to assure resources to be protected are properly identified.

3. Preparation of a mitigation manual which identifies alternative mitigation techniques for various kinds of disturbances to site resources as well as techniques (structural and non-structural) for mitigating water quantity and quality related impacts. This manual will be helpful in assessing whether or not 10 percent reduction in pollutant loadings are achieved for new development in Intensely Developed Areas, likewise it will assist in determining whether or not redevelopment achieves 10 percent reductions in pollution form pre-development levels to ascertain the degree or magnitude of mitigation required offsite.

4. Preparation of landscape standards for developed sites which incorporate standards for aerial extent of planting by type of plant units on a per acre basis or portion thereof. These standards should be consistent with the Forest and Woodland protection element of this program. Urban forestry planting considerations and plantings which enhance wildlife food value should be incorporated to achieve program intent and accomplish previously identified objections.

5. Modification of the Town's plans for park development to include model or demonstration buffer plantings with the assistance and cooperation of State agencies and/or civic organizations in the Town.

6. Identification of specific sites which represent appropriate locations for retrofitting measures to address existing Stormwater Management problems, as public improvements.

7. Encouraging redevelopment of privately-owned sites within the Intensely Developed Area where structures are vacant or under-utilized and/or large portions of the site are currently occupied by impervious surfaces.

8. Focus efforts to expand the size and/or enhance plantings in the existing Town waterfront areas located in The Buffer.

Growth Areas

The Critical Area Criteria provide for the designation of new IDA and LDA's in the Critical Area. Generally the acreage which can be converted to a more dense or intense land use is equal to five percent (5%) of the total RCA area in Talbot County. The computation of what is termed the "growth allocation" excludes tidal wetlands in the Resource Conservation Area. In addition, the Critical Areas Criteria mandate that Talbot County establish a process that accommodates the growth needs

of its municipalities.

The Criteria establish guidelines for creating new IDA's and LDA's are as follows:

1. New IDA's should be located in existing LDA's or adjacent to existing IDA's.

2. New LDA's should be located adjacent to existing LDA's or IDA's.

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

4. If the County is <u>able</u> to utilize its growth allocation as prescribed above, no more than half of the expansion allocated in the Criteria of the Commission may be located in RCA's (adjacent to LDA's or IDA's).

5. If the County is <u>unable</u> to utilize a portion of the growth allocated to the County as per 1 and 2 above, within or adjacent to existing IDA's or LDA's as demonstrated in the Talbot County Local Program approved by the Commission, then that portion of allocated expansion which cannot be so located may be located in the RCA in addition to expansion allocated in 4 above. A developer shall be required to cluster any development in any area authorized.

6. New IDA's and LDA's should be located in order to minimize impacts to Habitat Protection Areas and in a manner that optimizes benefits to water quality.

7. New IDA's or LDA's located in the RCA shall conform to all Criteria of the Commission for such areas and shall be designated on the Comprehensive Zoning Map submitted by the Local jurisdiction as part of its application to the Commission for program approval or at a later date as per 8-1809 (g) (Proposed Amendments).

Same as St. Michaels

The thrust of the Critical Area Criteria are to encourage the County to locate the entire growth allocation in or adjacent to areas that are already developed, such as the municipalities or existing IDA's and LDA's in the County. The Criteria intimate that the municipalities should be given priority for growth allocation. The Criteria also suggest that no more than half of the growth allocation should be located in existing RCA's, but recognize that it is possible that certain counties, including Talbot County, may not be able to so locate all of the growth allocation. If this is the case, the Criteria provide for allocating the unused portion of the growth allocation in stand-alone RCA's. The Talbot County Comprehensive Plan encourages locating growth in or near the existing towns, thus the Town of Easton should reasonably expect the County to assign some portion of the growth allocation for their growth needs.

As part of its program development, Esaton has identified IDA and/or LDA areas within the Town or on the fringe of the Town in which it expects growth of the Town to occur at a density of greater than one dwelling unit per twenty acres. The Town anticipates growth to include Easton Point and a portion of the Dudrow Farm.

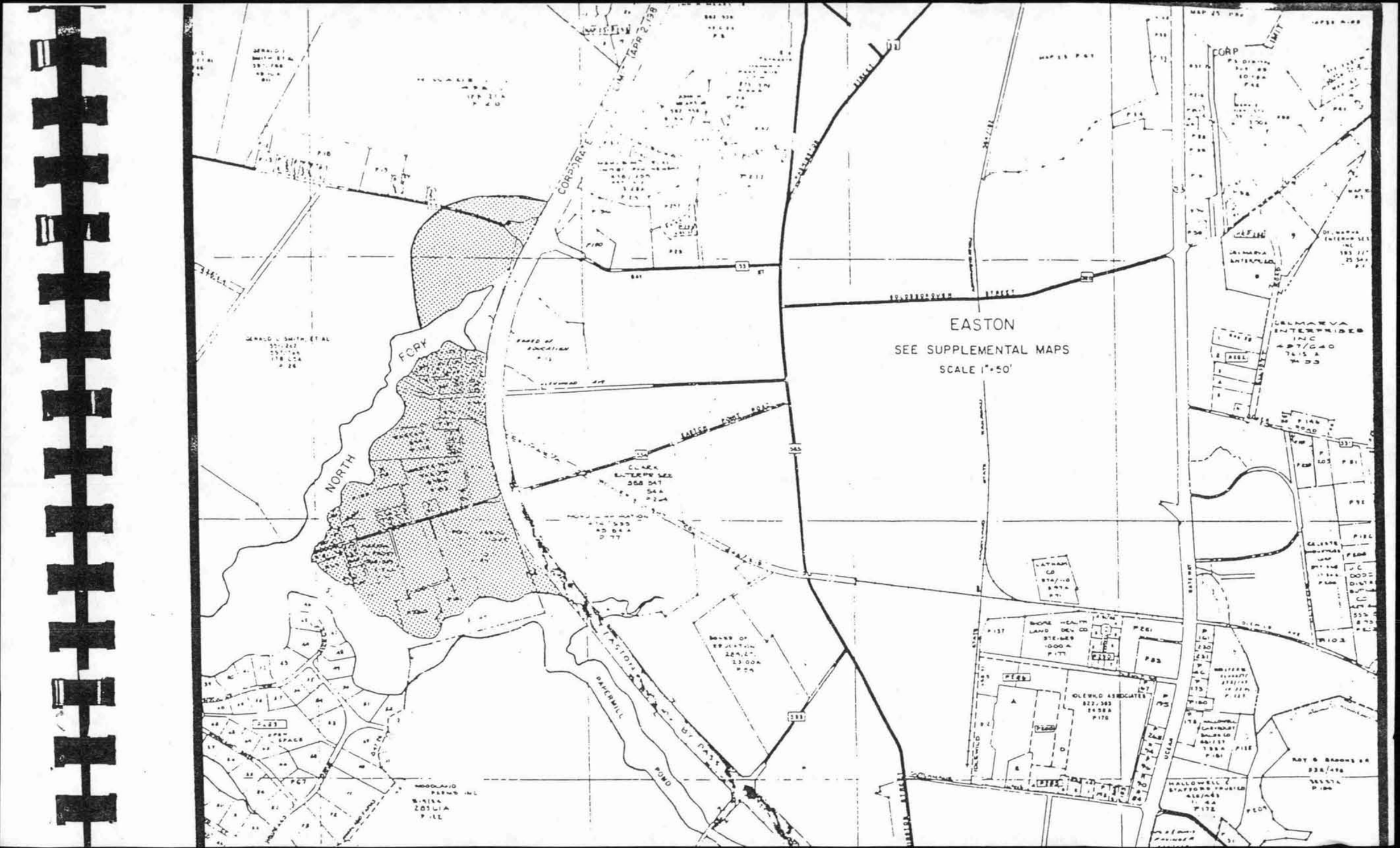
This area represents 140 acres and may require designation to an Intensely Developed Area or Limited Developed Area by Talbot County to realize the growth potential currently being identified in the Town's Comprehensive Plan and Local Program. (See Map 1)

Footnotes

1 Chesapeake Bay Critical Area Commission, A Guide to the Chesapeake Bay Critical Area Criteria (Annapolis: Chesapeake Bay Critical Area Commission, May 1986) pp. 3-4.

2 Ibid., p. 4.

3 Ibid.


EASTON
SEE SUPPLEMENTAL MAPS
SCALE 1"=50'
NORTH FORK
PAPERMILL POND
CORP

St. Michaels Program

quality.

4. New IDA's or LDA's located in the RCA shall conform to all Criteria of the Commission for such areas and shall be designated on the Comprehensive Zoning Map submitted by the Local jurisdiction as part of its application to the Commission for program approval or at a later date as per 8-1809 (g) (Proposed Amendments).

