

DISAPPROVAL OF DORCHESTER COUNTY MAP
AMENDMENTS AND CRITICAL AREA PROGRAM
AMENMENTS ON OCTOBER 4, 2006 Case No. C-
06-14611 (Circuit Court for Dorchester County)

USA-S-1831-27 (3 folders)

Pleadings

COMPLAINT/PETITION OF EGYPT ROAD, LLC AND
THE THOMAS LAND GROUP, LLC FOR THE JUDICIAL
REVIEW OF THE DECISION OF THE DEPARTMENT
OF NATURAL RESOURCES, CRITICAL AREA

USA S. 1831-27 (1 of 3)

Pleadings

COMPLAINT/PETITION OF EGYPT ROAD, LLC AND
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COMMISSION FOR THE CHESAPEAKE AND
ATLANTIC COASTAL BAYS

IN THE CASE OF BLACKWATER COMMUNITIES

Case No. C-06-14613 (Circuit Court of Dorchester County)

Egypt Road

The motion looks fine to me. You are authorized to sign. Thanks! Marianne
Dise

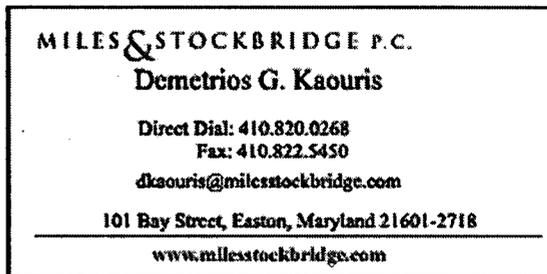
-----Original Message-----

From: Kaouris, Demetrios [mailto:DKAOURIS@MilesStockbridge.com]
Sent: Friday, April 13, 2007 2:39 PM
To: jblomquist@fblaw.com; Dise, Marianne E.; Charles D. MacLeod
Subject: Egypt Road / Critical Area Commission Cases - Joint Motions to Stay

Counsel,

Attached please find a proposed Motion to Stay for each of the two cases involving review of the Critical Area Commission's decision denying growth allocation for the property owned by Egypt Road. Please let me know whether the motions are acceptable to each of you and whether I am authorized to sign the Joint Motions on your behalf. I would like to have these filed early next week.

Regards,



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In accordance with Internal Revenue Service rules, any federal tax advice provided in this communication is not intended or written by the author to be used, and cannot be used by the

recipient, for the purpose of avoiding penalties which may be imposed on the recipient by the IRS. Please contact the author if you would like to receive written advice in a format which complies with IRS rules and may be relied upon to avoid penalties.

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DRAFT

IN THE CIRCUIT COURT
FOR DORCHESTER COUNTY, MARYLAND

PETITION OF DORCHESTER COUNTY *
FOR JUDICIAL REVIEW OF THE DECISION OF *

STATE OF MARYLAND *
CRITICAL AREA COMMISSION FOR THE *
CHESAPEAKE AND ATLANTIC COASTAL BAYS *

DISAPPROVAL OF DORCHESTER COUNTY MAP *
AMENDMENTS AND CRITICAL AREA *
PROGRAM AMENDMENTS ON *
OCTOBER 4, 2006 *

Case No. 09-C-06-14611

* * * * *

JOINT MOTION TO STAY

Dorchester County (the "County"), Egypt Road, LLC and The Thomas Land Group, LLC (collectively "Egypt Road") and the Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "Commission"), by and through their undersigned attorneys, hereby move for a stay in the above-captioned case and in support hereof state as follows:

1. This case involves the Commission's refusal to approve the award of growth allocation for certain real property owned by Egypt Road located in Cambridge, Maryland (the "Property").
2. Egypt Road and the State of Maryland (the "State") have entered in a written agreement whereby the State has agreed to purchase a substantial portion of the Property. That agreement is subject to approval by the Maryland Board of Public Works.
3. The Board of Public Works is scheduled to consider approval of the agreement and the purchase of a portion of the Property at a meeting scheduled for April 18, 2007.

4. If the agreement is approved by the Board of Public Works and a substantial portion of the Property sold to the State, the above-captioned case will be moot.

5. Egypt Road and the Commission request that this case be stayed to provide time for the Board of Public Works to consider approval of the agreement and, if approved, for the State to close the transaction.

6. If the Board of Public Works does not approve the agreement, either party may move to lift any stay entered in this case upon ten (10) days notice to the other party.

7. Upon the lifting of the stay, Egypt Road shall have thirty (30) days from the date of the entry of an Order lifting of the stay to file an opposition to the Motion to Dismiss filed by the Commission. The Commission shall then have twenty (20) days from the filing of Egypt Road's Opposition to file a Reply.

8. If the agreement is approved by the Board of Public Works and the Property sold to the State, the parties shall to file a Stipulation of Dismissal in this case.

WHEREFORE, the County, Egypt Road and the Commission respectfully request that the above-captioned case be stayed.

Respectfully submitted,

Richard A. DeTar
Demetrios G. Kaouris
Miles & Stockbridge P.C.
101 Bay Street
Easton, Maryland 21601
(410) 822-5280

Attorneys for The Thomas Land Group, LLC
and Egypt Road, LLC

Marianne E. Dise
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Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401
(410) 260-3466

Attorneys for the Critical Area Commission
for the Atlantic and Coastal Bays

Jefferson L. Blomquist
Funk & Bolton
315 High Street, #202
Chestertown, Maryland 21620-1350
(410) 810-1381

Attorneys for Dorchester County, MD

IN THE CIRCUIT COURT
FOR DORCHESTER COUNTY, MARYLAND

PETITION OF DORCHESTER COUNTY *
FOR JUDICIAL REVIEW OF THE DECISION OF *

STATE OF MARYLAND *
CRITICAL AREA COMMISSION FOR THE *
CHESAPEAKE AND ATLANTIC COASTAL BAYS *

DISAPPROVAL OF DORCHESTER COUNTY MAP *
AMENDMENTS AND CRITICAL AREA *
PROGRAM AMENDMENTS ON *
OCTOBER 4, 2006 *

Case No. 09-C-06-14611

* * * * *

ORDER

Having considered the Joint Motion to Stay, it is this _____ day of April 2007,

ORDERED, that the above-captioned case be and is hereby stayed; and

IT IS FURTHER ORDERED, that either party may move to lift the stay upon ten (10) days notice; and

IT IS FURTHER ORDERED, that if the stay is lifted, Egypt Road shall have thirty (30) days from the date of the Order lifting the stay to file an opposition to the Motion to Dismiss filed by the Commission and the Commission shall have twenty (20) days from the date of the filing of Egypt Road's Opposition to file a Reply to Egypt Road's Opposition.

Judge, Circuit Court for Dorchester County, Maryland

DRAFT

IN THE CIRCUIT COURT FOR DORCHESTER COUNTY, MARYLAND

COMPLAINT/PETITION OF
EGYPT ROAD, LLC

*

and

*

THE THOMAS LAND GROUP, LLC

*

FOR JUDICIAL REVIEW OF THE
DECISION OF THE DEPARTMENT OF
NATURAL RESOURCES, CRITICAL AREA
COMMISSION FOR THE CHESAPEAKE
AND ATLANTIC COASTAL BAYS

*

Civil Case No. 09-C-06-014613

*

*

IN THE CASE OF BLACKWATER
COMMUNITIES – GROWTH ALLOCATION

*

*

OR IN THE ALTERNATIVE
COMPLAINT FOR
DECLARATORY JUDGMENT AGAINST
THE DEPARTMENT OF NATURAL
RESOURCES, CRITICAL AREA COMMISSION
FOR THE CHESAPEAKE AND ATLANTIC
COASTAL BAYS

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JOINT MOTION TO STAY

Egypt Road, LLC and The Thomas Land Group, LLC (collectively “Egypt Road”) and the Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the “Commission”), by and through their undersigned attorneys, hereby move for a stay in the above-captioned case and in support hereof state as follows:

1. This case involves the Commission’s refusal to approve the award of growth allocation for certain real property owned by Egypt Road located in Cambridge, Maryland (the “Property”).

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WHEREFORE, Egypt Road and the Commission respectfully request that the above-captioned case be stayed.

Respectfully submitted,

Richard A. DeTar
Demetrios G. Kaouris
Miles & Stockbridge P.C.
101 Bay Street
Easton, Maryland 21601
(410) 822-5280

Attorneys for The Thomas Land Group, LLC
and Egypt Road, LLC

Marianne E. Dise
Assistant Attorney General
Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401
(410) 260-3466

Attorneys for the Critical Area Commission
for the Atlantic and Coastal Bays

IN THE CIRCUIT COURT FOR DORCHESTER COUNTY, MARYLAND

COMPLAINT/PETITION OF
EGYPT ROAD, LLC

*

and

*

THE THOMAS LAND GROUP, LLC

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FOR JUDICIAL REVIEW OF THE
DECISION OF THE DEPARTMENT OF
NATURAL RESOURCES, CRITICAL AREA
COMMISSION FOR THE CHESAPEAKE
AND ATLANTIC COASTAL BAYS

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Civil Case No. 09-C-06-014613

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IN THE CASE OF BLACKWATER
COMMUNITIES – GROWTH ALLOCATION

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OR IN THE ALTERNATIVE
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THE DEPARTMENT OF NATURAL
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FOR THE CHESAPEAKE AND ATLANTIC
COASTAL BAYS

*

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* * * * *

ORDER

Having considered the Joint Motion to Stay, it is this _____ day of April 2007,

ORDERED, that the above-captioned case be and is hereby stayed; and

IT IS FURTHER ORDERED, that either party may move to lift the stay upon ten (10) days notice; and

IT IS FURTHER ORDERED, that if the stay is lifted, Egypt Road shall have thirty (30) days from the date of the Order lifting the stay to file an opposition to the Motion to Dismiss filed by the Commission and the Commission shall have twenty (20) days from the date of the filing of Egypt Road's Opposition to file a Reply to Egypt Road's Opposition.

Judge, Circuit Court for Dorchester County, Maryland



STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401

(410) 260-3460 Fax: (410) 974-5338

www.dnr.state.md.us/criticalarea/

April 2, 2007

Honorable John Griffin, Secretary
Maryland Department of Natural Resources
580 Taylor Avenue
Annapolis, Maryland 21401

Re: Thomas Land Group, LLC / Egypt Road, LLC

Dear Secretary Griffin:

As I understand it, the State of Maryland has entered into an Agreement of Sale with the Thomas Land Group, LLC and Egypt Road, LLC (Thomas/Egypt) whereby the State will purchase 728 acres from Thomas/Egypt (the State Land) and then environmentally restore it to improve the water quality in the Little Blackwater River. The majority of the State Land is located on the east side of Egypt Road. Thomas/Egypt will retain and develop the remaining 346 acres of land on the west side of Egypt Road (the Thomas/Egypt Land). You have asked me what, if any, Critical Area Commission approvals are required for these activities.

No Critical Area Commission approval is required for the Egypt Road development if the development lies entirely outside of the Critical Area, provided that the post-development rate of stormwater discharge from the Thomas/Egypt Land to the State Land is equal to or less than the existing rate of discharge.

Restoration of the State Land does require Commission approval, as it involves development in the Critical Area. The procedures to apply for Commission review and approval are set forth in COMAR 27.02.05.01.

I hope this letter responds to your request. If you need any further information, please contact me at (410) 260-3462.

Sincerely,

A handwritten signature in black ink, appearing to read "Ren Serey".

Ren Serey
Executive Director

cc: Marianne Dise, Counsel, Critical Area Commission
Mary Owens, Chief, Program Implementation
Joe Gill, Counsel, Department of Natural Resources

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

DONNA HILL STATON
DEPUTY ATTORNEY GENERAL

MAUREEN M. DOVE
DEPUTY ATTORNEY GENERAL



MARIANNE E. DISE
ASSISTANT ATTORNEY GENERAL
PRINCIPAL COUNSEL

SAUNDRA K. CANEDO
ASSISTANT ATTORNEY GENERAL

WRITER'S DIRECT DIAL NO.:

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338

(410) 974-5338

(410) 260-3466

December 4, 2006

Mr. Michael L. Baker, Clerk of the Court
Circuit Court for Dorchester County
206 High Street
P.O. Box 150
Cambridge, Maryland 21613

Re: *Egypt Road, LLC, et al. v. Dep't of Natural Resources Critical Area Commission,*
Case No C-06-14613.

Dear Clerk:

Enclosed please find for filing in the above-referenced case the Defendant's Answer to Count II of Complaint, Motion to Dismiss Count I of Complaint, Memorandum in Support of Motion, and Proposed Order. Thank you very much for your assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Marianne E. Dise".

Marianne E. Dise
Assistant Attorney General

Enclosures

cc: William McAllister, Esquire
Richard A. DeTar, Esquire

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

EGYPT ROAD, LLC. et al.,

*

Plaintiffs,

*

v.

*

Case No. C-06-14613

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

*

*

Defendant

*

* * * * *

**ANSWER OF DEFENDANT DEPARTMENT OF NATURAL RESOURCES
TO COUNT II OF THE COMPLAINT FOR ADMINISTRATIVE MANDAMUS
OR IN THE ALTERNATIVE FOR DECLARATORY JUDGMENT**

Defendant Department of Natural Resources (“DNR”) and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the “Critical Area Commission”), by its attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, and Marianne E. Dise and Sandra K. Canedo, Assistant Attorneys General, pursuant to Maryland Rules 2-321 and 2-323 hereby answers Count II (Declaratory Judgment) of the Complaint for Administrative Mandamus or in the Alternative for Declaratory Judgment (“the Complaint”). DNR has filed a separate Motion to Dismiss as to Count I of the Complaint (Administrative Mandamus), and accordingly, the responses provided below pertain only to Count II of the Complaint (Declaratory Judgment):

1. DNR lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraphs 1 and 2 of the Complaint.

2. DNR denies the allegations contained in paragraph 3 of the Complaint that the Critical

Area Commission is “a state agency.” The remaining allegations of paragraph 3 are statements or conclusions of law to which no responses are required or provided.

3. Paragraphs 4, 5, and 6 of the Complaint contain no allegations of fact, only statements and conclusions of law, to which no responses are required or provided.

4. DNR lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 7 of the Complaint.

5. DNR admits the allegation contained in paragraph 8 of the Complaint.

6. DNR lacks sufficient knowledge or information to either admit or deny the allegations contained in the first sentence in paragraph 9 of the Complaint. As to the remaining allegations contained in paragraph 9 of the Complaint, to the extent that the allegations are allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR admits the allegations.

7. DNR admits the allegations contained in paragraph 10 of the Complaint.

8. DNR admits the allegations of the first sentence in paragraph 11 of the Complaint. As to the remaining allegations contained in paragraph 11 of the Complaint, to the extent that the allegations are allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR admits the allegations.

9. To the extent that paragraph 12 of the Complaint contains allegations of fact, and not merely statements or conclusion of law to which no responses are required or provided, DNR admits the allegations.

10. In response to the allegations contained in paragraph 13 of the Complaint, DNR denies that “the Critical Area Commission held a public hearing on the County Council’s and City of

Cambridge Commissioners' growth allocation award." In further response to the allegations contained in paragraph 13 of the Complaint, DNR states that a Panel of 5 members of the Critical Area Commission held a public hearing to consider the request from Dorchester County and the City of Cambridge to amend their local Critical Area Programs. To the extent that there are allegations remaining not responded to in this paragraph, DNR denies the remaining allegations of paragraph 13 of the Complaint.

11. In response to the allegations contained in paragraph 14 of the Complaint, DNR denies that "the Critical Area Commission thereafter met on several occasions to discuss the County Council's and City of Cambridge Commissioners' award of growth allocation." In further response to the allegations contained in paragraph 14 of the Complaint, DNR states that a Panel of 5 members of the Critical Area Commission held public meetings to discuss the request from Dorchester County and the City of Cambridge to amend their local Critical Area Programs

12. In response to the allegations contained in paragraph 15 of the Complaint, DNR admits that a copy of the Panel Report is attached to the Complaint. To the extent that paragraph 15 of the Complaint purports to explain the substance of the Panel Report, the document speaks for itself.