The thrust of the Critical Area Criteria is to encourage the County to locate the entire growth allocation in or adjacent to areas that are already developed, such as the municipalities or existing IDA's and LDA's in the County. The Criteria intimate that the municipalities should be given priority for growth allocation. The Criteria also suggest that no more than half of the Growth Allocation should be located in existing RCA's, but recognize that it is possible that certain counties, including Talbot County, may not be able to so locate all of the growth allocation. If this is the case, the Criteria provide for allocating the unused portion of the growth allocation in stand-alone RCA's. The Talbot County Comprehensive Plan encourages locating growth in or near the existing towns, thus the Town of St. Michaels should reasonably expect the County to assign some portion of the growth allocation for its growth needs.

St. Michaels has determined that there are several areas within and adjacent to the corporate limits for which it will request growth allocation in order to permit development to occur at densities permitted in the St. Michaels Zoning Ordinance. These areas, which are currently LDA and RCA are shown on Map 2-1. Under the LDA designation, the Town would not be permitted to allow the full density currently permitted, thus it will need growth allocation to permit conversion of these areas to new IDA's. Growth allocation has been requested from the County for these areas which total approximately 445 acres in the Critical Area.

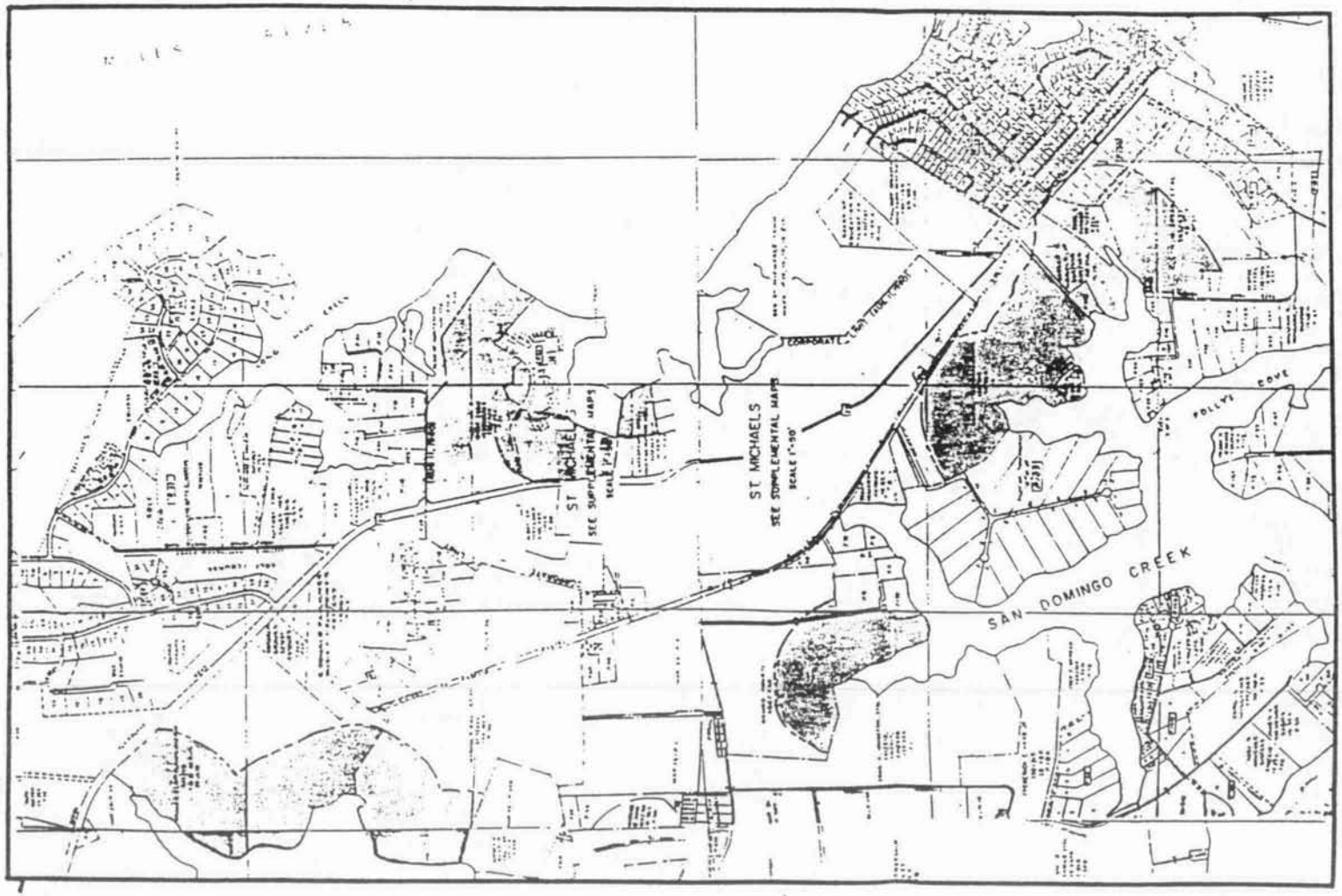
Program Goals

Using the designated development areas, the Town has established the following general goals to guide the creation of specific regulations within the Critical Area.

1. To direct future intense development to locations outside the Town's Critical Area to the extent possible. When future intense development activities are proposed in the Critical Area they shall be accommodated exclusively in designated Intensely Developed Areas.

2. To maintain medium development densities in the Limited Development Areas.

3. To reserve a portion of Resource Conservation Areas for compatible uses including but not limited to, fisheries, resource utilization activities (e.g., park land or passive recreation) and for achieving habitat protection objectives.



FUTURE GROWTH AREA

Map II-1

APPX. 403.1 ACRE

FUTURE GROWTH AR

ST. MICHAELS, MARY

REDMAN/JOHNST
ASSOCIA

4. To exclude the following types of development activities due to their adverse impact on habitats and water quality unless it has been demonstrated that the activity will create a net improvement in water quality to the adjacent body of water.

   Non-maritime heavy industry.

   Transportation facilities not including the proposed St. Michaels Parkway or others necessary to serve the region.

   Sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities.

5. To exclude the following types of development from the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality wastewater management problem.

   Solid or hazardous waste collection or disposal facilities.

   Sanitary landfills

6. To develop policies and programs necessary to achieve local program objectives for Intensely developed, Limited Development and Resource Conservation areas identified within the St. Michaels Critical Area.

7. To assure those development and redevelopment activities which are permitted to occur within portions of the Town's Critical Area and/or Critical Area buffer are developed in a manner consistent with appropriate Local program elements to achieve water quality and habitat resource protection benefits.

Designation of Development Areas

Intensely Developed, Limited Development and Resource Conservation Areas are designated on the Critical Area Map, Appendix 6, Map 1. The developed areas have been mapped based on existing land use data as of December 1985. The IDA's delineated are those areas where residential, commercial, institutional, and/or industrial developed land uses predominate, and where relatively little natural habitat occurs.

Any Town area mapped IDA meets at least one of the following general criteria:

1. Public sewer and water collection and distribution systems are currently serving the area.

2. Industrial, institutional, or commercial uses are concentrated in the area.

3. If residential, the housing density is greater than three dwelling units per acre with sewer and water or greater than 5 units per acre if sewer and water does not serve the site.

Any Town Area mapped LDA meets at least one of the following general criteria:

1. Housing densities range from one dwelling unit per five (5) acres up to four dwelling units per acre.

2. The area is not dominated by agriculture, wetlands, forest, barren land, surface waters, or open space.

3. The area is served by public sewer and/or water.

In addition to these general guidelines, it was necessary to develop detailed mapping rules which include assumptions not covered by the State criteria. These decision rules are found in Appendix 3, and were instrumental in providing an understandable and defensible basis for mapping areas in a manner consistent with the broader definitions for each area contained in section 14,15.02 of the Chesapeake Bay Critical Area Criteria.

Resource Conservation Areas constitute the residual mapped areas and are characterized by nature-dominated environments such as wetlands, forests, and resource-utilization activities such as agriculture, forestry, fisheries or aquaculture. These areas have been designated as Resource Conservation Areas (RCA) on the Critical Area Map, Appendix 6, Map 1. The density in these areas is less than one dwelling unit per five (5) acres. The dominant land use is forest, wetland, open space, or open water. The RCAs are areas that are remaining after all the detailed mapping decision rules have been applied to a tract or parcel of land thereby eliminating IDA and LDA type parcels and uses.

DEVELOPMENT OBJECTIVES

Intensely Developed Areas Objectives

To guide future development and redevelopment efforts the following program objectives have been framed for the Intensely developed areas within St. Michaels.

1. Minimize the expansion of Intensely Developed areas into areas not designated Intensely Developed.

2. Accommodate additional development permitted under the term of the Town's zoning ordinance provided water quality is not impaired.