13. In response to the allegations contained in paragraph 16 of the Complaint, DNR states that, to the extent that paragraph 16 of the Complaint purports to describe the Critical Area Commission's action, the Critical Area Commission's written correspondence to the County speaks for itself.

14. As set forth above, DNR has filed a Motion to Dismiss as to Count I of the Complaint, and therefore, DNR does not respond to the allegations contained in paragraphs 17 through 21 of the Complaint.

15. Paragraph 22 of the Complaint contains no separate allegations of fact, and thus no response is required or provided. To the extent that a response may be required, DNR incorporates and re-states its responses to the allegations contained in paragraphs 1 through 21 of the Complaint

16. Paragraph 23 of the Complaint contains no allegations of fact, only a statement of the relief requested, and statements or conclusions of law to which no responses are required or provided.

17. Paragraph 24 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no responses are required or provided. DNR denies the allegation contained in paragraph 24 of the Complaint that it acted in an “arbitrary, capricious and otherwise illegal manner.”

18. Paragraph 25 contains no allegations of fact, only statements or conclusions of law to which no response is required or provided. To the extent that paragraph 25 of the Complaint contains allegations of fact to which a response may be required, DNR denies the allegations.

19. Paragraph 26 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no response is required or provided. To the extent that paragraph 26 of the Complaint contains allegations of fact to which a response may be required, DNR denies the allegations.

20. Paragraph 27 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no response is required or provided. To the extent that paragraph 27 of the Complaint contains allegations of fact to which a response may be required, DNR denies the allegations.

21. Paragraph 28 of the Complaint contains no allegations of fact, only statements or

conclusions of law to which no response is required or provided. To the extent that paragraph 28 of the Complaint contains allegations of fact to which a response may be required, DNR denies the allegations.

22. Paragraph 29 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no response is required or provided.

23. Paragraph 30 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no response is required or provided. To the extent that the allegations of paragraph 30 of the Complaint purport to describe the Panel Report or the Commission's action, the Report and the Commission's written correspondence to the County speak for themselves. To the extent that paragraph 30 of the Complaint contains allegations of fact to which a response may be required, DNR denies the allegations.

24. Paragraph 31 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no response is required or provided. To the extent that the allegations of paragraph 31 of the Complaint purport to describe the Panel Report or the Commission's action, the Report and the Commission's written correspondence to the County speak for themselves. To the extent that paragraph 31 of the Complaint contains allegations of fact to which a response may be required, DNR denies the allegations.

25. Paragraph 32 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no response is required or provided. To the extent that the allegations of paragraph 32 of the Complaint purport to describe the Panel Report or the Commission's action, the Report and the Commission's written correspondence to the County speak for themselves. To the extent that paragraph 32 of the Complaint contains allegations of fact to which a response may

be required, DNR denies the allegations.

26. Paragraph 33 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no response is required or provided. To the extent that the allegations of paragraph 33 of the Complaint purport to describe the Panel Report or the Commission's action, the Report and the Commission's written correspondence to the County speak for themselves. To the extent that paragraph 33 of the Complaint contains allegations of fact to which a response may be required, DNR denies the allegations.

27. Paragraph 34 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no response is required or provided. To the extent that paragraph 34 of the Complaint contains allegations of fact to which a response may be required, DNR denies the allegations.

28. Paragraph 35 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no response is required or provided. To the extent that the allegations of paragraph 35 of the Complaint purport to describe the Panel Report or the Commission's action, the Report and the Commission's written correspondence to the County speak for themselves. To the extent that paragraph 35 of the Complaint contains allegations of fact to which a response may be required, DNR denies the allegations.

29. In response to the allegations of paragraph 36 of the Complaint, DNR denies that it "acted arbitrarily and capriciously." DNR admits that the Critical Area Commission previously approved at least one amendment to a local critical area program where the subject property was not located adjacent to property designated IDA or LDA. To the extent that the remaining allegations of paragraph 36 of the Complaint consist of statements or conclusions of law, no response is required

or provided. To the extent that the remaining allegations of paragraph 36 of the Complaint contain allegations of fact to which a response may be required, DNR denies the allegations.

30. In response to the allegations of paragraph 37, DNR admits that the Critical Area Commission denied the request by the City of Cambridge and Dorchester County to amend their local critical area programs. The remaining allegations of paragraph 37 consist of statements or conclusions of law to which no response is required or provided. To the extent that the remaining allegations of paragraph 37 of the Complaint contain allegations of fact to which a response may be required, DNR denies the allegations.

31. Paragraph 38 of the Complaint contains no allegations of fact, only statements of the relief requested and statements and conclusions of law to which no response is required or provided.

32. Paragraph 39 of the Complaint contains no allegations of fact, only statements of the relief requested and statements and conclusions of law to which no response is required or provided.

33. The remaining paragraphs of the Complaint (numbered A through K), are statements of the relief requested to which no response is required or provided.

AFFIRMATIVE DEFENSE

1. The Complaint fails to state a claim upon which relief can be granted.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL


Marianne E. Dise


Sandra K. Canedo

Assistant Attorneys General
Maryland Department of Natural Resources
Critical Area Commission for the Chesapeake
and Atlantic Coastal Bays
1804 West Street Suite 100
Annapolis, Maryland 21401
(410) 260-3466
Fax: (410) 974-5338
Attorneys for Defendant Department of
Natural Resources, Critical Area Commission

Dated: December 5, 2006

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

EGYPT ROAD, LLC. et al.,

*

Plaintiffs,

*

v.

*

Case No. C-06-14613

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

*

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Defendant

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* * * * *

MOTION TO DISMISS COUNT I OF COMPLAINT

Defendant Department of Natural Resources (“DNR”) and its Critical Area Commission For The Chesapeake And Atlantic Coastal Bays (the “Critical Area Commission”), by its attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, and Marianne E. Dise and Sandra K. Canedo, Assistant Attorneys General, moves pursuant to Maryland Rule 2-322(b) to dismiss Count I of the Complaint in the above-captioned proceeding, (“Administrative Mandamus”), and states for cause:

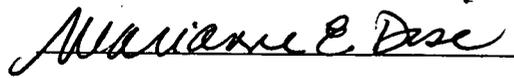
1. The action of the Critical Area Commission on the proposed amendment to Dorchester County’s and the City of Cambridge’s local Critical Area programs was a quasi-legislative action, and, as such, for the reasons set forth in the accompanying Memorandum in Support of Motion to Dismiss, is not subject to Administrative Mandamus under Rule 7-401.

WHEREFORE, defendant DNR Critical Area Commission requests that the Court dismiss Count I of the Complaint for failure to state a claim on which relief may be granted.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.

ATTORNEY GENERAL OF MARYLAND





Marianne E. Dise

Sandra K. Canedo

Assistant Attorneys General

Maryland Department of Natural Resources

Critical Area Commission

1804 West Street Suite 100

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(410) 260-3466

Fax: (410) 974-5338

Attorneys for Defendant

Dated: December 5, 2006

IN THE CIRCUIT COURT OF MARYLAND
FOR DORCHESTER COUNTY

EGYPT ROAD, LLC., et al,

*

Plaintiffs,

*

v.

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

*

Case No. C-06-14613

*

*

Defendant

*

* * * * *

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS COUNT I OF COMPLAINT

Respondent Department of Natural Resources (“DNR”) and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the “Critical Area Commission”), by its attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, and Marianne E. Dise and Sandra K. Canedo, Assistant Attorneys General, files this Memorandum In Support of Motion to Dismiss Count I of the Complaint (“Administrative Mandamus”) in the above-captioned proceeding.

ARGUMENT

The Critical Area Commission’s Action On the Proposed Critical Area Program Amendments for the Blackwater Resorts Growth Allocation Was Not a Contested Case Proceeding and Therefore Is Not Subject to Administrative Mandamus Under Rule 7-401 et seq.

Plaintiffs seek Administrative Mandamus under Maryland Rule 7-401 *et seq.*, claiming that the action of the Critical Area Commission was “quasi-judicial in nature.” Plaintiffs are wrong. The process under which the Critical Area Commission reached its decision to deny Dorchester

County's and the City of Cambridge's requested award of growth allocation for the Blackwater Resorts development project was the quasi-legislative process set forth in the Code, Nat. Res. II §8-1809 for Commission decisions on proposed amendments to local Critical Area programs.

The Critical Area Commission's proceedings on proposed amendments to local Critical Area programs are not contested case proceedings. *North v. Kent Island Limited Partnership*, 106 Md.App. 92, 103 (1995) (for a proceeding to meet the definition of "contested case," the agency must provide trial type procedures). In *North*, the Court of Special Appeals determined that nothing in the Critical Area Commission's program amendment review procedures in Md. Code Ann., Nat. Res. II § 8-1809 requires a contested case hearing. *Id.* The Court specifically held that "[t]he role of the Commission is quasi-legislative and does not encompass a contested case hearing." *Id.* (emphasis added). Since the Commission's proceedings that reviewed, and ultimately denied Dorchester County's and the City of Cambridge's proposed Program amendments in this case were not contested case proceedings, the administrative mandamus process is simply not applicable.

Rule 7-401 governs actions for judicial review of a "quasi-judicial order or action of an administrative agency where review is not expressly authorized by law." (emphasis added) As explained above, the action for which Plaintiffs seek administrative mandamus was a quasi-legislative act of considering a request from the City and the County to amend their local Critical Area Programs. Under the Critical Area Law, a locality may not amend its program without first receiving approval of the amendment from the Critical Area Commission. Code, Nat. Res. II § 8-1809(i). Once the Critical Area Commission accepts for review a locality's proposed program amendment, a Commission panel must hold a public hearing on the proposed amendment and the full Commission must act upon the proposed amendment within ninety days of accepting the

proposal for review. *Id.* § 8-1909(o)(1).

Here, the Critical Area Commission accepted Dorchester County's and the City of Cambridge's request to change their Critical Area programs regarding the proposed Blackwater Resorts growth allocation, but the Commission did not approve the request. Under *North v. Kent Island, id.*, the Commission's action on Dorchester County's and the City of Cambridge's proposed Critical Area program amendments was a quasi-legislative action, and not a quasi-judicial action. Accordingly, the Commission's action is not subject to administrative mandamus under Rule 7-401.

CONCLUSION

For the foregoing reasons and authorities, Defendant's Motion To Dismiss Count I of the Complaint should be granted.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL OF MARYLAND



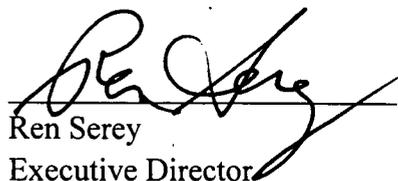


Marianne E. Dise
Sandra K. Canedo
Assistant Attorneys General
Maryland Department of Natural Resources
Critical Area Commission
1804 West Street Suite 100
Annapolis, Maryland 21401
(410) 260-3466
Fax: (410) 974-5338
Attorneys for Defendant

Dated: December 5, 2006

VERIFICATION

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

A handwritten signature in black ink, appearing to read "Ren Serey", is written over a horizontal line.

Ren Serey

Executive Director

Critical Area Commission for the Chesapeake and
Atlantic Coastal Bays

Dated: December 5, 2006

CERTIFICATE OF SERVICE

I hereby certify that, on this 5th day of December, 2006, a copy of the foregoing Answer to Complaint, Motion to Dismiss, Memorandum in Support of Motion, and Proposed Order, were sent via first-class U.S. mail, postage prepaid, to:

William W. McAllister, Jr., Miles & Stockbridge, P.C., 300 Academy Street, Cambridge, Maryland 21613; and Richard A. DeTar and Demetrios Kaouris, Miles & Stockbridge, P.C., 101 Bay Street, Easton, Maryland 21601, Attorneys for Plaintiffs.

Marianne E. Dese

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

EGYPT ROAD, LLC. et al.,

*

Plaintiffs,

*

v.

*

Case No. C-06-14613

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

*

*

Defendant

*

* * * * *

ORDER

The Court, having considered defendant's Motion To Dismiss Count I of the Complaint and Memorandum In Support Of Motion To Dismiss, together with any response thereto, and having found that Count I of the Complaint (Administrative Mandamus) fails to state a claim on which relief may be granted, does, this ___ day of _____, 2006,

ORDER that the Motion to Dismiss is hereby GRANTED and that Count I of the Complaint is hereby dismissed with prejudice.

Judge, Circuit Court of Maryland
for Dorchester County

IN THE CIRCUIT COURT OF MARYLAND
FOR DORCHESTER COUNTY

PETITION OF
DORCHESTER COUNTY COUNCIL

Petitioner, *

FOR JUDICIAL REVIEW OF THE *
DECISION OF: *
STATE OF MARYLAND *
THE CRITICAL AREA COMMISSION FOR *
THE CHESAPEAKE AND ATLANTIC *
COASTAL BAYS, *

Case No. C-06-14611

Respondent. *

* * * * *

MOTION TO DISMISS

Respondent Critical Area Commission For The Chesapeake And Atlantic Coastal Bays (the "Critical Area Commission"), by its attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, and Marianne E. Dise and Sandra K. Canedo, Assistant Attorneys General, moves pursuant to Maryland Rules 2-322(a)(1) and 2-322(b) to dismiss the Petition For Administrative Mandamus, or in the Alternative, For Judicial Review (the "Petition"), and states for cause:

1. The Critical Area Commission is a commission within the Maryland Department of Natural Resources ("DNR"). DNR is a principal department of State Government, whereas the Critical Area Commission is not. As such, and for reasons more fully set forth in the accompanying Memorandum In Support Of Motion To Dismiss, the Critical Area Commission lacks the legal capacity to be sued.

2. The Critical Area statute does not provide for judicial review of Commission decisions,

and accordingly, for the reasons set forth in the accompanying Memorandum in Support of Motion to Dismiss, such review is not authorized under Rule 7-201.

3. The action of the Critical Area Commission on the proposed amendment to Dorchester County's local Critical Area program was a quasi-legislative action, and, as such, for the reasons set forth in the accompanying Memorandum in Support of Motion to Dismiss, is not subject to Administrative Mandamus under Rule 7-401.

WHEREFORE, defendant Critical Area Commission requests that the Court dismiss the Petition for lack of in personam jurisdiction, and for failure to state a claim on which relief may be granted.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL





Marianne E. Dine
Sandra K. Canedo
Assistant Attorneys General
Maryland Department of Natural Resources
Critical Area Commission
1804 West Street Suite 100
Annapolis, Maryland 21401
(410) 260-3466
Fax: (410) 974-5338
*Attorneys for Defendant Critical Area
Commission*

Dated: December 4, 2006

IN THE CIRCUIT COURT OF MARYLAND
FOR DORCHESTER COUNTY

PETITION OF
DORCHESTER COUNTY COUNCIL

*

Petitioner,

*

v.

*

Case No. C-06-14611

STATE OF MARYLAND
CRITICAL AREA COMMISSION FOR
THE CHESAPEAKE AND ATLANTIC
COASTAL BAYS,

*

Respondent.

*

* * * * *

ORDER

The Court, having considered defendant's Motion To Dismiss and Memorandum In Support Of Motion To Dismiss, together with any response thereto, and having found that defendant Critical Area Commission for the Chesapeake And Atlantic Coastal Bays lack the legal capacity to be sued, and that the Petition fails to state a claim on which relief may be granted, does, this ___ day of _____, 2006,

ORDER that the Motion to Dismiss is hereby GRANTED and that the Petition is hereby dismissed.

Judge, Circuit Court of Maryland
for Dorchester County

IN THE CIRCUIT COURT OF MARYLAND
FOR DORCHESTER COUNTY

PETITION OF
DORCHESTER COUNTY COUNCIL

*

Petitioner,

*

FOR JUDICIAL REVIEW OF
DECISION OF:
STATE OF MARYLAND
CRITICAL AREA COMMISSION FOR
THE CHESAPEAKE AND ATLANTIC
COASTAL BAYS,

*

Case No. C-06-14611

*

Respondent

*

*

* * * * *

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Respondent Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the “Critical Area Commission”), by its attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, and Marianne E. Dise and Sandra K. Canedo, Assistant Attorneys General, files this Memorandum In Support of Motion to Dismiss.

ARGUMENT

1. The Critical Area Commission Lacks Legal Capacity to be Sued.

Plaintiffs have named the Critical Area Commission as the only defendant in this action seeking Administrative Mandamus pursuant to Rule 7-401 *et seq*, or Judicial Review pursuant to Rule 7-201 *et seq*. The Critical Area Commission was established by the General Assembly as a commission within and as part of the Maryland Department of Natural Resources (“DNR”). *See* Md. Code Ann., Nat Res. II § 8-1803 (“[t]here is a Critical Area Commission for the Chesapeake and

Atlantic Coastal Bays in the Department [of Natural Resources]”). DNR, which by statute includes “units, programs, boards, *commissions*, and advisory boards and commissions referenced in [the Natural Resources Article],” *id.* § 1-102(a) (emphasis added), is “established as a principal department of State Government.” *Id.* § 1-101(a).

As a commission within DNR, the Critical Area Commission has no legal identity separate from that of DNR. As such, the Critical Area Commission, itself, lacks the capacity to be sued. *Compare Champ v. Baltimore County*, 1994 WL 395735, 2 (D.Md 1994) (in Maryland, county police departments are agencies of their respective municipality or county, and, as such, have no legal identity separate and distinct from the respective locality, and thus lack the requisite capacity to be sued). *See also Ashburn v. Anne Arundel County*, 306 Md. 617, 620 (1986) (trial court dismissed the county police department because it found that police department was not a separate legal entity from the county itself). Indeed, there is no provision in the Critical Area Law, Md. Code Ann., Nat. Res. II § 8-1801 *et seq.*, establishing that the Critical Area Commission has the legal capacity to be sued.

2. The Critical Area Statute Does Not Provide For Judicial Review of Commission Decisions Under Rule 7-201 et seq.

Petitioner seeks judicial review in the form of an administrative appeal under Maryland Rule 7-201 *et seq.* of the Critical Area Commission’s decision to deny Dorchester County’s requested award of growth allocation for the Blackwater Resorts development project. This request from the County was considered by the Critical Area Commission as a proposed amendment to Dorchester County’s local Critical Area program under Code, Nat. Res. II §8-1809.

Pursuant to Maryland Rule 7-201(a)(1), judicial review of an action of an administrative

agency is permitted only where such review is specifically authorized by statute. *See Bucktail, LLC v. County Council of Talbot County*, 352 Md. 530, 541 (1999). Petitioner does not allege that the Critical Area Law authorizes judicial review of the Commission's action on a proposed local Critical Area program amendment. Indeed, the Critical Area Law does not authorize such review.

Moreover, the Maryland Administrative Procedures Act ("APA"), Md. Code Ann., State Gov't § 10-201 *et seq.*, does not entitle Petitioner to judicial review under Rule 7-201 *et seq.* The APA only provides for judicial review of a final decision in a "contested case." Md. Code Ann., State Gov't § 10-222(a). If a proceeding before an administrative agency is not a contested case proceeding, as defined by Md. Code Ann., State Gov't § 10-201(d), any agency action taken as a result of the proceeding is not subject to judicial review on administrative appeal.

The Critical Area Commission's proceedings on proposed amendments to local Critical Area programs are not contested case proceedings. *See North v. Kent Island Limited Partnership*, 106 Md.App. 92, 103 (1995) (for a proceeding to meet the definition of "contested case," the agency must provide trial type procedures). Indeed, the Court of Special Appeal in *North* determined that nothing in the Critical Area Commission's program or program amendment review procedure, as outlined in Md. Code Ann., Nat. Res. II § 8-1809, requires a contested case hearing. *Id.* The Court thus specifically held that "[t]he role of the Commission is quasi-legislative and does not encompass a contested case hearing." *Id.* (Emphasis added). Since the Commission's proceedings that reviewed, and ultimately denied Dorchester County's proposed Program amendment in this case were not contested case proceedings, Petitioner does not have a right of judicial review under Maryland Rule 7-201 *et seq.*

3. The Critical Area Commission's Action On the Proposed Dorchester County Program

Amendment for the Blackwater Resorts Growth Allocation Was Not a Contested Case Proceeding and Therefore Is Not Subject to Administrative Mandamus Under Rule 7-401 et seq.

In the alternative to their petition under Rule 7-201 et seq., Petitioners seek Administrative Mandamus under Rule 7-401 et seq. This Rule governs actions for judicial review of a “*quasi-judicial order or action* of an administrative agency where review is not expressly authorized by law.” (Emphasis added) As explained above, the action for which Petitioner seeks Administrative Mandamus is not a quasi-judicial action; rather, the action of the Critical Area Commission was a legislative act of considering a request from Dorchester County to amend its local Critical Area Program.

Under the Critical Area Law, a locality may not amend its program without first receiving approval of the amendment from the Critical Area Commission. Md. Code Ann., Nat. Res. II § 8-1809(i). Once the Critical Area Commission accepts for review a locality’s proposed program amendment, a Commission panel must hold a public hearing on the proposed amendment and the full Commission must act upon the proposed amendment within ninety days of accepting the proposal for review. *Id.* § 8-1909(o)(1).

Here, the Critical Area Commission accepted Dorchester County’s request to change its Critical Area program regarding the proposed Blackwater Resorts growth allocation, but the Commission did not approve the request. As set forth in *North v. Kent Island, id.*, the Commission’s action on Dorchester County’s proposed Critical Area program amendment was a quasi-legislative action, and not a quasi-judicial action. Accordingly, the Commission’s action is not subject to administrative mandamus under Rule 7-401.

CONCLUSION

For the foregoing reasons and authorities, Defendant's Motion To Dismiss should be granted.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL OF MARYLAND

Marianne E. Dise

Sandra K. Canedo

Marianne E. Dise
Sandra K. Canedo
Assistant Attorneys General
Maryland Department of Natural Resources
Critical Area Commission
1804 West Street Suite 100
Annapolis, Maryland 21401
(410) 260-3466
Fax: (410) 974-5338
Attorneys for Defendant Critical Area Commission

Dated: December 4, 2006

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT, on this 4th day of December, 2006, I mailed a copy of the foregoing Motion to Dismiss, Proposed Order, and Memorandum in Support of Motion to: Charles D. MacLeod and Jefferson L. Blomquist, Funk & Bolton, P.A., 315 High Street Suite 202, Chestertown, Maryland 21620, Attorneys for Dorchester County and the Dorchester County Council.

Marianne E. Dine

TRANSACTION REPORT

P. 01

DEC-20-06 WED 12:21 PM

DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
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TOTAL : 14M 58S PAGES: 27

STATE OF MARYLAND
 CRITICAL AREA COMMISSION
 CHESAPEAKE AND ATLANTIC COASTAL BAYS
 1804 West Street, Suite 100
 Annapolis, Maryland 21401

FACSIMILE TRANSMITTAL

TO: Tom Deming FAX: 410 757 8201

COMPANY: _____

FROM: Marianne Dize

DATE: _____ TIME: _____ a.m. p.m. NO. PAGES: _____

COMMENTS:

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100
Annapolis, Maryland 21401

FACSIMILE TRANSMITTAL

TO: Tom Deming FAX: 410 757 8201

COMPANY: _____

FROM: Marianne Dize

DATE: _____ TIME: _____ : _____ a.m. p.m. NO. PAGES: _____

COMMENTS:

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

DONNA HILL STATON
DEPUTY ATTORNEY GENERAL

MAUREEN M. DOVE
DEPUTY ATTORNEY GENERAL



MARIANNE E. DISE
ASSISTANT ATTORNEY GENERAL
PRINCIPAL COUNSEL

SAUNDRA K. CANEDO
ASSISTANT ATTORNEY GENERAL

WRITER'S DIRECT DIAL NO.:

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338

(410) 974-5338

(410) 260-3466

December 4, 2006

Mr. Michael L. Baker, Clerk of the Court
Circuit Court for Dorchester County
206 High Street
P.O. Box 150
Cambridge, Maryland 21613

Re: *Egypt Road, LLC, et al. v. Dep't. of Natural Resources Critical Area Commission,*
Case No C-06-14613.

Dear Clerk:

Enclosed please find for filing in the above-referenced case the Defendant's Answer to Count II of Complaint, Motion to Dismiss Count I of Complaint, Memorandum in Support of Motion, and Proposed Order. Thank you very much for your assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Marianne E. Dise".

Marianne E. Dise
Assistant Attorney General

Enclosures

cc: William McAllister, Esquire
Richard A. DeTar, Esquire

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

EGYPT ROAD, LLC. et al.,

*

Plaintiffs,

*

v.

*

Case No. C-06-14613

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

*

*

Defendant

*

* * * * *

**ANSWER OF DEFENDANT DEPARTMENT OF NATURAL RESOURCES
TO COUNT II OF THE COMPLAINT FOR ADMINISTRATIVE MANDAMUS
OR IN THE ALTERNATIVE FOR DECLARATORY JUDGMENT**

Defendant Department of Natural Resources (“DNR”) and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the “Critical Area Commission”), by its attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, and Marianne E. Dise and Sandra K. Canedo, Assistant Attorneys General, pursuant to Maryland Rules 2-321 and 2-323 hereby answers Count II (Declaratory Judgment) of the Complaint for Administrative Mandamus or in the Alternative for Declaratory Judgment (“the Complaint”). DNR has filed a separate Motion to Dismiss as to Count I of the Complaint (Administrative Mandamus), and accordingly, the responses provided below pertain only to Count II of the Complaint (Declaratory Judgment):

1. DNR lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraphs 1 and 2 of the Complaint.
2. DNR denies the allegations contained in paragraph 3 of the Complaint that the Critical

Area Commission is “a state agency.” The remaining allegations of paragraph 3 are statements or conclusions of law to which no responses are required or provided.

3. Paragraphs 4, 5, and 6 of the Complaint contain no allegations of fact, only statements and conclusions of law, to which no responses are required or provided.

4. DNR lacks sufficient knowledge or information to either admit or deny the allegations contained in paragraph 7 of the Complaint.

5. DNR admits the allegation contained in paragraph 8 of the Complaint.

6. DNR lacks sufficient knowledge or information to either admit or deny the allegations contained in the first sentence in paragraph 9 of the Complaint. As to the remaining allegations contained in paragraph 9 of the Complaint, to the extent that the allegations are allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR admits the allegations.

7. DNR admits the allegations contained in paragraph 10 of the Complaint.

8. DNR admits the allegations of the first sentence in paragraph 11 of the Complaint. As to the remaining allegations contained in paragraph 11 of the Complaint, to the extent that the allegations are allegations of fact, and not merely statements or conclusions of law to which no responses are required or provided, DNR admits the allegations.

9. To the extent that paragraph 12 of the Complaint contains allegations of fact, and not merely statements or conclusion of law to which no responses are required or provided, DNR admits the allegations.

10. In response to the allegations contained in paragraph 13 of the Complaint, DNR denies that “the Critical Area Commission held a public hearing on the County Council’s and City of

Cambridge Commissioners' growth allocation award." In further response to the allegations contained in paragraph 13 of the Complaint, DNR states that a Panel of 5 members of the Critical Area Commission held a public hearing to consider the request from Dorchester County and the City of Cambridge to amend their local Critical Area Programs. To the extent that there are allegations remaining not responded to in this paragraph, DNR denies the remaining allegations of paragraph 13 of the Complaint.

11. In response to the allegations contained in paragraph 14 of the Complaint, DNR denies that "the Critical Area Commission thereafter met on several occasions to discuss the County Council's and City of Cambridge Commissioners' award of growth allocation." In further response to the allegations contained in paragraph 14 of the Complaint, DNR states that a Panel of 5 members of the Critical Area Commission held public meetings to discuss the request from Dorchester County and the City of Cambridge to amend their local Critical Area Programs

12. In response to the allegations contained in paragraph 15 of the Complaint, DNR admits that a copy of the Panel Report is attached to the Complaint. To the extent that paragraph 15 of the Complaint purports to explain the substance of the Panel Report, the document speaks for itself.

13. In response to the allegations contained in paragraph 16 of the Complaint, DNR states that, to the extent that paragraph 16 of the Complaint purports to describe the Critical Area Commission's action, the Critical Area Commission's written correspondence to the County speaks for itself.

14. As set forth above, DNR has filed a Motion to Dismiss as to Count I of the Complaint, and therefore, DNR does not respond to the allegations contained in paragraphs 17 through 21 of the Complaint.

15. Paragraph 22 of the Complaint contains no separate allegations of fact, and thus no response is required or provided. To the extent that a response may be required, DNR incorporates and re-states its responses to the allegations contained in paragraphs 1 through 21 of the Complaint

16. Paragraph 23 of the Complaint contains no allegations of fact, only a statement of the relief requested, and statements or conclusions of law to which no responses are required or provided.

17. Paragraph 24 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no responses are required or provided. DNR denies the allegation contained in paragraph 24 of the Complaint that it acted in an "arbitrary, capricious and otherwise illegal manner."

18. Paragraph 25 contains no allegations of fact, only statements or conclusions of law to which no response is required or provided. To the extent that paragraph 25 of the Complaint contains allegations of fact to which a response may be required, DNR denies the allegations.

19. Paragraph 26 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no response is required or provided. To the extent that paragraph 26 of the Complaint contains allegations of fact to which a response may be required, DNR denies the allegations.

20. Paragraph 27 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no response is required or provided. To the extent that paragraph 27 of the Complaint contains allegations of fact to which a response may be required, DNR denies the allegations.

21. Paragraph 28 of the Complaint contains no allegations of fact, only statements or

conclusions of law to which no response is required or provided. To the extent that paragraph 28 of the Complaint contains allegations of fact to which a response may be required, DNR denies the allegations.

22. Paragraph 29 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no response is required or provided.

23. Paragraph 30 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no response is required or provided. To the extent that the allegations of paragraph 30 of the Complaint purport to describe the Panel Report or the Commission's action, the Report and the Commission's written correspondence to the County speak for themselves. To the extent that paragraph 30 of the Complaint contains allegations of fact to which a response may be required, DNR denies the allegations.

24. Paragraph 31 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no response is required or provided. To the extent that the allegations of paragraph 31 of the Complaint purport to describe the Panel Report or the Commission's action, the Report and the Commission's written correspondence to the County speak for themselves. To the extent that paragraph 31 of the Complaint contains allegations of fact to which a response may be required, DNR denies the allegations.

25. Paragraph 32 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no response is required or provided. To the extent that the allegations of paragraph 32 of the Complaint purport to describe the Panel Report or the Commission's action, the Report and the Commission's written correspondence to the County speak for themselves. To the extent that paragraph 32 of the Complaint contains allegations of fact to which a response may

be required, DNR denies the allegations.

26. Paragraph 33 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no response is required or provided. To the extent that the allegations of paragraph 33 of the Complaint purport to describe the Panel Report or the Commission's action, the Report and the Commission's written correspondence to the County speak for themselves. To the extent that paragraph 33 of the Complaint contains allegations of fact to which a response may be required, DNR denies the allegations.

27. Paragraph 34 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no response is required or provided. To the extent that paragraph 34 of the Complaint contains allegations of fact to which a response may be required, DNR denies the allegations.