3. Target Town (Intensely Developed Areas) stormwater management problem areas for public improvements to reduce runoff values and improve runoff water quality.

4. Minimize expansion of development into buffer portions of the Intensely

Developed Area or other Intensely Developed Areas designated as "Habitat Protection Areas" (see Habitat Protection Areas element).

5. Encourage public access to the Town's shoreline.

6. Establish programs for woodland resources creation and enhancement in Intensely Developed Areas in the form of urban forestry, street tree plantings, landscaping and open land buffer plantings.

7. Utilize State programs which assist the Town in enhancing biological resources in IDA's which are protective of water quality and contribute to urban wildlife habitat.

Limited Development Areas Objectives

The following objectives are designed to capitalize on opportunities to enhance water quality and natural habitat in areas where moderate density development patterns will continue to occur in the Town:

1. Maintain or improve the quality of runoff and groundwater entering the Bay and its tributaries.

2. Maintain to the extent practicable existing areas of natural habitat.

3. Accommodate additional low density development or moderate intensity development not exceeding a net density of four units per acre.

4. Maintain the character of existing low and moderate density areas as defined by the current mix of development and natural vegetation.

5. Provide for the orderly growth of the Town within those portions of the Critical Area beyond the Town limits that have been designated as growth areas.

Resource Conservation Areas Objectives

The following objectives are designed to maintain the biological values of these Resource Conservation Areas within the Town's Critical Area.

1. Restrict development activities within Resource Conservation Areas to a level consistent with the Chesapeake Bay Critical Area Criteria.

2. At the time development is proposed, determine if the Buffer needs to be expanded beyond 100 feet to include contiguous sensitive areas, such as steep slopes, hydric soils, or highly erodible soils, whose development or disturbance may impact streams, wetlands, or other aquatic environments.

3. Maintain and enhance forest cover in Resource Conservation Area designated lands to maintain their biological productivity and habitat values.

4. Utilize State programs and incentive/disincentive programs to maintain and enhance the features present on Resource Conservation area sites.

Implementation Strategies to Guide Development in the Critical Area

To achieve the objectives outlined for the Development element of the Town's Local Program will require several local actions. These actions, designed to implement the proposed program may take many forms. Some actions will revise and amend the Town's development ordinances and processes currently used for review of development proposals. Other actions may include projects which can be undertaken by the Town through staff or appointed Boards or Commissions. Efforts to achieve these objectives are often process oriented. Continuing re-evaluation of progress will be required to ascertain the community's effectiveness in achieving these objectives.

The following recommendations are intended to establish an initial list of tasks and projects that are designed to achieve St. Michaels program objectives. They should be periodically reviewed and revised. As State programs evolve and changes are made to the Critical Area Law and criteria, comparable adjustments to the St. Michaels Local Program should be considered.

The Town's implementation strategies include:

1. Preparation and adoption of an overlay zone corresponding to the Town's Critical area which superimposes Critical Area - oriented development standards on Intensely Developed Areas, Limited Development and Resource Conservation Areas. These standards will be applicable to all development in the Critical Area, and would apply in addition to those within the current zoning ordinance and underlying base zoning districts. The overlay zone establishes development standards for three mapped areas, i.e., Intensely Developed Areas, Limited Development Areas, and Resource Conservation Areas. The overlay zone text will specify those standards to be considered applicable for each of the three areas, and to assure that development and related land disturbances are essentially consistent with the State Criteria (proposed Overlay Zone in Chapter 3 - Implementation). The overlay zone further reflects buffer exemption provisions consistent with Resource Protection objectives.

2. Preparation of a check list for site plan reviews and guidance for use by the developers as well as Town staff which has approval authority. The check list will serve to familiarize users with all information necessary to be shown or identified on a specific site proposed for development to assure resources to be protected are properly identified.

3. Preparation of a mitigation manual which identifies alternative mitigation techniques for various kinds of disturbances to site resources as well as techniques (structural and non-structural) for mitigating water quantity and quality related impacts. This manual will be helpful in assessing whether or not 10 percent reduction in pollutant loadings are achieved for new

2. Location of slips in a manner which minimizes dredging needs and volumes. Dredged channels should decrease in width and depth toward shore with provision made for berthing deeper draft boats farthest from shore. Design of slips which are two feet (2) deeper at mean low water than the lowest projection of boats moored in them will minimize turbidity and bottom disturbances.

3. Maintenance of water circulation patterns to include tidal flow patterns, and preservation of salinity and distribution of nutrients in the water. Dimensions and locations of channels should be designed to achieve maximum flushing of the marina basin area.

4. Maintenance of the flow and volume of the natural drainage system, both on site and on adjacent properties.

5. Approaches taken through design to reduce storm water runoff volumes and erosion. Use of impervious ground surfacing should be minimized where possible. Maximum distances should be maintained between water and land areas proposed to be used for parking and loading purposes, to minimize the consequences of site runoff.

6. Effective use and location of site screening and vegetation in a manner which minimize noise and lighting impacts to surrounding residential uses.

7. Many off-site considerations which are significant should be reviewed in relation to the proposed marine facility location. It should be the applicant's responsibility to further assure the review body that their location proposals or projects should not adversely affect:

   (a) Maintenance of state water quality standards.

   (b) Land and water circulation needs. Marine locations should avoid interference with traffic flow on Town streets and the land/water transportation patterns of the surrounding area.

   (c) Preservation of rooted submerged aquatic vegetation of value to fish, shellfish and wildlife in the area.

   (d) Preservation of area wetlands, (tidal and non-tidal), fish spawning areas, shellfish beds and waterfront nesting sites.

Section IX. Growth Allocation Process

Several areas of the Town or adjacent areas where growth may occur have been mapped as Limited Development Areas or Resource Conservation Areas based on existing land use as of December 1, 1985. These areas may have to be converted to a different management category, e.g., converted from an LDA to an IDA through use of the County's growth allocation. These areas are identified and discussed in the Development Section of the St. Michaels Local Program.

The Town has requested growth allocation from the County to provide for these anticipated growth areas. The Town has mapped these growth areas in order to determine the approximate acreage of growth allocation that will be required and so that the County may anticipate the Town's growth needs in establishing their growth allocation process. It is also recommended that the Town adopt a local process for subsequent allocation of growth when it is determined development proposals which are consistent with the Town Comprehensive Plan and Local Program.

The Commissioners of St. Michaels may award growth allocation that permits an increase in the permitted density or intensity of use of a site over and above what is currently permitted at the time a specific development proposal is submitted. Prior to awarding growth allocation the Town Commissioners will review the proposed development plans and determine if they meet the objectives of the Local Program and are consistent with the St. Michaels Comprehensive Plan.

The following are additional provisions for guiding the award of the Town's growth allocation are recommended for inclusion in the St. Michaels Critical Area Overlay Zone:

Purpose and Intent

It is the purpose of the St. Michaels Growth Allocation Process to establish objectives, procedure, standards and criteria for determining appropriate locations and projects where growth allocation may be awarded to permit conversion of existing Limited Development Areas (LDA) and/or Resources Conservation Areas (RCA) to a new LDA and/or IDA. Upon approval of a proposed development project, the Planning Commission may assign a portion of the County's total Growth Allocation existing in LDA and RCA areas, as designated in the St. Michaels Critical Area Program. The Growth Allocation may be awarded to development projects which the Planning Commission deems to be the best examples of critical areas development and land use, and which demonstrate consistency with the Comprehensive Plan, Local Program and Critical Area Criteria.

The Growth Allocation Process is intended to insure that the Town's limited growth allocation, as determined in the Talbot County Local Chesapeake Bay Critical Area Protection Program (Local Program) is managed to insure equity in the award of growth while also resulting in development projects in the Town's Critical Area which achieve the goals and objectives of the Local Program as determined by the Town Commissioners. Further, it is the intent of the Town to establish a process whereby only those development projects which the Town Commissioners concludes are examples of sensitive development in the critical area are given growth allocation.

Project Location Criteria

It is the intent of the Town to encourage projects for growth allocation to be located in or adjacent to existing Limited Development or Intensely Developed Areas. In approving projects for Growth Allocation award the Planning Commission will give consideration to the following guidelines for the location of the growth allocation projects to the extent possible:

Black's Law Dictionary

SUPPLEMENTAL. That which is added to a thing to complete it. State v. Day, 189 Ind. 243, 123 N.E. 402, 403; People ex rel. Astor Trust Co. v. State Tax Commission, 174 App.Div. 320, 160 N.Y.S. 854, 858.

SUPPLEMENTAL ACT. That which supplies a deficiency, adds to or completes, or extends that which is already in existence without changing or modifying the original; Act designed to improve an existing statute by adding something thereto without changing the original text. Swanson v. State, 132 Neb. 82, 271 N.W. 264, 268.

SUPPLEMENTAL AFFIDAVIT. An affidavit made in addition to a previous one, in order to supply some deficiency in it. Callan v. Lukens, 89 Pa. 136.

SUPPLEMENTAL ANSWER. One which was filed in chancery for the purpose of correcting, adding to, and explaining an answer already filed. Smith, Ch. Pr. 334. French v. Edwards, 9 Fed. Cas. 780; Yeatman v. Patrician, 144 Wash. 241, 257 P. 622, 624.

SUPPLEMENTAL BILL. In equity pleading. A bill filed in addition to an original bill, in order to supply some defect in its original frame or structure which cannot be supplied by amendment. Story, Eq. Pl. §§ 332–338; Bloxham v. Railroad Co., 39 Fla. 243, 22 So. 697; Thompson v. Schenectady Railroad Co., C.C.N.Y., 119 F. 634; Bartee v. Matthews, 212 Ala. 667, 103 So. 874, 876; Pantaleo v. Colt's Patent Fire Arms Mfg. Co., D.C.N.Y., 13 F.Supp. 989, 990. Also for purpose of bringing into controversy matter occurring after original bill was filed. Snellings v. Builders' Supply Co., 228 Ala. 47, 152 So. 459, 461.

SUPPLEMENTAL BILL IN NATURE OF BILL OF REVIEW. Employed to invoke jurisdiction of court of chancery to recall one of its adjudications made while some fact existed which, if before court, would have prevented rendition of final decree, and which, without negligence of party presenting it, was not earlier presented to chancellor. Brown v. Oehler, 114 Fla. 57, 152 So. 862.

SUPPLEMENTAL CLAIM. A further claim which was filed when further relief was sought after the bringing of a claim. Smith, Ch. Pr. 655.

SUPPLEMENTAL COMPLAINT. Under the codes of practice obtaining in many of the states, a complaint filed in an action to bring to the notice of the court and the opposite party matters occurring after the commencement of action and which may affect the rights asserted. Pouder v. Tate, 132 Ind. 327, 30 N.E. 880; Plumer v. McDonald Lumber Co., 74 Wis. 137, 42 N.W. 250; Title and Trust Co. v. U. S. Fidelity and Guaranty Co., 138 Or. 467, 7 P.2d 805, 812.

It is distinguished from an "amended complaint," in that an "amended complaint" is one which corrects merely faults and errors of a pleading. Pantaleo v. Colt's Patent Fire Arms Mfg. Co., D.C.N.Y., 13 F.Supp. 989, 990.

SUPPLEMENTAL PLEADING. One consisting of facts arising since filing of the original, State v. Patten, 209 Ind. 482, 199 N.E. 577, 579; or which pleader at time of serving of original plea ing had no notice. Fisher v. Bullock, 204 A Div. 523, 198 N.Y.S. 538, 540.

SUPPLEMENTARY. Added as a supplemer additional; being, or serving as, a supplemer Swanson v. State, 132 Neb. 82, 271 N.W. 264, 26

SUPPLEMENTARY PROCEEDINGS. Procee ings supplementary to an execution, directed the discovery of the debtor's property and its a plication to the debt for which the execution issued. They are purely statutory, they are in th nature of a creditor's bill for the collection of judgment or tax, and are proceedings in perso am and not in rem. In re Maltbie, 119 N.E. 38 391, 223 N.Y. 227; Walker v. Staley, 89 Colo. 29 1 P.2d 924, 925.

SUPPLETORY OATH. See Oath.

SUPPLIANT. The actor in, or party preferring a petition of right.

SUPPLICATIO. Lat. In the civil law. A peti tion for pardon of a first offense; also a petitio for reversal of judgment; also equivalent t *"duplicatio,"* which corresponds to the commo law rejoinder. Calvin.

SUPPLICAVIT. In English law. A writ issuing out of the king's bench or chancery for taking sureties of the peace. It is commonly directed t the justices of the peace, when they are averse t acting in the affair in their judicial capacity. Bl.Comm. 253.

SUPPLICIUM. Lat. In the civil law. Punishment; corporal punishment for crime. Death was called *"ultimum supplicium,"* the last or ex treme penalty.

SUPPLIES. In English law. In parliamentary proceedings the sums of money which are an nually voted by the house of commons for the maintenance of the crown and the various public services. Jacob; Brown.

Means of provision or relief; stores; available aggregate of things needed or demanded in amount sufficient for a given use or purpose; accumulated stores reserved for distribution; sufficiency for use or need; a quantity of something supplied or on hand. Northern Pac. Ry. Co. Sanders County, 66 Mont. 608, 214 P. 596, 599.

In connection with building contracts, things other than labor, which are consumed in, but do not become a physical part of, the structure and is distinguished from the word "materials," which are things becoming a physical part of the structure. Hurley-Mason Co. v. American Bonding Co., 79 Wash. 564, 140 P. 575, 576, L.R.A.1915 1131.

SUPPLY. To furnish with what is wanted; available aggregate of things needed or demanded anything yielded or afforded to meet a want; and the act of furnishing with what is wanted. Clay ton v. Bridgeport Mach. Co., Tex.Civ.App., 33 S.W 2d 787, 789.

from
MDM
file
Bill 762

-2609 D.C. METRO-586-0450

for
MDM
file
Bill 762

-2609 D.C. METRO-586-0450

WHILE YOU WERE OUT

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their next hearing as this has already been drafted by the legal office. Larry Duket moved on panel recommendation to approve the legislative proposal for Anne Arundel County discussed by the staff with the condition that the minor error appearing on page 1, line 17 in the preamble of Bill #12-00 be corrected. The motion was seconded by Dave Cooksey and carried unanimously.

Tracey Green, Circuit Rider, CBCAC and Office of Planning, presented for VOTE the City of Fruitland's four year Comprehensive Review. Ms. Green explained that the City of Fruitland has a very limited amount of Critical Area and a total of forty acres of which thirty eight acres are undeveloped. She explained that because of the administrative burden of doing a typical comprehensive review, the City has adopted a streamlined Critical Area ordinance to replace their existing Program and Ordinance. It will contain only those aspects of the Criteria that are applicable to the City's Critical Area. The ordinance, along with the City's official Critical Area map, will be considered the City's Critical Area Program. Ms. Green reviewed the condensed document for the Commission. A joint public hearing with the Critical Area Commission panel and the city Planning Commission and Council was held on May 9, 2000 and no public comments were received. Sam Johnson moved to approve the Fruitland Comprehensive Review changes as presented. The motion was seconded by Bill Bradley and carried unanimously.

Ms. Hoerger, Planner, CBCAC presented for concurrence with the Chairman's determination of Refinement, Bill #762 which established procedures for awarding supplemental growth allocation in the municipalities in Talbot County. In anticipation of future growth the County has established a joint review process that will be conducted with each town when considering allotting additional growth allocation which will include the Planning Commission, the Talbot County Council, Town Commissions, and any other Commission involved at the local level. The Town of Easton has used up most of its original allocation since 1989. A request for additional acres was denied to the Town last year by the County. The Commission supported the Chairman's determination of Refinement.

Ms. LeeAnne Chandler, Planner, CBCAC presented for concurrence with the Chairman's determination of Refinement, the proposal for growth allocation by Wicomico County to change the Critical Area designation on Tax Map 46, Parcel 116 , River Woods, from RCA to LDA. The proposed use is for a residential subdivision with 5 lots in the Critical Area. She said that with the appropriate mitigation for forest clearing the project meets the requirements for growth allocation as stated in the Wicomico County ordinance and will be consistent with COMAR 27.01.02.06 and the Commission policy on growth allocation. The property includes the 100-foot Buffer to "My Lord's Creek" and is completely forested. This project is recommended for approval by the Commission Staff

Chesapeake Bay Critical Area Commission

STAFF REPORT
July 5, 2000

APPLICANT:	Talbot County
PROPOSAL:	Refinement - Talbot County Council Bill # 762 Joint Review Process
COMMISSION ACTION:	Concurrence
STAFF RECOMMENDATION:	Concur with Chairman's Determination
STAFF:	Lisa Hoerger
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article §8-1809 (p)

DISCUSSION:

The Talbot County Council Bill # 762 establishes procedures for awarding supplemental growth allocation to the municipalities in Talbot County. In 1989, the County provided each municipality with a limited number of growth allocation acres. Since 1989, the Town of Easton has used most of its original allocation. In anticipation of future growth, the Town will request additional acres in the near future. Last year the town requested additional acres but was denied by the County.

Subsequent to that time, the County has established a joint review process that it will conduct with each town when considering allotting additional growth allocation. The new joint review process will include the Planning Commissions, the Talbot County Council, Town Commissions, and any other Commission involved at the local level.