28. Paragraph 35 of the Complaint contains no allegations of fact, only statements or conclusions of law to which no response is required or provided. To the extent that the allegations of paragraph 35 of the Complaint purport to describe the Panel Report or the Commission's action, the Report and the Commission's written correspondence to the County speak for themselves. To the extent that paragraph 35 of the Complaint contains allegations of fact to which a response may be required, DNR denies the allegations.

29. In response to the allegations of paragraph 36 of the Complaint, DNR denies that it "acted arbitrarily and capriciously." DNR admits that the Critical Area Commission previously approved at least one amendment to a local critical area program where the subject property was not located adjacent to property designated IDA or LDA. To the extent that the remaining allegations of paragraph 36 of the Complaint consist of statements or conclusions of law, no response is required

or provided. To the extent that the remaining allegations of paragraph 36 of the Complaint contain allegations of fact to which a response may be required, DNR denies the allegations.

30. In response to the allegations of paragraph 37, DNR admits that the Critical Area Commission denied the request by the City of Cambridge and Dorchester County to amend their local critical area programs. The remaining allegations of paragraph 37 consist of statements or conclusions of law to which no response is required or provided. To the extent that the remaining allegations of paragraph 37 of the Complaint contain allegations of fact to which a response may be required, DNR denies the allegations.

31. Paragraph 38 of the Complaint contains no allegations of fact, only statements of the relief requested and statements and conclusions of law to which no response is required or provided.

32. Paragraph 39 of the Complaint contains no allegations of fact, only statements of the relief requested and statements and conclusions of law to which no response is required or provided.

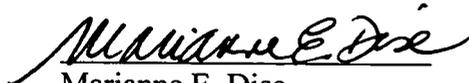
33. The remaining paragraphs of the Complaint (numbered A through K), are statements of the relief requested to which no response is required or provided.

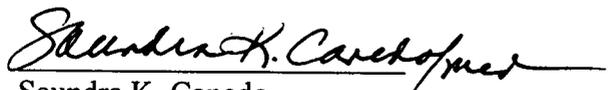
AFFIRMATIVE DEFENSE

1. The Complaint fails to state a claim upon which relief can be granted.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL


Marianne E. Dise


Sandra K. Canedo

Assistant Attorneys General
Maryland Department of Natural Resources
Critical Area Commission for the Chesapeake
and Atlantic Coastal Bays
1804 West Street Suite 100
Annapolis, Maryland 21401
(410) 260-3466
Fax: (410) 974-5338
Attorneys for Defendant Department of
Natural Resources, Critical Area Commission

Dated: December 5, 2006

IN THE CIRCUIT COURT OF MARYLAND
FOR DORCHESTER COUNTY

EGYPT ROAD, LLC., et al,

*

Plaintiffs,

*

v.

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

*

Case No. C-06-14613

*

*

Defendant

*

* * * * *

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS COUNT I OF COMPLAINT

Respondent Department of Natural Resources (“DNR”) and its Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the “Critical Area Commission”), by its attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, and Marianne E. Dise and Sandra K. Canedo, Assistant Attorneys General, files this Memorandum In Support of Motion to Dismiss Count I of the Complaint (“Administrative Mandamus”) in the above-captioned proceeding.

ARGUMENT

The Critical Area Commission’s Action On the Proposed Critical Area Program Amendments for the Blackwater Resorts Growth Allocation Was Not a Contested Case Proceeding and Therefore Is Not Subject to Administrative Mandamus Under Rule 7-401 et seq.

Plaintiffs seek Administrative Mandamus under Maryland Rule 7-401 *et seq.*, claiming that the action of the Critical Area Commission was “quasi-judicial in nature.” Plaintiffs are wrong. The process under which the Critical Area Commission reached its decision to deny Dorchester

County's and the City of Cambridge's requested award of growth allocation for the Blackwater Resorts development project was the quasi-legislative process set forth in the Code, Nat. Res. II §8-1809 for Commission decisions on proposed amendments to local Critical Area programs.

The Critical Area Commission's proceedings on proposed amendments to local Critical Area programs are not contested case proceedings. *North v. Kent Island Limited Partnership*, 106 Md.App. 92, 103 (1995) (for a proceeding to meet the definition of "contested case," the agency must provide trial type procedures). In *North*, the Court of Special Appeals determined that nothing in the Critical Area Commission's program amendment review procedures in Md. Code Ann., Nat. Res. II § 8-1809 requires a contested case hearing. *Id.* The Court specifically held that "[t]he role of the Commission is quasi-legislative and does not encompass a contested case hearing." *Id.* (emphasis added). Since the Commission's proceedings that reviewed, and ultimately denied Dorchester County's and the City of Cambridge's proposed Program amendments in this case were not contested case proceedings, the administrative mandamus process is simply not applicable.

Rule 7-401 governs actions for judicial review of a "quasi-judicial order or action of an administrative agency where review is not expressly authorized by law." (emphasis added) As explained above, the action for which Plaintiffs seek administrative mandamus was a quasi-legislative act of considering a request from the City and the County to amend their local Critical Area Programs. Under the Critical Area Law, a locality may not amend its program without first receiving approval of the amendment from the Critical Area Commission. Code, Nat. Res. II § 8-1809(i). Once the Critical Area Commission accepts for review a locality's proposed program amendment, a Commission panel must hold a public hearing on the proposed amendment and the full Commission must act upon the proposed amendment within ninety days of accepting the

proposal for review. *Id.* § 8-1909(o)(1).

Here, the Critical Area Commission accepted Dorchester County's and the City of Cambridge's request to change their Critical Area programs regarding the proposed Blackwater Resorts growth allocation, but the Commission did not approve the request. Under *North v. Kent Island, id.*, the Commission's action on Dorchester County's and the City of Cambridge's proposed Critical Area program amendments was a quasi-legislative action, and not a quasi-judicial action. Accordingly, the Commission's action is not subject to administrative mandamus under Rule 7-401.

CONCLUSION

For the foregoing reasons and authorities, Defendant's Motion To Dismiss Count I of the Complaint should be granted.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL OF MARYLAND





Marianne E. Dise
Sandra K. Canedo
Assistant Attorneys General
Maryland Department of Natural Resources
Critical Area Commission
1804 West Street Suite 100
Annapolis, Maryland 21401
(410) 260-3466
Fax: (410) 974-5338
Attorneys for Defendant

Dated: December 5, 2006

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

EGYPT ROAD, LLC. et al.,

*

Plaintiffs,

*

v.

*

Case No. C-06-14613

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

*

Defendant

*

*

* * * * *

MOTION TO DISMISS COUNT I OF COMPLAINT

Defendant Department of Natural Resources (“DNR”) and its Critical Area Commission For The Chesapeake And Atlantic Coastal Bays (the “Critical Area Commission”), by its attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, and Marianne E. Dise and Sandra K. Canedo, Assistant Attorneys General, moves pursuant to Maryland Rule 2-322(b) to dismiss Count I of the Complaint in the above-captioned proceeding, (“Administrative Mandamus”), and states for cause:

1. The action of the Critical Area Commission on the proposed amendment to Dorchester County’s and the City of Cambridge’s local Critical Area programs was a quasi-legislative action, and, as such, for the reasons set forth in the accompanying Memorandum in Support of Motion to Dismiss, is not subject to Administrative Mandamus under Rule 7-401.

WHEREFORE, defendant DNR Critical Area Commission requests that the Court dismiss Count I of the Complaint for failure to state a claim on which relief may be granted.

Respectfully Submitted,

J. JOSEPH CURRAN, JR.

ATTORNEY GENERAL OF MARYLAND





Marianne E. Dise

Sandra K. Canedo

Assistant Attorneys General

Maryland Department of Natural Resources

Critical Area Commission

1804 West Street Suite 100

Annapolis, Maryland 21401

(410) 260-3466

Fax: (410) 974-5338

Attorneys for Defendant

Dated: December 5, 2006

VERIFICATION

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

A handwritten signature in black ink, appearing to read "Ren Serey", is written over a horizontal line.

Ren Serey

Executive Director

Critical Area Commission for the Chesapeake and
Atlantic Coastal Bays

Dated: December 5, 2006

CERTIFICATE OF SERVICE

I hereby certify that, on this 5th day of December, 2006, a copy of the foregoing Answer to Complaint, Motion to Dismiss, Memorandum in Support of Motion, and Proposed Order, were sent via first-class U.S. mail, postage prepaid, to:

William W. McAllister, Jr., Miles & Stockbridge, P.C., 300 Academy Street, Cambridge, Maryland 21613; and Richard A. DeTar and Demetrios Kaouris, Miles & Stockbridge, P.C., 101 Bay Street, Easton, Maryland 21601, Attorneys for Plaintiffs.

Marianne E. Dese

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

EGYPT ROAD, LLC. et al.,

*

Plaintiffs,

*

v.

*

Case No. C-06-14613

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

*

*

Defendant

*

* * * * *

ORDER

The Court, having considered defendant's Motion To Dismiss Count I of the Complaint and Memorandum In Support Of Motion To Dismiss, together with any response thereto, and having found that Count I of the Complaint (Administrative Mandamus) fails to state a claim on which relief may be granted, does, this ___ day of _____, 2006,

ORDER that the Motion to Dismiss is hereby GRANTED and that Count I of the Complaint is hereby dismissed with prejudice.

Judge, Circuit Court of Maryland
for Dorchester County

Pleadings

DISAPPROVAL OF DORCHESTER COUNTY MAP
AMENDMENTS AND CRITICAL AREA PROGRAM

USA-S-1831-27 (2013)

Pleadings

DISAPPROVAL OF DORCHESTER COUNTY MAP
AMENDMENTS AND CRITICAL AREA PROGRAM
AMENMENTS ON OCTOBER 4, 2006 Case No. C-
06-14611 (Circuit Court for Dorchester County)

THE CIRCUIT COURT OF MARYLAND
FOR DORCHESTER COUNTY

PETITION OF:	*	
DORCHESTER COUNTY COUNCIL	*	
Petitioner	*	
FOR JUDICIAL REVIEW OF THE DECISION OF:	*	CASE NO.: C-06-14611
	*	
STATE OF MARYLAND CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS	*	
	*	
1804 West Street, Suite 100 Annapolis, Maryland 21401	*	
	*	
DISAPPROVAL OF DORCHESTER COUNTY MAP AMENDMENTS AND CRITICAL AREA PROGRAM AMENDMENTS ON OCTOBER 4, 2006	*	

* * * * *

PLEADINGS INDEX

- | | | |
|----|----------|--|
| 1. | 11/7/06 | Notice to Administrative Agency of Judicial Review |
| 2. | 11/7/06 | Petition for Judicial Review |
| 3. | 12/4/06 | Defendant's Motion to Dismiss, Memorandum in Support of Motion and Proposed Order |
| 4. | 12/4/06 | Notice of Intention to Participate |
| 5. | 12/21/06 | Dorchester County's Response to motion to Dismiss and CAC Panel Report of October 4, 2006. |
| 6. | 1/8/07 | Stipulation Regarding Filing of Opposition and Reply Brief |
| 7. | 1/19/07 | Stipulation Regarding Filing of Opposition and Reply Brief |
| 8. | 2/23/07 | Stipulation Regarding Filing of Opposition and Reply Brief |
| 9. | 4/17/07 | Joint Motion to Stay |

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IN THE CIRCUIT COURT
FOR DORCHESTER COUNTY, MARYLAND

PETITION OF DORCHESTER COUNTY
FOR JUDICIAL REVIEW OF THE DECISION OF

STATE OF MARYLAND
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS

DISAPPROVAL OF DORCHESTER COUNTY MAP
AMENDMENTS AND CRITICAL AREA
PROGRAM AMENDMENTS ON
OCTOBER 4, 2006

Received in the
Circuit Court on

4-17-07

By Michael L. Baker, Clerk

Case No. 09-C-06-14611

* * * * *

JOINT MOTION TO STAY

Dorchester County (the "County"), Egypt Road, LLC and The Thomas Land Group, LLC (collectively "Egypt Road") and the Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "Commission"), by and through their undersigned attorneys, hereby move for a stay in the above-captioned case and in support hereof state as follows:

1. This case involves the Commission's refusal to approve the award of growth allocation for certain real property owned by Egypt Road located in Cambridge, Maryland (the "Property").

2. Egypt Road and the State of Maryland (the "State") have entered in a written agreement whereby the State has agreed to purchase a substantial portion of the Property. That agreement is subject to approval by the Maryland Board of Public Works.

3. The Board of Public Works is scheduled to consider approval of the agreement and the purchase of a portion of the Property at a meeting scheduled for April 18, 2007.

RECEIVED

APR 18 2007

4. If the agreement is approved by the Board of Public Works and a substantial portion of the Property sold to the State, the above-captioned case will be moot.

5. Egypt Road and the Commission request that this case be stayed to provide time for the Board of Public Works to consider approval of the agreement and, if approved, for the State to close the transaction.

6. If the Board of Public Works does not approve the agreement, either party may move to lift any stay entered in this case upon ten (10) days notice to the other party.

7. Upon the lifting of the stay, Egypt Road shall have thirty (30) days from the date of the entry of an Order lifting of the stay to file an opposition to the Motion to Dismiss filed by the Commission. The Commission shall then have twenty (20) days from the filing of Egypt Road's Opposition to file a Reply.

8. If the agreement is approved by the Board of Public Works and the Property sold to the State, the parties shall file a Stipulation of Dismissal in this case.

WHEREFORE, the County, Egypt Road and the Commission respectfully request that the above-captioned case be stayed.

Respectfully submitted,



Richard A. DeTar
Demetrios G. Kaouris
Miles & Stockbridge P.C.
101 Bay Street
Easton, Maryland 21601
(410) 822-5280

Attorneys for The Thomas Land Group, LLC
and Egypt Road, LLC



Marianne E. Dise
Assistant Attorney General
Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401
(410) 260-3466

Attorneys for the Critical Area Commission
for the Atlantic and Coastal Bays



Jefferson L. Blomquist
Funk & Bolton
315 High Street, #202
Chestertown, Maryland 21620-1350
(410) 810-1381

Attorneys for Dorchester County, MD

IN THE CIRCUIT COURT
FOR DORCHESTER COUNTY, MARYLAND

PETITION OF DORCHESTER COUNTY *
FOR JUDICIAL REVIEW OF THE DECISION OF *

STATE OF MARYLAND *
CRITICAL AREA COMMISSION FOR THE *
CHESAPEAKE AND ATLANTIC COASTAL BAYS *

DISAPPROVAL OF DORCHESTER COUNTY MAP *
AMENDMENTS AND CRITICAL AREA *
PROGRAM AMENDMENTS ON *
OCTOBER 4, 2006 *

Case No. 09-C-06-14611

* * * * *

ORDER

Having considered the Joint Motion to Stay, it is this _____ day of April 2007,

ORDERED, that the above-captioned case be and is hereby stayed; and

IT IS FURTHER ORDERED, that either party may move to lift the stay upon ten (10) days notice; and

IT IS FURTHER ORDERED, that if the stay is lifted, Egypt Road shall have thirty (30) days from the date of the Order lifting the stay to file an opposition to the Motion to Dismiss filed by the Commission and the Commission shall have twenty (20) days from the date of the filing of Egypt Road's Opposition to file a Reply to Egypt Road's Opposition.