Bill No. 762 is consistent with COMAR 27.01.02.06 A (2) which states:

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

Chairman North requests your concurrence that Bill # 762 is a refinement to Talbot County's Critical Area Program since it is consistent with the Criteria.

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

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

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

Reservation maintained

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

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

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

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

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

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

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

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

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

PUBLIC HEARING

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

BY THE COUNCIL

Read the third time.

ENACTED April 25, 2000 *
AS AMENDED

By Order Jessica Mann
Secretary

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

TALBOT COUNTY OFFICE OF PLANNING & ZONING
COURT HOUSE
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Bill 933

December 3, 2003

MEMORANDUM

TO: Members of the Talbot County Planning Commission

FROM: George Kinney, Planning Officer

SUBJECT: Review and recommendation to County Council
Zoning Ordinance Text Amendment

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

{This Bill was introduced by Council on November 18, 2003 and is currently scheduled for public hearing}

Nature of the Request

Consistent with §190-109D(11), the attached Bill serves to review and reallocate the number of reserved growth allocation acres originally afforded to the Towns of Oxford, Easton and St. Michaels. The Bill was prepared by the County Attorney and introduced by County Council on November 18, 2003. Consistent with §190-109A, the Planning Commission must review the legislation and provide a recommendation to Council.

Staff Comments

In 1989, the County was originally awarded 1,213 acres from the Critical Area Commission for growth allocation. From that acreage, 155 acres were awarded to the Town of Easton, 195 acres to the Town of Oxford and 245 acres to the Town of St. Michaels. The remaining 618 acres remained with the County. As currently written and upon adoption, this Bill would recapture remaining acreage from the Towns and require them to approach the County in the event growth allocation is necessary for a specified Town project. This change would afford the County the opportunity to involve itself in the development process and further help to achieve the 90% threshold necessary to request additional allocation acreage from the Critical Area Commission.

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.

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 drawings[1] which are collectively referred to as the "Development Plans.". The Ratcliffe PUD plat and Development Plans are part of the record.

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[1] 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:

_____

_____

_____

_____

_____

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A BILL TO AWARD 156 ACRES OF SUPPLEMENTAL GROWTH ALLOCATION TO THE TOWN OF EASTON AND TO IMPOSE CERTAIN CONDITIONS, RESTRICTIONS, AND LIMITATIONS ON ITS USE.

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

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

Note: ref to reserved acreage

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

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

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

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

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

1. **Award.** Subject to the following conditions, restrictions, and limitations, Talbot County hereby awards 156 acres of supplemental growth allocation to the Town of Easton.

2. **Conditions, restrictions, and limitations.** This award of growth allocation is subject to the following conditions, restrictions, and limitations:

a. **Use.** The growth allocation shall be used exclusively for the project approved by the Town of Easton by Ordinance No. 461, effective October 9, 2003 (the "Project").

b. **Contingencies.** Easton Town Ordinance No. 461 incorporated Development Plans for the Project as Exhibit "A", and Findings of Fact as Exhibit "B". This award shall be contingent upon full compliance by Elm Street Development, LC, its successors and assigns, with the Development Plans, all requirements set forth in the Findings of Fact, and each of the "Conditions of Approval" attached as Exhibit "A" to the Town of Easton's Findings of Fact.

c. **Criteria.** Talbot County Code § 190-109 D. (4) (b) provides that the Council may consider the following criteria in deciding whether to approve or disapprove an application for growth allocation, in addition to the specific requirements and purposes set forth elsewhere in Chapter 190, Zoning, of the Talbot County Code:

[1] Consistency with the purposes and intent of the Talbot County Comprehensive Plan;

[2] Compatibility with existing and proposed development and land use in the surrounding area;

[3] Availability of public facilities;

[4] The effects on present and future transportation patterns;

[5] The effect of population change within the immediate area;

[6] The past, present, and anticipated need for future growth of the county as a whole;

[7] The location, nature, and timing of the proposed growth allocation in relation to the public interest in ordered, efficient, and productive development and land use;

[8] The protection of the public health, safety and welfare.

d. **Factual findings and approval.** This award of supplemental growth allocation is specifically conditioned upon the Council's review of information provided with regard to the forgoing criteria, and upon the Council's determination and adoption of written findings of fact that the Project, either as proposed or modified to mitigate impacts from the proposed development, satisfies the criteria and is otherwise in the public interest. Notwithstanding any finding that the Project satisfies these criteria, the Council may nevertheless exercise its legislative discretion to deny the application in accordance with the provisions of Talbot County Code § 190-109 D. (4) (c).

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

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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 Plant 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.

clock on that. And if after the first go around you have more to say, you can come back and expand upon the comments that you made earlier. Also if anybody here has heard somebody make the argument they intended to make, feel free to get up and give us your name and say, I agree with Mr. Jones and sit down. Judge North. Next and who else would like to speak. Anybody else. Mr. Keller, you can follow Judge North. If you'll both come. Great believer of on deck circle. A lot of time is wasted at hearings while people try to get out of the row and so forth, so I'm going to have an on deck person ready to go after each person fI and Ishes. Judge North.

JUDGE NORTH: Mr. Chairman, ladies and gentlemen, at the outset I should like to thank each of you for coming to grips with a problem which your predecessors have successfully avoided for the last 14 odd years. It was a source of some embarrassment to me as chairman

of the critical area commission to experience the want of concern and interest demonstrated by Talbot County and complying with the law requiring a quadrennial review of the local critical area program. I'm sure that there were reasons for that. But since I was chairman and this was my home turf, it was a source of some personal embarrassment that the County had not complied with what the law required heretofore. And I'm delighted to see that you ladies and gentlemen are coming to grips with that requirement. With respect to the immediate issue before you, I spoke by phone today with Ren Serey, who is the executive director of the critical area commission, and has been such since I was his chair, to review with him my understanding of the law pertaI and Ing to the application of the growth allocation principal. He pointed out several things to me which I was only tangentally aware of. First off that

apparently I and Itially the practice was for the commission to allocate to each County its growth allocation, as determined by 5 percent of the resource conservation area in the County, and the County was then left on its own rather as to how it handled the application of those numbers. Some counties awarded growth allocation to municipalities within the County, some did not. St. Mary's County, Charles County and Caroline County have never, never, granted growth allocation to any municipalities within those counties. Thereby those counties have retained the control which they have today. I would quote to you from COMAR 27010206 subparagraph A-2, and I think this is directly on point, "when planning future expansion of intensely developed and limited development areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities." COMAR, in other words, says,

dictates if you will, that it's the responsibility of the County to work with the municipalities in accommodating municipalities growth needs. So unless you do this, unless you adopt what is being proposed here today, you're not conforming with what the law requires of you.

MR. FOSTER: Thank you.

JUDGE NORTH: That concludes my commentary.

MR. FOSTER: Thank you. Whoever wants to be next, come forward.

PHILIP KELLER: Members of the Council.

MR. FOSTER: And when no one comes forward, this hearing is over.

PHILIP KELLER: I do agree that the County should accommodate the towns with growth allocation. I think on that part Judge North and I agree. Your own planning commission voted three to one against this bill. I believe it takes away self rule in the internal

GROWTH ALLOCATION COORDINATION BETWEEN COUNTIES AND MUNICIPALITIES
April 6, 2004

Anne Arundel County
(Currently undergoing comprehensive review, to be completed in April 2004)

The County allocated 11 acres of growth allocation to the City of Annapolis which represents five percent of the RCA lands within the City. The City controls the use of this growth allocation and may use it without County review or action. To date, the Commission has not reviewed any growth allocation applications within the City.

Baltimore County

Baltimore County does not have any municipalities with Critical Area Programs.

Calvert County
(Last comprehensive review completed February 1997, currently undergoing third round)

Calvert County allocated 100 acres of growth allocation to Chesapeake Beach and 20 acres to North Beach. The respective Towns control the use of this growth allocation and may use it without County review or action. To date, the Commission has not reviewed any growth allocation applications within the Towns.

Caroline County
(Comprehensive review initiated)

Caroline County did not allocate any growth allocation to the towns of Denton, Federalsburg, Greensboro or Hillsboro. The County did adopt procedures for the consideration and award of growth allocation, which are applicable to the Towns. The County would have to approve the use of growth allocation within any of the Towns. To date, no growth allocation has been used within the Towns.

Cecil County
(Last comprehensive review completed in July, 1994)

Cecil County did not allocate any growth allocation to the towns of Charlestown, Chesapeake City, Elkton, Northeast, Perryville, and Port Deposit. The County did adopt procedures for the consideration and award of growth allocation, which are applicable to the Towns. The County would have to approve the use of growth allocation within any of the Towns. When Towns approve growth allocation applications, they submit a request for growth allocation to the County with information about the project. To date, Charlestown, Northeast, and Port Deposit have not used any growth allocation, Chesapeake City has used 23.87 acres, Elkton has used 76.50 acres, and Perryville has used 58.66 acres.

Charles County
(Last comprehensive review completed in July 2001)

Charles County includes provisions in the County's Program stating that Indian Head and the County divide growth allocation acreage on the basis of population, i.e. if Indian Head has

3.5% of the population, then the Town is entitled to 3.5% of the growth allocation. The calculations must be updated regularly, especially when a growth allocation application is submitted. To date, Indian Head has used 9.00 acres of growth allocation.

Dorchester
(Last comprehensive review completed in February 2001)

Dorchester has allocated 240 acres of growth allocation to the City of Cambridge, 30 acres to Vienna, 20 acres to Secretary, and 20 acres to be used jointly by Church Creek, Eldoardo, Brookview, and Galestown. The respective Towns control the use of this growth allocation and may use it without County review or action. These allocations reflected coordination between the municipalities and the County to identify the growth allocation needs of the municipalities an amendment to the County's Critical Area Program which was approved by the Commission in July 2001.

Harford County
(Last comprehensive review completed in August 2001)

Harford County did not allocate any growth allocation to the Town of Havre de Grace; however, the County's zoning ordinance includes provisions for using growth allocation for land proposed to be annexed by a municipality. These provisions require the review of applications through the County's procedures.

Kent County
(Last comprehensive review completed in March 2003)

Kent County has allocated 82.78 acres of growth allocation to the Town of Betterton, 84.00 acres to Chestertown, no acreage to the Town of Millington, and 66.73 acres to the Town of Rock Hall. The respective Towns control the use of this growth allocation and may use it without County review or action. Once this acreage is used, the Kent County Growth Allocation Policy would apply. It states, "It is policy to grant growth allocation to the incorporated towns of Betterton, Chestertown, Millington, and Rock Hall." The County would be involved in the review of projects requiring growth allocation in excess of the initial allotment.

Prince George's County

Prince George's County does not have any municipalities with Critical Area Programs.

Queen Anne's County
(Last comprehensive review completed in April, 1996)
The County has set aside 189 acres of growth allocation for Centreville, and 160 acres for Queenstown. The respective Towns control the use of this growth allocation and may use it without County review or action. To date, Centreville has not used any growth allocation and Queenstown has used 15.06 acres. The County's Program states that, "The Queen Annes' County Critical Area Program may be amended to provide that the remaining acres of municipal set aside may be reallocated to the County if any municipal set aside is not assigned within five years." At this time, the County has not reallocated any growth allocation set aside for the municipalities. Additional growth allocation may be used by these Towns, as well as Church Hill and Queen Anne, on a project-by-project basis, subject to review and approval by the County.

St. Mary's County
(Last comprehensive review completed in July 2002)
The County allocated 4 acres of growth allocation to the Town of Leonardtown, which represents five percent of the RCA lands within the Town. The Town controlled the use of this growth allocation and used it in 1998 for the Tudor Hall Village Project. The Town has requested additional growth allocation from the County for another part of the Tudor Hall Project and the Leonardtown Landing Project. In the Tudor Hall Project, the Town become an applicant to the County and went through the same formal review and approval process as a private landowner. Since that time, the County has completed their comprehensive review and amended their growth allocation process. Now the Town requests growth allocation from the County Commissioners, and the Commissioners may approve the request if it is consistent with the County's comprehensive plan. The Town is not required to submit the request with a specific project; however, the most recent growth allocation request was made specifically to accommodate the Leonardtown Landing Project, and specific plans were provided to the County with the Town's request.

Somerset County
(Last comprehensive review completed in December 1995)
Somerset County allocated 100 acres of growth allocation to Princess Anne and 100 acres to Crisfield. The respective Towns control the use of this growth allocation and may use it without County review or action. To date, the Commission has reviewed and approved the use of 17.12 acres of growth allocation within the Town of Crisfield.

Talbot County
(Currently undergoing a comprehensive review to be completed in 2004)
Talbot County allocated 155 acres of growth allocation to the Town of Easton, 195 acres to the Town of Oxford, and 245 acres to the Town of St. Michaels. The County's Critical Area provisions state that this reserved acreage shall be reviewed by June 1, 1993 for possible reallocation, and at least every four years thereafter. The respective Towns control the use of this growth allocation and may use it without County review or action. In May 2000, the County amended their Critical Area Program to provide for the award of supplemental growth allocation through a joint review process in which both the Town and County would participate. Easton has used 147.34 acres of its original allocation, plus an additional 156.0 acres through the "supplemental growth allocation" process. Oxford has used 15.22 acres of growth allocation, and St. Michaels has not used any growth allocation acreage.

Wicomico County
(Last comprehensive review completed in November 2001)
Wicomico County originally allocated half of its growth allocation to the City of Salisbury and the towns of Mardela Springs and Sharptown. The County's Program specified that after four years, any of this growth allocation that had not been used would become part of the countywide growth allocation pool. No growth allocation was used by Salisbury, Mardela Springs, or Sharptown during the four years, so all growth allocation has been consolidated in the countywide pool. At this time, the municipalities would have to request approval of the use of growth allocation by the County.

Worcester County – Chesapeake Bay
(Last comprehensive review completed in November 2003)

Worcester County did not allocate any growth allocation to the Town of Snow Hill. The Town must apply to the County to use growth allocation after the request is approved by the Town Council. The County reviews the application and holds a public hearing on the application. To date 1.63 acres of growth allocation have been used by Snow Hill.

Worcester County – Coastal Bays
(Program adopted in November 2002)

The only incorporated municipality in the Coastal Bays Critical Area of Worcester County is Ocean City. All of Ocean City is designated IDA, so no growth allocation would be needed unless additional land was annexed.

COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND

TALBOT COUNTY GOVERNMENT BUILDING

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PETER A. CARROLL
THOMAS G. DUNCAN
HILARY B. SPENCE

February 4, 2004

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

RE: *Talbot County's Response to Town of St. Michael's Letter of January 7, 2004*

Dear Senator Madden and Commission Members:

This letter will respond to the January 7, 2004 correspondence to you from Robert T. Snyder on behalf of the Town of St. Michaels.

Many of the claims and statements in that letter are incorrect, both legally and factually. Its tone is inflammatory in general. No good purpose is served by responding in kind. It is evident from the tone of that letter that the Town is clearly frustrated at having gone through 5 years of litigation/negotiation with a developer in connection with the Miles Point project and with having spent $1,200,000 in the process. While the County is not unsympathetic to the Town's problems, the County will not allow St. Michaels to make the County, or Bill 933, into a scapegoat.

St Michaels' premise that Bill 933 should be evaluated by how it affects one particular project pending in St. Michaels is flawed. Bill 933, while it may impact that project, is not specific to that project, or even to St. Michaels, but applies uniformly throughout the County. Bill 933 should be evaluated by whether its policies are consistent with State critical area law and regulations. The County asks you to approve Bill 933 as an amendment to County's local critical area program. A copy of Bill 933 is attached.

The balance of this letter will explain:

- The reasons for adoption of Bill 933;
- How Bill 933 fits into Talbot County's critical area program;
- What Bill 933 means for the future;
- How Bill 933 promotes inter-jurisdictional cooperation to advance the goals of the County's critical area program; and
- Why St. Michaels' legal analysis is flawed.

To help understand why Bill 933 was adopted I will provide a brief background of the County's critical area program.

Background

Talbot County adopted its local critical area program in 1989. It included 3 maps showing anticipated growth areas around the Towns of Easton, St. Michaels, and Oxford. The 3 maps are attached to Bill 933. Using those maps, growth allocation acreage was reserved for Easton (155 acres), Oxford (195 acres), and St. Michaels, (245 acres). No growth allocation was reserved for the Town of Queen Anne.

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

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

Reasons for Adoption of Bill 933

The preamble to Bill 933 explains many of the reasons for adoption. This will provide a broader explanation.

The best way to plan for growth is as a component part of the regularly scheduled comprehensive planning process. The process results in adoption of a countywide comprehensive plan, followed, ultimately, by comprehensive rezoning as necessary to achieve the goals of the plan as they evolve over time. Bill 933 repealed the 1989 maps because:

The 1989 maps:

- Are outdated; show incorrect town boundaries, show growth areas which have been bypassed, and don't reflect current growth areas;
- Are inconsistent with current town and county comprehensive plans;
- Are inconsistent with the current update to the Comprehensive Plan, scheduled for the County Council's consideration and adoption in the next several months;
- Represent but a single segment of the whole picture lacking coordination with other planning and growth issues;

The policies Bill 933 promotes:

- The separation of the "planning" from the "zoning" function, consistent with the Courts' separate treatment of those two very different functions. See, for example, *Board of County Commissioners v. Gaster,* 285 Md. 233, 246 (1979) (planning and zoning are not synonymous; zoning is concerned with the use of property but planning is broader in concept).
- The elimination of the former process and quadrennial reviews for planning growth areas around towns; makes that planning part of the comprehensive planning process, and eliminates existing conflicting plans and duplicative reviews.