Judge, Circuit Court for Dorchester County, Maryland

IN THE CIRCUIT COURT
FOR DORCHESTER COUNTY, MARYLAND

PETITION OF DORCHESTER COUNTY *
FOR JUDICIAL REVIEW OF THE DECISION OF *

STATE OF MARYLAND *
CRITICAL AREA COMMISSION FOR THE *
CHESAPEAKE AND ATLANTIC COASTAL BAYS *

DISAPPROVAL OF DORCHESTER COUNTY MAP *
AMENDMENTS AND CRITICAL AREA *
PROGRAM AMENDMENTS ON *
OCTOBER 4, 2006 *

Case No. 09-C-06-14611

* * * * *

STIPULATION REGARDING FILING OF OPPOSITION AND REPLY BRIEF

Egypt Road, LLC and the Thomas Land Group, LLC (collectively "Egypt Road") and The Critical Area Commission for the Atlantic and Chesapeake Coastal Bays (the "Commission"), hereby stipulate to the filing of memoranda in this case and state as follows:

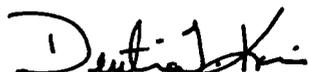
1. On or about December 4, 2006, the Commission filed a Motion to Dismiss the Complaint filed in this case (the "Motion to Dismiss").

2. Egypt Road is currently negotiating an agreement with the State of Maryland, Department of natural Resources (the "State"), pursuant to which the State will purchase a portion of the property that is the subject of this case. If such an agreement is reached, the above-captioned case would likely be moot.

3. Egypt Road and the State have made substantial progress toward reaching a final written agreement. In light of the continued negotiations between Egypt Road and the State, and in order to conserve judicial resources, Egypt Road and the Commission stipulate that Egypt Road shall have until March 15, 2007 to file an Opposition to the Motion to Dismiss.

4. Egypt Road and the Commission further stipulate that the Commission shall have until April 9, 2007 to file a Reply to the Opposition filed by Egypt Road.

Respectfully submitted,



Richard A. DeTar
Demetrios G. Kaouris
Miles & Stockbridge P.C.
101 Bay Street
Easton, Maryland 21601
(410) 822-5280

Attorneys for The Thomas Land Group, LLC
and Egypt Road, LLC



Marianne E. Dise
Assistant Attorney General
Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401
(410) 260-3466

Attorneys for the Critical Area Commission
for the Atlantic and Coastal Bays

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February 2007, a copy of the foregoing Stipulation Regarding Filing of Opposition and Reply Brief was mailed first class, postage prepaid to:

Charles D. MacLeod, Esquire
Jefferson L. Blomquist, Esquire
Amanda Stakem Conn, Esquire
Funk & Bolton, P.A.
315 High Street, #202
Chestertown, Maryland 21620-1350



Demetrios G. Kaouris

IN THE CIRCUIT COURT
FOR DORCHESTER COUNTY, MARYLAND

PETITION OF DORCHESTER COUNTY *
FOR JUDICIAL REVIEW OF THE DECISION OF *

STATE OF MARYLAND *
CRITICAL AREA COMMISSION FOR THE *
CHESAPEAKE AND ATLANTIC COASTAL BAYS *

DISAPPROVAL OF DORCHESTER COUNTY MAP *
AMENDMENTS AND CRITICAL AREA *
PROGRAM AMENDMENTS ON *
OCTOBER 4, 2006 *

Case No. 09-C-06-14611

* * * * *

STIPULATION REGARDING FILING OF OPPOSITION AND REPLY BRIEF

Egypt Road, LLC and the Thomas Land Group, LLC (collectively "Egypt Road") and The Critical Area Commission for the Atlantic and Chesapeake Coastal Bays (the "Commission"), hereby stipulate to the filing of memoranda in this case and state as follows:

1. On or about December 4, 2006, the Commission filed a Motion to Dismiss the Complaint (the "Motion to Dismiss").
2. Egypt Road is currently negotiating an agreement with the State of Maryland, Department of Natural Resources (the "State"), pursuant to which the State will purchase a portion of the property that is the subject of this case. If such an agreement is reached, the above-captioned case would likely be moot.
3. In light of the negotiations between Egypt Road and the State and in order to conserve judicial resources, Egypt Road and the Commission stipulate that Egypt Road shall have until February 15, 2007 to file an Opposition to the Motion to Dismiss.

4. Egypt Road and the Commission further stipulate that the Commission shall have until March 9, 2007 to file a Reply to the Opposition filed by Egypt Road.

Respectfully submitted,



Richard A. DeTar
Demetrios G. Kaouris
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101 Bay Street
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Attorneys for The Thomas Land Group, LLC
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Marianne E. Dise
Assistant Attorney General
Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401
(410) 260-3466

Attorneys for the Critical Area Commission
for the Atlantic and Coastal Bays

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January 2007, a copy of the foregoing Stipulation Regarding Filing of Opposition and Reply Brief was mailed first class, postage prepaid to:

Charles D. MacLeod, Esquire
Jefferson L. Blomquist, Esquire
Amanda Stakem Conn, Esquire
Funk & Bolton, P.A.
315 High Street, #202
Chestertown, Maryland 21620-1350



Demetrios G. Kaouris

IN THE CIRCUIT COURT
FOR DORCHESTER COUNTY, MARYLAND

PETITION OF DORCHESTER COUNTY *
FOR JUDICIAL REVIEW OF THE DECISION OF *

STATE OF MARYLAND *
CRITICAL AREA COMMISSION FOR THE *
CHESAPEAKE AND ATLANTIC COASTAL BAYS *

DISAPPROVAL OF DORCHESTER COUNTY MAP *
AMENDMENTS AND CRITICAL AREA *
PROGRAM AMENDMENTS ON *
OCTOBER 4, 2006 *

Case No. 09-C-06-14611

* * * * *

STIPULATION REGARDING FILING OF OPPOSITION AND REPLY BRIEF

Egypt Road, LLC and the Thomas Land Group, LLC (collectively "Egypt Road") and The Critical Area Commission for the Atlantic and Chesapeake Coastal Bays (the "Commission"), hereby stipulate to the filing of memoranda in this case and state as follows:

1. On or about December 4, 2006, the Commission filed a Motion to Dismiss the Complaint (the "Motion to Dismiss").
2. The above-referenced parties stipulate that Egypt Road shall have until January 15, 2007 to file an Opposition to the Motion to Dismiss.
3. The parties further stipulate that the Commission shall have until February 7, 2007 to file a Reply to the Opposition filed by Egypt Road.

Respectfully submitted,

Richard A. DeTar
Demetrios G. Kaouris
Miles & Stockbridge P.C.
101 Bay Street
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(410) 822-5280

Attorneys for The Thomas Land Group, LLC
and Egypt Road, LLC

Marianne E. Dise
Assistant Attorney General
Critical Area Commission
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(410) 260-3466

Attorneys for the Critical Area Commission
for the Atlantic and Coastal Bays

15



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TIFFANY HANNA ANDERSON (MD)
DARYN E. RUSH (PA, NJ)
STEPHEN Z. MEEHAN (MD)
DEREK B. YARMIS (MD, DC)
JEFFERSON L. BLOMQUIST (MD)
LINDSEY A. RADER (MD)
JAMES F. TAYLOR (MD)
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JOSEPH B. TETRAULT (MD)
PAULINE K. WHITE (MD)

December 21, 2006

Clerk of the Court
Circuit Court for
Dorchester County
Court House
206 High Street
Cambridge, Maryland 21613

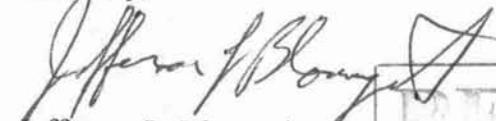
Re: *Petition of: Dorchester County Council.*
for Judicial Review of the Decision of: State of Maryland Critical Area
Commission for the Chesapeake and Atlantic Coastal Bays
Case No. C-06-014611

Dear Clerk:

Enclosed for filing, please find Petitioner, Dorchester County's Response to Motion to Dismiss of State of Maryland, Chesapeake and Atlantic Coastal Bays Critical Area Commission, in connection with the above-reference matter. An extra copy (without the Exhibit) is also enclosed. Please date-stamp the extra copy and return it to me in the self-addressed, stamped envelope provided for that purpose.

If you have any questions, please do not hesitate to contact me.

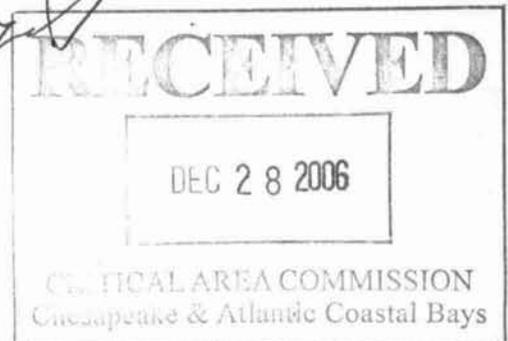
Sincerely,


Jefferson L. Blomquist

JLB/DD
Enclosures

cc: ✓ Marianne E. Dise, Esquire
William W. McAllister, Jr., Esquire
Charles D. MacLeod, Esquire

58058.009:89808.4



denial of the County's request for critical area map amendments and its request for a program amendment to provide growth allocation to the developer of the proposed Blackwater Resorts Community Project is not subject to judicial review.

First, the CAC takes the position that dismissal is appropriate because it lacks the legal capacity to be sued. This argument is misguided. The County is not suing the CAC or the State of Maryland. The County seeks judicial review of the administrative, declaratory decision of the CAC, because the decision violates the CAC's regulatory constraints and, therefore, runs afoul of the *Accardi* Doctrine; it is arbitrary and capricious; it is not supported by substantial evidence; and it is erroneous as matter of law. *See* Md. Code Ann., State Gov't §§ 10-222(h)(ii) – 10-222(h)(vi).

Second, the CAC argues that the critical area statute does not provide for judicial review of the CAC's decision. That contention, while true, is irrelevant. Judicial review is provided pursuant to the Sections 10-301 *et seq.* of the State Government Article.

Third, the CAC argues that its action on the County's proposed amendment of its local critical area program was a quasi legislative action and as such is not subject to judicial review. While the County's decision to award the developer of the proposed Blackwater Resorts Community Project growth allocation was accomplished by a Resolution of the Dorchester County Council, the decision of the CAC was accomplished by the adoption of a ten (10) page declaratory panel report that is attached hereto as Exhibit 1. As such, the CAC's decision may be appealed pursuant to Sections 10-301 *et seq.* of the State Government Article.

II. ARGUMENT

Pursuant to Section 10-304 of the State Government Article of the Maryland Annotated Code: "An interested person may submit to a unit a petition for a declaratory ruling with respect

to the manner in which the unit would apply a regulation or order of the unit or a statute that the unit enforces to a person or property on the facts set forth in the petition.” “A political subdivision of the State is entitled ... to be an interested person, party or petitioner in a matter under [Subtitle 3 to Title 10 of the State Government Article].” Md. Code Ann., State Gov’t § 10-303. A “‘unit’ means an officer or unit that is authorized by law to: (1) adopt regulations subject to Subtitle 1 of [Title 10 of the State Government Article, Administrative Procedure Act, Regulations, *i.e.*, Md. Code Ann., State Gov’t §§ 10-101 et seq.].” Md. Code Ann., State Gov’t § 10-301. The unit may issue a declaratory ruling. Md. Code Ann., State Gov’t § 10-305(a). “A declaratory ruling [issued by a unit] is subject to review in a circuit court in the manner that Subtitle 2 of [Title 10 of the State Government Article] provides for review of a contested case.” Md. Code Ann., State Gov’t § 10-305(c). Thus, the declaratory ruling of the CAC may be appealed pursuant to Section 10-222 of the State Government Article.

The Chesapeake and Atlantic Coastal Bay Critical Area Commission has authority to promulgate regulations pursuant to Title 10 Subtitle 1 of the State Government Article. Md. Code Ann., Nat’l Res. § 8-1806(a)(1). Therefore, the CAC is a “unit” as that term is used in Subtitle 3 of Title 10 of the State Government Article.

Dorchester County is a political subdivision of the State of Maryland. More specifically, it is a Charter County organized under the Constitution of the State of Maryland and the State Enabling legislation. *See* Md. Const. Art. XI-A §§ 1 *et seq.*; Md. Ann. Code art 25A §§ 1 *et seq.* Therefore, the County and the County Council, as the governing body of the County, is an interested person as that term is defined in Subtitle 3 of Title 10 of the State Government Article.

The County requested a declaratory ruling from the Critical Area Commission that it be permitted to amend its critical area maps and award growth allocation pursuant to the

application/petition submitted to the CAC by the City of Cambridge and the County relative to the proposed Blackwater Resort Communities Project. The CAC reviewed that application/petition jointly submitted by the County and the City pursuant to its enabling legislation (Md. Code Ann., Nat'l Res. §§ 8-1809(g) – 8-1809(p)) and the comprehensive regulatory scheme that it has promulgated for the review of growth allocation requests. *See e.g.*, COMAR 27.01.02.06.

Pursuant to Section 10-305(a) of the State Government Article of the Maryland Annotated Code, The CAC adopted the declaratory ruling of its Panel members dated October 4, 2006. (*See Ex. 1.*)

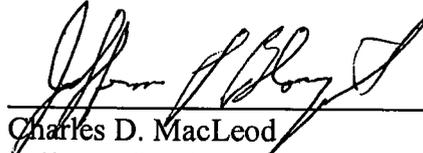
The County has appealed that declaratory ruling pursuant to Section 10-305(c) of the State Government Article.

To the County's knowledge, there is no Maryland case that addresses the issue of whether a local government may appeal a CAC decision to deny such local government a map amendment and a program amendment awarding growth allocation. The cases cited by the CAC, *Bucktail, LLC v. County Council of Talbot County*, 252 Md. 530, 541 (1999) (suit by developer against a county to contest county's denial of critical area growth allocation to the developer) and *North v. Kent Island Limited Partnership*, 106 Md. App. 92, 103 (1995) (ruling that the CAC does not have authority to review a map amendment to a county critical area map made by a county as the result of an original mapping error) do not address the applicability of Subtitle 3, Title 10 of the State Government Article to a program amendment determination of the CAC, or the right of a local government to seek mandamus relief pursuant to Maryland Rules 7-401 *et seq.* in the event that Subtitle 3, Title 10 of the State Government Article does not permit an appeal of the CAC's decision. The rationale of the Court in *Bucktail* suggests that mandamus

relief would be available if the County does not have an appeal of right pursuant to Sections 10-301 *et seq.* of the State Government Article.

WHEREFORE, the County respectfully requests this Court to deny the Motion to Dismiss.

Respectfully submitted,



Charles D. MacLeod
Jefferson L. Blomquist
Funk & Bolton, P.A.
315 High Street, Suite 202
Chestertown, Maryland 21620
*Attorneys for Dorchester County and the
Dorchester County Council*

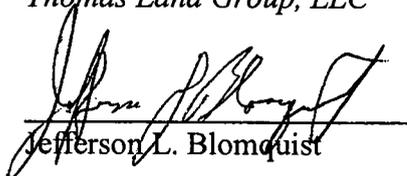
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of December 2006 a copy of Dorchester County's Response to Motion to Dismiss of State of Maryland, Chesapeake and Atlantic Coastal Bays Critical Area Commission was mailed first class, postage prepaid to:

Marianne E. Dise, Esquire
Deputy Counsel
Maryland Department of Natural Resources
Office of the Attorney General
580 Taylor Avenue
Annapolis, Maryland 21401
Attorney for Respondent

William W. McAllister, Jr., Esquire
Richard A. DeTar, Esquire
Miles & Stockbridge, P.C.
101 Bay Street
Easton, Maryland 21601
*Attorneys for Egypt Road, LLC and
Thomas Land Group, LLC*


Jefferson L. Blomquist

Jeff L. Blomquist

From: Dise, Marianne E. [MDise@dnr.state.md.us]
Sent: Friday, October 13, 2006 11:53 AM
To: Jeff L. Blomquist
Cc: Owens, Mary; Serey, Ren
Subject: RE: Blackwater Resorts Community growth allocation request

Jeff,

I've asked that a copy of the Panel Report be ready for pick-up on Monday. Also, the CAC will mail a copy to you of the Chairman's notification letter to the County.