How Bill 933 fits into the County's Critical Area Program

Bill 933 and Bill 762 combine to provide a single, uniform, comprehensive, simple, and cooperative process to make supplemental awards of growth allocation to municipalities in Talbot County. St. Michaels claims that Bill 933 represents "the complete destruction by the County of the existing and workable process to accommodate growth needs of the Town."[1] This claim is flatly incorrect.

On April 25, 2000, Talbot County adopted Bill 762, (copy attached) entitled, "*A Bill to Establish Procedures for Awarding Supplemental Growth Allocation to Municipalities in Talbot County, Maryland*". Through this procedure the County may make supplemental awards of growth allocation to municipalities. The process includes a joint hearing before the town and county planning commissions, separate recommendations by the planning commissions to their respective councils, then a joint hearing before the town/county councils to consider the application.

The Critical Area Commission has approved the procedure established by Bill 762 as an amendment to the County's critical area program. Bill 933 does not eliminate that process, but expands it to include all the towns within the County. St. Michaels' claim that Bill 933 creates "a lack of uniformity of treatment of towns within the County"[2] is precisely the opposite of what Bill 933 actually does. Bill 933 makes (formerly) different processes uniform.

Before adoption of Bill 933, the joint review created by Bill 762 only applied to Easton, because Easton had no "reserved" growth allocation. Oxford and St. Michaels were exempt from the joint review established by Bill 762 because they had "reserved" growth allocation from the 1989 allotment. Pre-933, the joint review established by Bill 762 applied to Easton but not to Oxford and St. Michaels. Bill 933 eliminates that distinction and makes joint review applicable to all the towns.

Easton and the County have used this joint review repeatedly, effectively, and cooperatively, with excellent results. Recently, Easton and the County used that joint process to

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[1] Page 4, item 4 (all references are to the January 7, 2004 letter)
[2] Page 4, item 2

review and award growth allocation to Easton Village, a substantial waterfront development in Easton. The Critical Area Commission recently approved the joint town/county award of growth allocation for the Easton Village project. There have been other Easton/County joint reviews and approvals of supplemental awards of growth allocation as well.

Talbot County has an existing, smoothly functioning, approved system for handling applications for supplemental awards of growth allocation for municipalities. This joint review process has a proven track record that shows it works well.

What Bill 933 means for the future.

Bill 933 extends the process created by Bill 762 to all municipalities within the County and creates a single, uniform, joint review process for supplemental awards of growth allocation to municipalities. All future expansion in the critical area within towns will receive joint town/county review and approval. The current situation, where St. Michaels and the County may be at odds over a particular development, will not occur, or, if it does, differences will be handled locally through the joint review and approval process just described.

In hindsight, in 1989, reserving 195 acres growth allocation for Oxford and 245 acres for St. Michaels was hugely excessive. With the recent development of a large farm adjacent to Oxford[3] into large, estate-type lots under County zoning, it is now clear that the 1989 assumptions about Oxford's growth were incorrect and that Oxford is unlikely to expand into the 1989 footprint. The 1989 map for Oxford included this farm, approximately 236 acres, as "RCA for Annexation or Rezoning." Oxford has decided to not annex that property. It has been developed according to County zoning without requesting or obtaining growth allocation. Actual events have made the 1989 map, adopted purely for planning purposes, obsolete. St. Michaels, likewise, has used virtually none[4] of the growth allocation reserved under the 1989 maps.

It is now clear that the original municipal requests and County allocations were made at a time when all parties lacked experience with the critical area law to make anything other than "best-guess" assumptions—some of which time has shown to be too liberal and some too conservative. One purpose of Bill 933 was to adjust for those lessons.

How Bill 933 promotes inter-jurisdictional cooperation to promote the goals of the critical area program in Talbot County.

Hon. John C. North II, past Chairman, Critical Area Commission, testified before the County Council in support of Bill 933. In his testimony Judge North identified three other counties, St. Mary's, Charles, and Caroline that have never given growth allocation to municipalities. Their programs, all approved by the Critical Area Commission, have always required municipalities to request and obtain growth allocation from the county. Judge North cited COMAR 27.01.02.06 A. (2), which provides:

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[3] Plimhimmon Farm.

[4] St. Michaels conditionally awarded up to 20 acres for the Strausburg annexation.

> "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."

In Judge North's view this regulation requires *counties*, in coordination with affected municipalities, to plan the future expansion of intensely developed and the limited development areas, and requires *counties* to establish a process to accommodate the growth needs of the municipalities. Judge North concluded his remarks by stating that, "...unless you do this, unless you adopt what is being proposed here today, you're not conforming with what the law requires of you." A transcript of Judge North's testimony is attached.

Although some counties have chosen to reserve growth allocation for municipalities, others have not. Talbot County's choice to adopt a joint review process and to make that joint process applicable to all towns will insure that development in the critical area meets the goals and policies of the critical area programs of both the towns and the county.

The town and County planning commissions, planning office staffs, and councils will all have a role to play in the process. There will be information sharing at staff level, the planning commissions will have a common public hearing at which they will receive a common presentation of the facts. Each planning commission will make separate recommendations based on their separate responsibility to evaluate the proposal under their respective local program. The town and County councils will review the recommendations of their planning commission, and attend a joint hearing at which they will each receive a common presentation. They will deliberate separately, make separate findings of fact, and exercise their legislative discretion to award or withhold growth allocation based on the facts as they find them and their own program's requirements.

This process has worked well in the past and will continue to work well in the future to jointly promote both the towns' and the county's critical area programs.

St. Michaels' legal analysis is flawed.

I. *Gordon v. Commissioners of St. Michaels* has no application to the facts of this case.

St. Michaels cites *Gordon v. Commissioners of St. Michael's,* 278 Md. 128 (1976) in support of its argument, but *Gordon* has no application to the facts of this case. St. Michaels claims "Bill 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."[5]

Bill 933 is a County ordinance, not a State statute. *Gordon* held a State statute enacted by the Maryland General Assembly applicable only to incorporated towns in Talbot County unconstitutional – because it violated Maryland Constitution Article XI–E which forbids passage by *the General Assembly* of "any law relating to the incorporation, organization, government, or

[5] Page 4.

affairs of those municipal corporations…which will be special or local in its terms or in its effect." The General Assembly enacted a State statute that purported to give municipalities in Talbot County zoning jurisdiction different than municipalities elsewhere in the State even though Talbot's municipalities were in the same "class" as municipalities elsewhere in the State. That State statute violated Art. XI-E and was therefore invalid. That holding has no application to the facts of this case.

Bill 933, as a County ordinance, is by definition not subject to the application of Md. Const. Art. XI–E. Moreover, Bill 933 treats all municipalities within Talbot County equally and eliminates the different treatment formerly in place. The *Gordon* case does not apply and certainly does not support the Town's position.

II. Bill 933 does not take the power to plan and zone from the St. Michaels.

St. Michaels claims, "…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."[6] St. Michaels also claims, "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."[7] These arguments fail to recognize the legal relationship established by State law between Counties and municipalities as to growth allocation.

Growth allocation is calculated under a formula, 5% of the total resource conservation area in the local jurisdiction when the Commission approves a local program. Nat. Res. Art. § 8-1808.1 (b), Md. Ann. Code. Under that formula Talbot County, not St. Michaels, received 2,254 acres of growth allocation based on the total RCA area in the County. State law gave that growth allocation to the County, to be used by the County, for growth throughout the County.

St. Michaels' argument is premised on the false assumption, contrary to the State formula and COMAR, that County growth allocation belongs to the Town. The County reserved growth allocation for St. Michaels by county ordinance. No vested rights have accrued. The County may repeal its own ordinance. Under State law, by default, that growth allocation reverts to the County. St. Michaels' argument, in essence, is either that: (1) the County doesn't have the authority to repeal its own ordinance, or (2) that growth allocation calculated under the State formula and given to the County under that formula somehow belongs to St. Michaels.

Bill 933 repeals the 1989 maps and reserved growth allocation. That legislative act is within the broad discretion of the County Council under the Express Powers Act of Art. 25 A § 5, Md. Ann. Code. It is consistent with State law and COMAR, consistent with the County process for awarding supplemental growth allocation to municipalities, and consistent with the approved critical area programs of St. Mary's, Charles, and Caroline Counties.

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[6] Page 4
[7] Page 4

Talbot County requests that you approve Bill 933 as an amendment to the County's local critical area program. Thank you for your time and consideration.

Miles Point project

St. Michaels has provided considerable comment on the Miles Point project. That project is an entirely different subject and is not before the Critical Area Commission at this time for any action. When that project is ready for your consideration the County will provide additional information and respond to St. Michaels' comments on that subject.

Very truly yours,

Philip Carey Foster
President

Enclosures

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
Senator Richard F. Colburn
Delegate Adelaide C. Eckardt
Delegate Jeannie Haddaway
Ren Serey, Critical Area Commission
Mary R. Owens, Critical Area Commission
Marianne Mason, Asst. Attorney General
Audrey E. Scott, Md. Dept. Planning
Tom Rimrodt, Md. Dept. Planning
Patricia Goucher, Md. Dept. Planning
Samuel Bradner, Md. Dept. Planning

1/29/04

Mike Pullen

1989. Talbot ord.. incl. 3 maps growth areas - for Easton · STM · Oxford

Maps used to calculate g.A. for reserved for towns.

Plan - renew every 4 years - not happened. Yet maps are "frozen in time"

2003. Oxford used almost none

Easton used all + more. annexations made diff. boundaries

Oxford + St Michaels = 440 acres

Total = 2554

-128 allocated to LDAs + IDAs

2426

1213 = half

when 1092 is allocated, then Talbot will go back to CAC + ask for release of 2nd half.

Effectively, the Towns have a "pocket veto" over County's 2nd half release.

Bill 933 repealed the maps -

+ put reserved acreage back in County's column.

Bill 762 (2000) - allows suppl. awards

of GA to municipalities -
Towns + Cty Joint Krg. Plann. Cmn
" " " Council
votes. Process used for other projects
eg. Easton.

post- 762
pre 933
2 systems: one for Easton + Trappe
one for ST Michaels + Oxford

Mason, Marianne D

From: Hoerger, Lisa
Sent: Friday, January 23, 2004 2:08 PM
To: Mason, Marianne D
Subject: RE: Talbot County Comp. Review Bills and Bill 933

Thanks!

-----Original Message-----
From: Mason, Marianne D
Sent: Friday, January 23, 2004 2:05 PM
To: Hoerger, Lisa
Subject: RE: Talbot County Comp. Review Bills and Bill 933

Lisa you usually count the day after the item is received as the first day. So ten working days would be Feb.5. That would be the date of "acceptance." 90 days after that date (day 1 being Feb. 6) would be the magic date by which the Commission has to act.

-----Original Message-----
From: Hoerger, Lisa
Sent: Friday, January 23, 2004 10:34 AM
To: Mason, Marianne D
Subject: Talbot County Comp. Review Bills and Bill 933

Marianne,

We need your advice on how to count the ten days and the 90 days associated with amendments.

The submission was date stamped yesterday (1/22/04). So in regard to the 10 working day response would Thursday, February 5th be the 10th day?

If our letter is dated February 5th, 2004, would 90 days work out to be May 5th?

That is how we figured it out, but we wanted to check with you to see whether we are interpreting the requirements of the law correctly.

Thanks Marianne!

LH

MILES & STOCKBRIDGE P.C.

Richard A. DeTar
rdetar@milesstockbridge.com
(410) 820-0224

April 5, 2004

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

Ren Serey, Executive Director
Critical Area Commission
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Re: Talbot County Council Bill 933

Ladies and Gentlemen:

This letter is further to my letter to you dated April 2, 2004. In that letter I asserted that the primary purpose for the Talbot County Council's enactment of Bill 933 is to defeat the Midland/Miles Point Project. This assertion is relevant for a number of reasons. First, this would establish that Talbot County did not act "in coordination" with St. Michaels, nor did it "accommodate the growth needs of [St. Michaels]". See COMAR 27.01.02.06A.(2). Furthermore, Talbot County's motive (i.e., to attempt to defeat the Midland/Miles Point Project) explains why the County declined to undertake a coordinated process with affected

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:

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[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

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

MR. PULLEN: Mr. Chairman, if I may, I would like to yield the balance of the County's presentation at this point to a person who needs no introduction to the Panel, the Honorable John C. North.

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

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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*
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Appointed by County Council
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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
Chesapeake Maritime Museum
St. Michaels, Maryland

Reported by. David M. Schafer, AA, CCR

MEMBERS OF THE PANEL:

Gary Setzer, Chair

Judith Evans

Joseph Jackson

Dave Blazer

Edwin Richards

JUDGE NORTH: Good evening, Mr. Chairman, ladies and gentlemen. Thank you very much for your attendance here this evening.

You have a handful to consider all these facts and suggestions, and I applaud you're industrious application, as witnessed by the note taking that you're engaged in constantly.

I live on Yacht Club Road. My name is John North. I think I forgot to say that, too. I live at the end of Yacht Club Road and have lived there for something like 18 years. My family has owned property on Yacht Club Road for over 50 years, and I've lived in Talbot County all my life.

I learned to swim in the Miles River when I was about three. And since that time, I think it's fair to say that I have spent more time sailing on the Miles and swimming in the Miles, sometimes simultaneously or nearly so, than anyone else in

This project is modified slightly, and the Town again says no, is sustained by the Circuit Court, goes to the Court of Appeals, the Court of Appeals sends it back and said take a better look at things.

About that time the Town ran out of steam, the Town ran out of money, the Town ran out

of determination.

I applaud the efforts of the Town Council to have attempted so long and so vigorously to ward off what they very accurately perceived as a gross imposition on this entire community.

But after having raised taxes in the Town twice to meet legal expenses exceeding a million dollars, ladies and gentlemen, fending off Mr. Valanos, after doing that they ran out of steam and consequently the Town voted to grant the growth allocation to this project.

Fortunately the County of Talbot, in the form of a County Council, came galloping to the rescue and said this matter should not proceed in this fashion, and consequently they instituted a bill to recover unused growth allocation from all municipalities in the County of Talbot.

I think all the authorities are in agreement that that is perfectly in accord with the COMAR regulations. I don't think there is any real dispute on that point, though there are arguments to

be made about it.

So we are in a situation now where the

former representatives to the Critical Area Commission -- the three are Bill Corkran, Doctor -- come on head -- Doctor Shepard Krech and Paul Jones, Esquire, all had authorized me to say that they would vote against granting growth allocation in this instance.

Thank you very much.

I, David M. Schafer, a Notary Public in and for the State of Maryland, County of Wicomico, do hereby certify the foregoing excerpt a true and accurate record of the aforementioned proceeding.

As Witness, my hand and Notarial Seal this 2nd day of April 2004, at Delmar, Maryland.

_____

David M. Schafer

My Commission expires August 2006

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.

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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

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COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND

Council Meeting

December 23, 2003

1:30 p.m.

County Council Chambers, Easton, Maryland

COUNCIL MEMBERS:

PHILIP FOSTER, President
HOPE HARRINGTON
PETER CARROLL
HILARY SPENCE
THOMAS DUNCAN

Reported by
David C. Corbin

it's review and reallocate. Doesn't mean we're going to keep it. Reallocate I think has a very positive meaning. It means that we're working with the municipalities. That indeed can happen. And, again, I think I touched earlier, I'm really concerned about environmental issues and I know that there's a lot of folks in the town are concerned about it and I know there's a lot of folks, even the development folks are concerned about it. But the bottom line is if we all work together we can accomplish something that will make our County a better place to live in. So that's where I'm at. Thank you, Mr. Foster.

MR. FOSTER: I would really like to vote for this bill.

MR. DUNCAN: Well, do it.

MR. FOSTER: It's interesting. But I'm not going to. And I'll tell you why. I guess maybe every once in a while you get struck with this desire for intellectual honesty. And as

and to be responsible for. I don't think that was probably a very good way of doing it. I think that was a kind of a Pontius Pilate sort of thing, we'll wash our hands of it, and if anything goes wrong in any of those towns, they won't be able to blame us because we're not the ones that made the decision. This bill really is about power and it's about control. And I guess I'm reacting against this nonsense of a partnership. It isn't a partnership when you grant somebody authority to do something and then you take it back from them. It is a retaking. Reallocation is to retake, and I guess as revenue enhancement is to tax increase. I mean it's just another way of saying the same thing, maybe a prettier way of saying the same thing. What moved me in the letter from St. Michaels, and I'm not sure what, you know, their priorities are, but what moves me in this is the argument of what kind of situation are we setting up here when we

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DNR - LEGAL DIVISION

IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

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

LINE

Please note that effective July 5, 2006, the **firm name** of counsel for Defendant Talbot County, Maryland has changed to **Karpinski, Colaresi & Karp, P.A.**

KARPINSKI, COLARESI & KARP

BY: Victoria Shearer

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Baltimore, Maryland 21202
410-727-5000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of July 2006, a copy of the foregoing Line was mailed first-class, postage prepaid to:

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~~Counsel for Plaintiff Talbot County~~

MBD