Marianne

-----Original Message-----

From: Jeff L. Blomquist [mailto:jblomquist@fblaw.com]
Sent: Friday, October 13, 2006 11:36 AM
To: Dise, Marianne E.
Cc: Jane Baynard ; Charles D. MacLeod; Amanda Stakem Conn
Subject: RE: Blackwater Resorts Community growth allocation request

Marianne,

Thank you for your prompt reply.

Please request the Commission office to mail a copy of the written notification of the CAC's decision directly to me at the below address.

I will send an assistant to the Commission's Office in Annapolis on Monday to obtain a copy of the decision and will assume that a copy can be obtained any time between 9:00 am and 4:30 pm unless you advise to the contrary.

Have a good weekend,

Jefferson L. Blomquist
Funk & Bolton, P.A.
9701 Apollo Drive, Suite 301
Largo, Maryland 20774

From: Dise, Marianne E. [mailto:MDise@dnr.state.md.us]
Sent: Friday, October 13, 2006 11:19 AM
To: Jeff L. Blomquist
Subject: RE: Blackwater Resorts Community growth allocation request

Jeff,

Thank you for your email. I am responding on behalf of the Critical Area Commission.

I will address your questions in order:

1. The Panel Report is available at the Commission's office at 1804 West Street, Suite 100, Annapolis, MD 21401. The Report was distributed to all Commission members (I believe that Commissioner Bramble was in attendance) at the Commission's meeting on October 4, 2006, and to all members of the public in attendance who wanted a copy.
 2. The Chairman's written notification to the County and City of the Commission decision is expected to be mailed early next week. When that letter is sent, you may obtain a copy from the Commission office, or from your client. If you wish to have a copy mailed directly to you, please let me know and I will request the Commission staff to do so.
 3. The Commission's decision is its final decision.
 4. Several times in the past, the Commission's action on a proposed amendment or refinement to a local Critical Area program has been challenged in the courts. Unfortunately, I cannot advise you, or your client, as to your options for challenging my client's decision.
- Please feel free to call me at 410-260-8351, or to email, with further questions.

Sincerely,

Marianne E. Dise,

Principal Counsel

Critical Area Commission for the Chesapeake and Atlantic Coastal Bays

-----Original Message-----

From: Jeff L. Blomquist [mailto:jblomquist@fblaw.com]

Sent: Thursday, October 12, 2006 6:03 PM

To: Serey, Ren; Dise, Marianne E.

Cc: Charles D. MacLeod; Amanda Stakem Conn; Jane Baynard

Subject: Blackwater Resorts Community growth allocation request

Ren/Marion,

As I believe you know, we (Funk & Bolton, P.A., Chip MacLeod, Amanda Stakem Conn and me) represent Dorchester County and the Dorchester County Council with respect to the growth allocation request relative to the Blackwater Resorts Community project.

Would you please send me a copy of the CAC Panel Decision/Report (I will pick up a copy of the report if you advise to which office I must travel to obtain a copy).

Would you please send us a copy of the CAC's decision with respect to this request (again, I will pick up a copy of the report if you advise to which office I must travel to obtain a copy).

Is the decision that was reported by the press on October 4, 2006 a final decision of the CAC?

Has the CAC provided written notice of the decision to anyone at the County, and if so, whom?

What if any right of appeal exists from the decision? Please advise of the appeal rights, or, if it is your position that there are no appeal rights, please advise.

Please respond at your earliest convenience, as we have to advise the County of its options so

that it can make a determination of how it will proceed.

Regards,

Jefferson L. Blomquist, Esquire



FUNK & BOLTON

ATTORNEYS AT LAW

*9701 Apollo Drive
Suite 301
Largo, Maryland 20774-4783
Phone: 301-386-0812
Fax: 301-386-1452*

Critical Area Commission

PANEL REPORT **October 4, 2006**

JURISDICTION: Dorchester County and the City of Cambridge

PROPOSAL: Blackwater Resort Communities – Growth Allocation

COMMISSION ACTION: VOTE

PANEL MEMBERS: Dave Blazer (Chair), Jim McLean, Stevie Prettyman, Gary Setzer, Cathy Vitale

PANEL RECOMMENDATION: Deny

STAFF: Mary Owens

**APPLICABLE LAW/
REGULATIONS:** Natural Resources Article §8-1809, COMAR 27.01.02.06,
Chapter 55 of the 2006 Laws of Maryland

DISCUSSION:

The Critical Area Commission Panel reviewing the Blackwater Resort Communities Growth Allocation Project held a public hearing on July 20, 2006 at Maple Elementary School. Prior to the hearing, the Panel received information describing the project and summarizing the major issues for discussion. Following the hearing, the public record was held open until July 28, 2006. Prior to the hearing and at the hearing itself, extensive information was submitted by the developer, the City, and the County describing the project and supporting the request for growth allocation. There has also been significant public interest in the project. There were over 100 people at the public hearing, numerous letters submitted, and over 4,000 e-mails sent regarding the project. After the hearing, the Panel met on August 2, 2006, August 17, 2006, September 6, 2006, September 15, 2006, September 28, 2006, and October 4, 2006.

This Report sets forth the discussions of the Panel, provides background information, and gives the Panel's recommendations to the full Commission. This report addresses the Critical Area Law's growth allocation guidelines, and the goals, policies, and provisions of the law and Criteria. For the reasons and supporting documentation set forth in this Report (and in the August 11, 2006, and September 26, 2006 Staff Memoranda), the Panel believes that there is a lack of documentation explaining how the growth allocation is consistent with the purposes, goals, and provisions of the Critical Area Commission; and therefore recommends that the proposed growth allocation Program amendment be denied. The vote of the Panel was unanimous.

Adjacency

Locate a new Intensely Developed Area in a Limited Development Area or adjacent to an existing Intensely Developed Area. *Natural Resources Article § 8-1808.1(c)(1)*

Both the City of Cambridge and Dorchester County determined in their findings that the project was not adjacent to existing LDA or IDA. The Panel discussed how "adjacent" does not necessarily mean "adjoining," but found that only a very small portion of the site is within one-half mile of an existing IDA and that the proposed IDA extends approximately 2.5 miles from the closest existing IDA. The Panel discussed that the concept of adjacency could be viewed broadly as proposed by the Black's Law Dictionary definition of "adjacent" to look at properties that may not be contiguous to the project site, but are nearby; however, the purpose of the statute must be considered. The Panel believes that the purpose of the statute is to accommodate growth by concentrating development and avoiding both isolated pockets of LDA or IDA located in the RCA and unwieldy patterns of development that promote areas of LDA or IDA that extend far from developed areas in a non-uniform manner.

In their analysis, the Panel agreed with the City and County that the project site is not adjacent to LDA or IDA, and in addition the Panel viewed the concept of adjacency as requiring a "nearby presence" of LDA or IDA, conditions that do not exist here. The Panel considered the definition of adjacency and although the definition does not require that the new IDA be immediately next to existing LDA or IDA, the distance proposed with this application is far too great.

The Panel has concluded that they cannot recommend to the full Commission that this guideline has been applied in a manner that is consistent with the purposes, policies, goals, and provisions of the Critical Area law. The Panel believes that the purpose of the statute is to accommodate growth by concentrating development and avoiding both isolated pockets of LDA or IDA located in the RCA and unwieldy patterns of development that promote areas of LDA or IDA that extend far from developed areas in a non-uniform manner.

Optimization of Benefits to Water Quality

Locate a new Limited Development Area or an Intensely Developed Area in a manner that minimizes impacts to a Habitat Protection Area as defined in COMAR 27.01.09 and in an area and manner that optimizes benefits to water quality. *Natural Resources Article § 8-1808.1(c)(3)*

This locational guideline specifies that growth allocation should be located in a manner that optimizes benefits to water quality. The application package proposes that benefits to water quality have been optimized because the project will implement best management practices for treating the quality and quantity of stormwater runoff as required by the City of Cambridge Zoning Ordinance. In discussing this issue, the Panel identified three primary concerns. The first concern was whether the applicant's proposal to comply with the 10% pollutant reduction requirement, to "maintain stormwater run-off on the project site" and to treat the 10-year storm represents optimization of benefits to water quality particularly in light of the acknowledged complexity of the hydrology of the Little Blackwater River system, the flat topography of the site, the extensive areas of hydric soils, the high water table, and the vulnerability of the proposed best management practices to flooding or "blowing out" in severe storm events.

The second concern was the proposed design whereby stormwater facilities within the Critical Area will be treating runoff from highly developed portions of the site outside of the Critical Area, and all stormwater facilities (both inside and outside the Critical Area) will be hydrologically connected to streams and ditches within the Critical Area that discharge to the Little Blackwater River system. It was discussed that it could be preferable to collect, treat, and store all stormwater runoff on the site. Stormwater that was collected would be used for irrigation or would be infiltrated or evaporated resulting in no direct discharge to existing streams and ditches that discharge to the Little Blackwater River. Information about the viability of this option was not included in the growth allocation application.

The third concern involves the significance of the Little Blackwater River Habitat Protection Area as a significant component of a larger ecosystem, the Blackwater National Wildlife Refuge. Correspondence from the U.S. Fish and Wildlife Service (USFWS) states that the Refuge is "the downstream recipient of any chemical, sediment, and stormwater runoff from the proposed development." Not only does the USFWS manage Blackwater National Wildlife Refuge, but also as a federal government agency, the USFWS provides important and significant comments, guidance, and recommendations to the Commission regarding projects that involve resources protected at the federal level.

In the letter from the USFWS dated July 11, 2006, and included in the public record, Glenn Carowan, John Wolflin, and Steve Minkkien express their concern about the need for additional studies of the Little Blackwater River (some of which are ongoing), the need for additional time to review studies that have been completed, and following review of the studies, the opportunity to provide additional input to the Commission. Among the letter's recommendations are the following:

1. *Delay making a decision on the project until an adequate peer-reviewed independent research program is completed by the U. S. Geological Survey, University of Maryland, and the U.S. Fish and Wildlife Service;*
2. *Establish a requirement for an annual monitoring program to collect data on biological parameters that is adequate and peer-reviewed by all interested stakeholders;*
3. *Provide the U.S. Fish and Wildlife Service with specific information on how stormwater runoff from the golf course will be managed; and*
4. *Prohibit use of any chemicals on the golf course that may be environmentally harmful to the resources of Blackwater National Wildlife Refuge.*

The Panel discussed the last recommendation and whether it would be appropriate for the Commission to prohibit the use of certain chemicals on the golf course. The Panel discussed how pesticide, herbicide, and fertilizer applications are typically addressed in Integrated Pest Management (IPM) Plans and Nutrient Management Plans. The developer is proposing to develop and implement an Integrated Pest Management Plan and Nutrient Management Plan for the golf course; however, the Panel expressed concern that there may not be sufficient monitoring of the implementation of these Plans to provide adequate safeguards for the Blackwater National Wildlife Refuge.

The Panel expressed concern that there was insufficient information about immediate and cumulative impacts to water quality. Specifically, the Panel identified a lack of baseline data about the Little Blackwater River system, a lack of analysis of an alternative stormwater treatment system that would not discharge directly to any watercourses on the site or off-site, and a lack of information about appropriate monitoring. The Panel believes that the results of the independent research program, to be completed in 2007, recommended by the USFWS and any resulting recommendations are critical components of this request and are necessary for the Commission to make a determination regarding this standard. The Panel has concluded that they cannot recommend to the full Commission that this growth allocation is located in an area and in a manner that optimizes benefits to water quality.

Minimization of Impacts to Habitat Protection Areas

Locate a new Limited Development Area or an Intensely Developed Area in a manner that minimizes impacts to a Habitat Protection Area as defined in COMAR 27.01.09 and in an area and manner that optimizes benefits to water quality. Natural Resources Article § 8-1808.1(c)(3)

The Panel evaluated information on the Habitat Protection Areas on the project site in order to determine if impacts associated with the proposed growth allocation have been minimized. The Little Blackwater River and adjacent wetlands are identified by the City of Cambridge as Habitat Protection Area – Locally Significant Habitat. The Ordinance includes specific provisions addressing protection and conservation of these habitats. The Ordinance states that the City has maps on file to be used as a flagging device; however, it is stated that, “While these maps give a general indication of the area, they do not excuse any property owner or operator from establishing to the satisfaction of the City Planning Commission, whether or not the property or activity will affect the element of habitat to be protected. At the time of development, the applicant will be responsible for providing an on-site analysis and inventory.”

The Ordinance also includes specific standards to ensure that plant and wildlife habitats identified as Habitat Protection Areas are considered. These standards require a site-specific survey to determine the presence of any plant and wildlife habitat areas. They also require that the property owner submit the survey with design plans and a “written description of the measures that the property owner proposes to take to protect the habitats identified.” Site specific Habitat Protection Plans are to be prepared in consultation with the Department of Natural Resources (DNR). The Plans are to be used by the City in making a determination that development activities or land disturbances will not have or cause adverse impacts.

In addition to the Little Blackwater River Habitat Protection Area, the other significant HPA on the property within the Critical Area is the 100-foot Buffer. The Critical Area portion of the site borders the waters and adjacent wetlands of the Little Blackwater River and Maple Dam Branch along its entire length, involving approximately 14,700 linear feet or 2.78 miles of shoreline. In addition, there are approximately 5,770 linear feet of tributary streams. The City’s application package proposed that impacts to the 100-foot Buffer have been minimized by establishing the Buffer in forest vegetation as required by the City’s Critical Area Program, by expanding the forested Buffer beyond 100-feet in some areas, by locating the golf course, which includes nominal areas of impervious surface, in the area of the site closest to the Little Blackwater River, by restoring and

reconfiguring the six tributary streams and several agricultural drainage ditches, and by connecting wildlife corridors along the streams to forested areas on properties surrounding the site.

Over the past several weeks, the Panel has carefully examined the proposed impacts to the Buffer associated with the fairways for Hole #3, Hole #4, Hole #7, Hole #8, Hole #9, Hole #10, and Hole #18, the centralized public waterfront park area, and the conference center, as well as the proximity of the maintained areas of the golf course adjacent to tidal wetlands, tidal waters and tributary streams. The Panel has discussed and generally supports the concepts to protect, establish, and enhance the Buffer; however, a Buffer Management Plan for the entire project was not included in the City's application package. The Panel believes that without a detailed Buffer Management Plan depicting the proposed Buffer enhancements, the wildlife corridor network, and stream restoration activities, they do not have sufficient information regarding the minimization of impacts.

The project area has been defined by the City as a Habitat Protection Area – Locally Significant Habitat. This designation requires that the developer provide specific detailed studies to manage and protect the area. This information has not been provided. While the Panel acknowledges the positive aspects of the proposed project (e.g. stream restoration), the Panel believes that more information is needed on impacts to the downstream Blackwater Wildlife Refuge. The Panel has concluded that they cannot recommend to the full Commission that this growth allocation is located in a manner that minimizes impacts to Habitat Protection Areas without this information.

In addition, a Buffer Management Plan has not been submitted. The Panel acknowledges that in the past Buffer Management Plans have not been required as part of a growth allocation submittal. However, they believe that the size and intensity of the project, the linear extent and overall acreage of the Buffer on the site, the importance of providing viable wildlife corridors, and the unique and fragile nature of the primary watercourse that the Buffer is protecting warrant a different approach. They believe the Buffer Management Plan must be considered as part of the growth allocation application in order to determine if the 100-foot Buffer has been adequately protected. The Panel has concluded that they cannot recommend to the full Commission that this growth allocation is located in a manner that minimizes impacts to Habitat Protection Areas without a detailed Buffer Management Plan that addresses these habitat concerns.

300-Foot Setback

Locate a new Intensely Developed Area or a Limited Development Area in a Resource Conservation Area at least 300 feet beyond the landward edge of tidal wetlands or tidal waters. Natural Resources Article § 8 -1808.1(c)(4)

In the City's submittal, it is stated that generally areas proposed for residential and commercial structures, parking and stormwater management are located approximately 300-feet from tidal waters and tidal wetlands; however, much of the commercial center and portions of roads, pedestrian paths, cart paths, and stormwater management practices are within the 300-foot setback. In evaluating this locational standard, the Panel discussed that the primary development activity within the 300-foot setback is the golf course. Although golf courses may include relatively few structures and low impervious surface coverage, they are highly maintained and manipulated landscapes that provide active recreation and limited habitat value. The Panel expressed concern

about the commercial development located within the 300-foot setback and believed that its location is not consistent with this guideline.

Although, the Blackwater Resort Communities Project is designed with most of the intense development outside the Critical Area, the zoning classification used for the portion of the project outside the Critical Area is intrinsically linked to the water frontage, recreational amenities, and open space provided in the Critical Area portion of the project. Historically for projects involving significant growth allocation acreage and intense development, the Commission has looked at the 300-foot setback as a means to mitigate for and offset adverse impacts associated with development. The Panel discussed that the 300-foot setback has been identified as a way to provide increased buffering of aquatic resources from development activity, to provide additional forest cover on otherwise intensely developed sites with high levels of impervious surface, to provide a wider Buffer potentially expanding its habitat value for a larger number of species, and to provide numerous water quality benefits associated with riparian forest buffers. On some projects, it has not been practical or effective to provide the 300-foot setback. On these projects, applicants have proposed a variety of alternative measures and demonstrated to the Commission that these alternative measures provide equivalent, or in some cases, greater benefits.

The application does not provide a 300-foot setback. If it is impractical for the applicant to provide a 300-foot setback, then the applicant must demonstrate that the proposed design provides equivalent or greater benefits. However, the application does not include alternative measures that meet or exceed the water quality and riparian habitat benefits that would be provided by a 300-foot setback on this project site. The Panel also expressed concern about the location of the commercial center within the 300-foot setback and the proximity of the conference center to the 300-foot setback. The Panel believes that these structures and associated parking must be located outside the setback. The Panel has concluded that they cannot recommend to the full Commission that this growth allocation guideline has been applied in a manner that is consistent with the purposes, policies, goals, and provisions of the Critical Area law and Criteria because neither a 300-foot setback nor alternative measures for protection of the resources have been provided.

Buffer Expansion for Hydric Soils

Local jurisdictions shall expand the Buffer beyond 100 feet to include contiguous sensitive areas, such as steep slopes, hydric soils, or highly erodible soils, whose development or disturbance may impact streams, wetlands, or other aquatic environments. COMAR 27.01.09.02.C(7)

There are extensive areas of hydric soils on the project site, some of which are contiguous to the 100-foot Buffer of the Little Blackwater River, its adjacent nontidal wetlands, and the streams feeding the Little Blackwater River. The Panel has reviewed a soils map and discussed that these soils have severe limitations and that special design, significant increases in construction costs, and possibly increased maintenance may be required for all types of development. The commercial area, portions of the golf clubhouse and parking lot, and numerous stormwater management facilities are located in areas of hydric soils.

The Panel reviewed both the City's Critical Area Ordinance and the Dorchester County Code language regarding expansion of the Buffer for hydric soils. In their discussions, the Panel discussed the intensity of development directly adjacent to and hydrologically connected to areas of hydric soils in the Critical Area, the large areas of hydric soils that are proposed to be extensively graded for the golf course, and the location of the hydric soils in low-lying, flat areas directly adjacent and contiguous to tidal and nontidal wetlands of the Little Blackwater River and its wetlands. The Panel discussed that if the Buffer is not expanded, then a variety of measures can be proposed to address this protection measure; however, the City's submittal does not propose any expansion of the 100-foot Buffer for hydric soils, nor is the City proposing any alternative measures to address adverse impacts from the golf course on the Little Blackwater River and wetlands. The Panel believes that because the Criteria state that the Buffer shall be expanded to include sensitive areas such as hydric soils, whose development or disturbance may impact streams, wetlands, or other aquatic environments, then the Buffer on this site must be expanded unless the application provides adequate scientific information that the Little Blackwater River system and adjacent wetlands will not be impacted by the proposed project.

The Panel acknowledges that the project includes several measures that may provide some protection of streams, wetlands, and aquatic resources including locating most structures and impervious surfaces at least 300-feet from tidal waters and tidal wetlands and using significant portions of the areas of hydric soils within the Critical Area for development of the golf course. However, the Panel believes that the Buffer on this site shall be expanded unless the application provides adequate scientific information that the Little Blackwater River system and adjacent wetlands will not be impacted by the proposed project. The Panel has concluded that they cannot recommend to the full Commission that the growth allocation request as submitted is consistent with the purposes, policies, goals, and provisions of the Critical Area Criteria because adequate scientific information has not been provided, nor has the Buffer been expanded.

Critical Area Program Goals

New intensely developed areas should be located where they minimize their impacts on the defined land uses of the Resource Conservation Area. COMAR 27.01.02.06.B(5)

The entire Critical Area portion of the project site is currently designated RCA and is in agricultural use. The project site is generally surrounded by extensive areas of agricultural lands and forested lands, except to the north where the project site is adjacent to Snows Turn Park (non-Critical Area portion of the site) and the athletic fields and forested lands of Maple Elementary School. The Panel has discussed that the property has a narrow, linear configuration with a lot of edge and development on this property will affect a significant area of adjacent land that is currently engaged in defined resource utilization activities. The panel reviewed the City and County Comprehensive Plans and discussed the numerous compatibility issues regarding the proximity of agricultural uses to other types of land use. The Panel also discussed how significant land use changes on a single large property could promote development on surrounding lands and promote a sprawling development pattern that is not conducive to agricultural preservation or the conservation of natural resources.

The proposed project may promote development on surrounding lands and a sprawl development pattern that is not conducive to agricultural preservation or the conservation of natural

resources. The application does not contain information from which the Panel can determine that the new IDA has been located where it will minimize impacts on the defined land uses of the RCA. Due to this lack of information, the Panel cannot determine and therefore cannot recommend to the full Commission that this Critical Area Program goal has been achieved.

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. *Natural Resources Article § 8 - 1808(b)(3)*

In accordance with Chapter 55 of the 2006 Laws of Maryland (effective June 1, 2006), the Commission shall ensure that the guidelines for growth allocation are applied in a manner that is consistent with the purposes, policies, goals, and provisions of the Critical Area law and all Criteria of the Commission. While this goal may be somewhat broader than the other goals and policies included in the Critical Area law and Criteria, it serves an important purpose in directing the Panel to evaluate projects broadly and in the context of growth, development, and land use change in the Critical Area as a whole. The Panel's discussion of the project relative to this goal focused on three concepts as discussed below.

- 1) Is the use of growth allocation for this project, which is located in a large Resource Conservation Area, which is contiguous to sensitive resources, and which has the potential to impact nearby federally protected conservation lands, consistent with the overall purpose and intent of the Critical Area law and Criteria?

In evaluating the first concept, the Panel had significant concerns about the size and intensity of the project and the tremendous impact that it will have, not only on the City of Cambridge, but on Dorchester County as well. The project is the largest single project growth allocation award reviewed by the Commission and represents approximately 11% of the County's total growth allocation and approximately 23 % of the County's remaining growth allocation. The Panel discussed the appropriateness of locating such a large and intensely developed project in an area of the Critical Area that includes so many and such extensive areas of the resources that require specific protection and conservation measures under the law and Criteria including hydric soils, the 100-foot Buffer, and the Little Blackwater River Habitat Protection Area – Locally Significant Habitat. The Panel also discussed the extensive testimony and exhibits presented that indicate that almost the entire Critical Area portion of the property is within the 100-year floodplain and portions of this site have flooded in recent severe storms. The Panel discussed that the location of floodplains are an important consideration in decisions regarding the location of future growth. Flooding issues are especially significant on this site because of the flat topography, poor soils, high water table, and the complexity of the tidal influence of the Little Blackwater River.

- 2) Is the use of growth allocation for this project inconsistent with the purpose and intent of the Critical Area law and Criteria, in spite of the fact that most of the intense development is located outside the Critical Area, because that portion of the project serves to intensify human activity in an environmentally sensitive area?

In analyzing the second concept, the Panel considered environmental impacts associated with consequences and situations that result, both directly and indirectly, from the presence and activities of people. These impacts, which are inherently difficult to specifically identify and quantify, tend to contribute over the long term to degradation of habitat and water quality and ultimately the effectiveness of the Critical Area law. The Panel discussed that if this growth allocation request were approved and this property were designated IDA, the particular configuration of the new IDA could easily lead to many additional requests in the area based on adjacency. The Panel was concerned that such action by the Critical Area Commission could serve to further intensify growth and increased human population in an area that extends more than 2.5 miles from the existing downtown and into an area where increased human activity would be detrimental to water quality and habitat over time.

- 3) Is the use of growth allocation consistent with the City and County comprehensive plans as directed in the growth allocation provisions of the City's and the County's Critical Area Programs?

In evaluating the third issue, the Panel discussed that both the City's Zoning Ordinance and the County's Code specify that the use of growth allocation shall be consistent with the adopted comprehensive plans. The Panel also discussed that this project involved an annexation that significantly extended a municipal boundary into an undeveloped portion of Dorchester County in manner that does not appear to have been contemplated by the 1996 Dorchester County Comprehensive Plan or the 1998 City of Cambridge Comprehensive Plan. The Panel understands that the Dorchester County Council did pass a resolution amending the comprehensive plan to facilitate the use of growth allocation for this project and its ultimate development. However, although the project site has been annexed into the City, and the City and Dorchester County have jointly submitted the request to use growth allocation, the City of Cambridge Comprehensive Plan has not been amended.

The Panel also discussed the tremendous public interest that this project has generated over the last several months. More than 100 people attended the Commission's public hearing, and the Commission, both prior to, and during the public comment period, received approximately 4,000 e-mails and 100 letters. Almost all of the public comment expressed opposition to the project. Many of the e-mails received were similar in format highlighting the Commission's responsibility to protect the Bay and to prevent pollution from reaching the streams, wetlands, and shores of the Bay; urging the Commission to deny the application because an "adequate, peer-reviewed, independent water quality study has not been done that would assess the impacts of the proposed development on the natural resources of the area;" and stating that the proposed location is not the right place for a development of this size. Many of the e-mails were personalized with detailed accounts of the writer's concerns about adverse impacts to the Blackwater National Wildlife Refuge and its significance, both personally and as a "national" resource.

The City and the County have not provided information regarding all of the direct environmental impacts associated with a project of this size and intensity, as well as the indirect impacts associated with the number, movement, and activities of people in the Critical Area relative to this project. As the City's Plan is currently written, it does not propose this area for future growth and development. The Panel believes that because the property was annexed into the City, and the

project reviewed under City zoning, subdivision, and site plan regulations, the City should have amended its comprehensive plan in an appropriate manner to address the direct environmental and indirect impacts of the project. The Panel has concluded that they cannot recommend to the full Commission that the growth allocation request as submitted is consistent with the purposes, policies, goals, and provisions of the Critical Area law because this goal of the Critical Area law has not been met.

Mapping Mistake

“Critical Area” means all lands and waters defined in Natural resources Article §8-1807, Annotated Code of Maryland. They include: (a) All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetland maps, and all State and private wetlands designated under Natural Resources Article, Title 9, Annotated Code of Maryland; (b) All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Natural Resources Article, Title 9, Annotated Code of Maryland; and ...” COMAR 27.01.01.01.B(18)

At the Panel meeting on September 15, 2006, an issue was raised regarding the extent of tidal wetlands at the southern end of the site and how the Critical Area boundary was drawn in this area. Commission staff researched the issue and identified at least one apparent error on the County’s Critical Area Maps, which appear to have been used to identify the Critical Area boundary on the project site plan. The limit of tidal wetlands is shown on the County’s Critical Area Maps, and this line does not match the line shown on the 1972 State Tidal Wetland Maps. As a result, the 1,000-foot Critical Area boundary shown on the County’s Maps is also incorrect. At least one area is part of the project site and is proposed for development; therefore, any change to the Critical Area boundary in this area would affect the acreage of the growth allocation request.

The Panel has concluded that they cannot recommend to the full Commission that the growth allocation request as submitted is consistent with the purposes, policies, goals, and provisions of the Critical Area Criteria because it appears that the Critical Area boundary has been incorrectly mapped, which affects the growth allocation acreage that is being requested.

IN THE CIRCUIT COURT OF MARYLAND
FOR DORCHESTER COUNTY

PETITION OF: *

DORCHESTER COUNTY COUNCIL *

Petitioner *

FOR JUDICIAL REVIEW OF THE
DECISION OF: *

CASE NO.: C-06-14611

STATE OF MARYLAND
CRITICAL AREA COMMISSION
FOR THE CHESAPEAKE AND
ATLANTIC COASTAL BAYS *

1804 West Street, Suite 100
Annapolis, Maryland 21401 *

DISAPPROVAL OF DORCHESTER
COUNTY MAP AMENDMENTS
AND CRITICAL AREA PROGRAM
AMENDMENTS ON OCTOBER 4, 2006 *

* * * * *

PLEADINGS INDEX

- | | | |
|----|---------|--|
| 1. | 11/7/06 | Notice to Administrative Agency of Judicial Review |
| 2. | 11/7/06 | Petition for Judicial Review |
| 3. | 12/4/06 | Defendant's Motion to Dismiss, Memorandum in Support of Motion and Proposed Order. |
| 4. | 12/4/06 | Notice of Intention to Participate |

4

IN THE CIRCUIT COURT
FOR DORCHESTER COUNTY, MARYLAND

PETITION OF DORCHESTER COUNTY *
FOR JUDICIAL REVIEW OF THE DECISION OF *

STATE OF MARYLAND *
CRITICAL AREA COMMISSION FOR THE *
CHESAPEAKE AND ATLANTIC COASTAL BAYS *

DISAPPROVAL OF DORCHESTER COUNTY MAP *
AMENDMENTS AND CRITICAL AREA *
PROGRAM AMENDMENTS ON *
OCTOBER 4, 2006 *

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* * * * *

Received in the
Circuit Court on
12/1/06
By Michael L. Baker, Clerk

Case No. 09-C-06-14611

NOTICE OF INTENTION TO PARTICIPATE

Egypt Road, LLC and The Thomas Land Group, LLC, by and through William W. McAllister, Jr., Richard A. DeTar, Demetrios G. Kaouris and Miles & Stockbridge, P.C., hereby give notice of their intention to participate in this matter in accordance with Maryland Rule 7-204.

Respectfully submitted,



William W. McAllister, Jr.
Richard A. DeTar
Demetrios G. Kaouris
Miles & Stockbridge P.C.
300 Academy Street
Cambridge, Maryland 21613
(410) 228-4545

RECEIVED
DEC 4 2006
CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December 2006, a copy of the foregoing Notice of Intention to Participate was mailed first class, postage prepaid to: Charles D. MacLeod, Esquire, and Jeff L. Blomquist, Esquire, Funk & Bolton, P.A., 315 High Street, Chestertown, MD 21620 and Marianne E. Dise, Assistant Attorney General, Critical Area Commission, 1804 West Street, Suite 100, Annapolis, MD 21401.

A handwritten signature in black ink, appearing to read "Demetrios G. Kaouris", written over a horizontal line.

Demetrios G. Kaouris

3

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

DONNA HILL STATON
DEPUTY ATTORNEY GENERAL

MAUREEN M. DOVE
DEPUTY ATTORNEY GENERAL



MARIANNE E. DISE
ASSISTANT ATTORNEY GENERAL
PRINCIPAL COUNSEL

SAUNDRA K. CANEDO
ASSISTANT ATTORNEY GENERAL

WRITER'S DIRECT DIAL NO.:

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338

(410) 974-5338

(410) 260-3466

December 4, 2006

Mr. Michael L. Baker, Clerk of the Court
Circuit Court for Dorchester County
206 High Street
P.O. Box 150
Cambridge, Maryland 21613

Re: *Dorchester County Council v. State of Maryland Critical Area Commission*,
Case No C-06-14611.

Dear Clerk:

Enclosed please find for filing in the above-referenced case the Defendant's Motion to Dismiss, Memorandum in Support of Motion, and Proposed Order. Thank you very much for your assistance.

Very truly yours,


Marianne E. Dize
Assistant Attorney General

Enclosures

cc: Charles D. MacLeod, Esquire
Jefferson L. Blomquist, Esquire

2

CIRCUIT COURT FOR DORCHESTER COUNTY

Michael L. Baker
Clerk of the Circuit Court
206 High Street
P.O. Box 150
Cambridge, MD 21613
TTY for Deaf: (800)-735-2258

Md Toll Free (800)340-9186 License/Recording (410)228-0480 Law (410)228-0481

CASE NUMBER: 09-C-06-014611 AA

Dorchester County Council vs Maryland State Critical Area Comm For The Chesapeake

Maryland State Critical Area Comm For The Chesapeake & Atlantic Coastal Bay
1804 West Street, Suite 100
Annapolis MD 21401

NOTICE TO ADMINISTRATIVE AGENCY
OF JUDICIAL REVIEW

=====

You are advised that a petition for judicial review was filed on 11/03/2006 and assigned Civil Action No. 09-C-06-014611.

Pursuant to Maryland Rule 7-202(d)(1), a copy of the petition is enclosed for the agency.

Date Issued: 11/06/06

Michael L. Baker

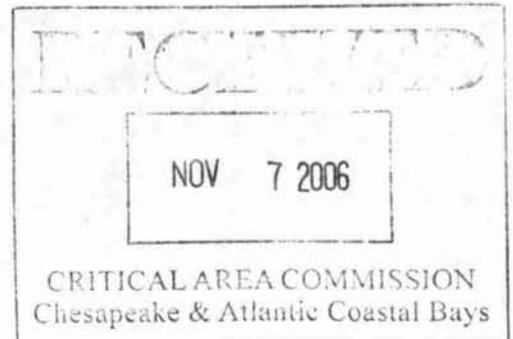
Michael L. Baker
Clerk of the Circuit Court
of Dorchester County



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DATE RECEIVED: November 7, 2006

SIGNATURE: M. Diane E. Duse



CIRCUIT COURT FOR DORCHESTER COUNTY

Form: 403

Michael L. Baker
Clerk of the Circuit Court
206 High Street
P.O. Box 150
Cambridge, MD 21613

TTY for Deaf: (800)-735-2258

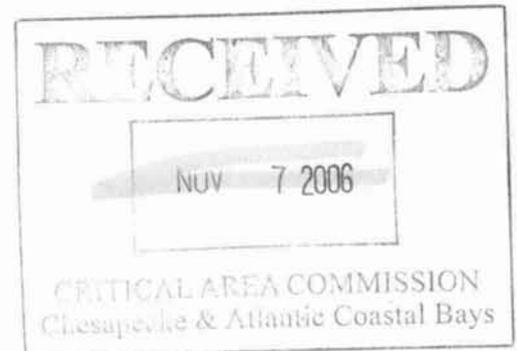
Md Toll Free (800)340-9186 License/Recording (410)228-0480 Law (410)228-0481

Case Number: 09-C-06-014611 AA

Maryland State Critical Area Comm For The Chesapeake & Atlantic Coastal B

1804 West Street, Suite 100
Annapolis, MD 21401

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CIRCUIT COURT FOR DORCHESTER COUNTY

Michael L. Baker
Clerk of the Circuit Court
206 High Street
P.O. Box 150
Cambridge, MD 21613

TTY for Deaf: (800)-735-2258

Md Toll Free (800)340-9186 License/Recording (410)228-0480 Law (410)228-0481

CASE NUMBER: 09-C-06-014611 AA

Dorchester County Council vs Maryland State Critical Area Comm For The Chesapeake

Maryland State Critical Area Comm For The Chesapeake & Atlantic Coastal Bay
1804 West Street, Suite 100
Annapolis MD 21401

**NOTICE TO ADMINISTRATIVE AGENCY
OF JUDICIAL REVIEW**

=====

You are advised that a petition for judicial review was filed on 11/03/2006 and assigned Civil Action No. 09-C-06-014611.

Pursuant to Maryland Rule 7-202(d)(1), a copy of the petition is enclosed for the agency.

Date Issued: 11/06/06

Michael L. Baker

Michael L. Baker
Clerk of the Circuit Court
of Dorchester County



PLEASE DATE, SIGN AND RETURN TO THE COURT THE COPY OF THIS NOTICE

DATE RECEIVED: _____

SIGNATURE: _____



10

PETITION OF:

DORCHESTER COUNTY COUNCIL

Petitioner

FOR JUDICIAL REVIEW OF THE
DECISION OF:

STATE OF MARYLAND
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL
BAYS

1804 West Street, Suite 100
Annapolis, Maryland 21401

DISAPPROVAL OF DORCHESTER COUNTY
MAP AMENDMENTS AND CRITICAL AREA
PROGRAM AMENDMENTS ON
OCTOBER 4, 2006

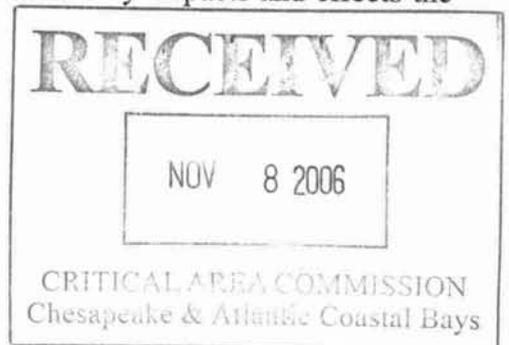
* IN THE
* CIRCUIT COURT
* FOR
* DORCHESTER COUNTY

* CASE NO.: _____

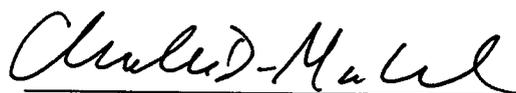
* * * * *

PETITION FOR JUDICIAL REVIEW

Respondent, Dorchester County (the "County") and the Dorchester County Council (the "County Council"), by and through its attorneys, Charles D. MacLeod, Jefferson L. Blomquist, Funk & Bolton, P.A., and E. Thomas Merryweather, Harrington & Merryweather, pursuant to Maryland Rules 7-202 and/or 7-404, appeal the decision of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays ("CAC") to disapprove, on October 4, 2006, the Critical Area map amendments and the program amendments approved by the County Council pursuant to County Council Resolution 2005-16. The County and the County Council are interested parties to the CAC proceeding and the October 4, 2006 decision of the CAC directly impacts and effects the County's critical area program.



Respectfully submitted,

A handwritten signature in cursive script that reads "Charles D. MacLeod". The signature is written in black ink and is positioned above a horizontal line.

Charles D. MacLeod
Jefferson L. Blomquist
Funk & Bolton, P.A.
315 High Street, Suite 202
Chestertown, Maryland 21620
*Attorneys for Dorchester County and the Dorchester
County Council*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November 2006 a copy of the forgoing Petition for Judicial Review was mailed first class, postage prepaid to:

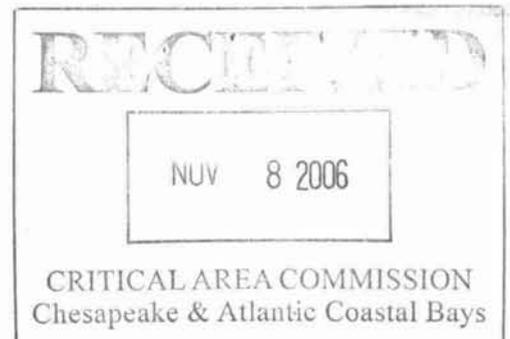
Marianne E. Dise, Esquire
Deputy Counsel
Maryland Department of Natural Resources
Office of the Attorney General
580 Taylor Avenue
Annapolis, Maryland 21401
Attorney for Respondent

William W. McAllister, Jr., Esquire
Richard A. DeTar, Esquire
Miles & Stockbridge, P.C.
101 Bay Street
Easton, Maryland 21601
*Attorneys for Egypt Road, LLC and
Thomas Land Group, LLC*



Charles D. MacLeod

58058.009.99840



PETITION OF:

DORCHESTER COUNTY COUNCIL

Petitioner

FOR JUDICIAL REVIEW OF THE
DECISION OF:

STATE OF MARYLAND
CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL
BAYS

1804 West Street, Suite 100
Annapolis, Maryland 21401

DISAPPROVAL OF DORCHESTER COUNTY
MAP AMENDMENTS AND CRITICAL AREA
PROGRAM AMENDMENTS ON
OCTOBER 4, 2006

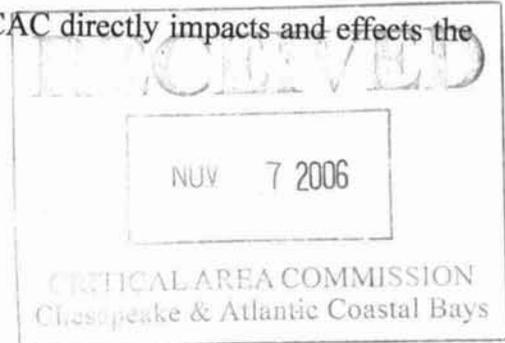
* IN THE
* CIRCUIT COURT
* FOR
* DORCHESTER COUNTY

* CASE NO.: CO6-14611

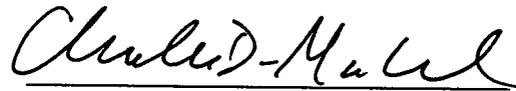
* * * * *

PETITION FOR JUDICIAL REVIEW

Respondent, Dorchester County (the "County") and the Dorchester County Council (the "County Council"), by and through its attorneys, Charles D. MacLeod, Jefferson L. Blomquist, Funk & Bolton, P.A., and E. Thomas Merryweather, Harrington & Merryweather, pursuant to Maryland Rules 7-202 and/or 7-404, appeal the decision of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays ("CAC") to disapprove, on October 4, 2006, the Critical Area map amendments and the program amendments approved by the County Council pursuant to County Council Resolution 2005-16. The County and the County Council are interested parties to the CAC proceeding and the October 4, 2006 decision of the CAC directly impacts and effects the County's critical area program.



Respectfully submitted,



Charles D. MacLeod
Jefferson L. Blomquist
Funk & Bolton, P.A.
315 High Street, Suite 202
Chestertown, Maryland 21620
*Attorneys for Dorchester County and the Dorchester
County Council*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November 2006 a copy of the forgoing Petition for Judicial Review was mailed first class, postage prepaid to:

Marianne E. Dise, Esquire
Deputy Counsel
Maryland Department of Natural Resources
Office of the Attorney General
580 Taylor Avenue
Annapolis, Maryland 21401
Attorney for Respondent

William W. McAllister, Jr., Esquire
Richard A. DeTar, Esquire
Miles & Stockbridge, P.C.
101 Bay Street
Easton, Maryland 21601
*Attorneys for Egypt Road, LLC and
Thomas Land Group, LLC*



Charles D. MacLeod

Background Information

~~WRIGHT INVESTMENT GROUP V. MARYLAND~~
DISAPPROVAL OF DORCHESTER COUNTY MAP
AMENDMENTS AND CRITICAL AREA PROGRAM

MSA S-1831-27 (3 of 3)

Background Information

~~WRIGHT INVESTMENT GROUP V. MARYLAND~~
DISAPPROVAL OF DORCHESTER COUNTY MAP
AMENDMENTS AND CRITICAL AREA PROGRAM
AMENMENTS ON OCTOBER 4, 2006 Case No. C-
06-14611 (Circuit Court for Dorchester County)

TODAY

DATE _____

THINGS TO DO**FINISHED** ✓

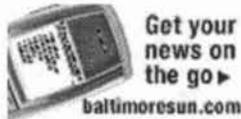
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SPECIAL FOLLOW-UP

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FROM TUESDAY'S SUN

State to save land on Shore

\$10 million deal to preserve much of Blackwater site

BY TOM PELTON AND CHRIS GUY
SUN REPORTERS

ORIGINALLY PUBLISHED NOVEMBER 6, 2006, 8:47 PM EST

CAMBRIDGE // The Ehrlich administration announced Monday that it plans to spend \$10.4 million to preserve about two-thirds of a contested development site near the Blackwater National Wildlife Refuge.

The effort to save 754 acres of Eastern Shore farmland marks a change in direction for the administration, which previously declined to get involved in what it called a mostly local land-use decision.

The purchase agreement will still allow developer Duane Zentgraf to build more than 600 homes, marketed to senior citizens, on 326 acres of farmland on the southern fringe of this city.

That's less than a quarter of the homes proposed in Zentgraf's original 1,080-acre Blackwater Resort project, which sparked seven lawsuits and a campaign to stop it by a coalition of farmers and environmentalists. But some environmentalists said they were disappointed that the entire development has not been stopped.

The announcement came a day before the gubernatorial election, timing that Maryland

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Natural Resources Secretary Ron Franks said was "coincidental."

"This has been very intense since August, that's the reality," Franks, speaking at a news conference here, said of negotiations to buy the land. "DNR has tried to be a mediator to get people to the table. We reached an agreement on Friday, and we wanted to go ahead," he said.

Will Baker, president of the Chesapeake Bay Foundation, which collected 37,000 signatures on petitions urging the governor to preserve the land, said he had hoped that the governor would save the entire site.

"We haven't seen the details of this agreement, but once we do, we can determine if we can withdraw our seven lawsuits, and if this will protect the wildlife refuge," said Baker, who did not attend the announcement.

Cindy Schwartz, executive director of the Maryland League of Conservation Voters, said it's good some of the proposed development site is being preserved, but she called the administration's reversal a "crassly political election ploy" by Republican Gov. Robert L. Ehrlich Jr.

"Is this the kind of governor we want, one who will do this at the last minute, or one who will do the right thing the first time?" Schwartz asked.

Henry Fawell, a spokesman for the governor, said Ehrlich was "thrilled" with the deal. "We are preserving hundreds and hundreds of sensitive acres of land for the goal of preserving the Little Blackwater River, and it's something every Marylander can be proud of," Fawell said.

He said the state's proposed purchase of the land was kept "private" until recently so that the "intensive discussions" with the developer wouldn't be jeopardized.

Under the agreement, the state would purchase 754 acres from Zentgraf using money from Maryland's open space preservation program. The sale would have to be approved next year by the state Board of Public Works, which will include a new state comptroller and perhaps a new governor. The state's Natural Resources agency declined Monday to release the agreement with the developer.

Dru Schmidt-Perkins, executive director of 1000 Friends of Maryland, a nonprofit group devoted to preserving open space, said Monday that Ehrlich could have saved taxpayers \$10 million by opposing the project "much, much" earlier.

"It's great that this humongous development is not going to be built on this frail land," Perkins said. "I think it could have been done saving the taxpayers \$10 million, by using the state's Office of Smart Growth to say we are not going to allow this kind of growth on sensitive land."

In June of last year, the Ehrlich administration concurred with Cambridge's decision to designate the development site as a "priority funding area" appropriate for growth. Under Maryland's Smart Growth Act of 1997, the administration instead could have told Cambridge that it would not provide any state money for road construction, sewers and

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other infrastructure for the development.

Some members of the General Assembly tried this year to block much of the project through legislation. But Ehrlich's appointed chairman of the state Critical Area Commission testified against the growth-control measure, and the bill was ultimately defeated.

Zach Messitte, a political science professor at St. Mary's College, said the timing of Monday's announcement could have an influence on some undecided voters in what appears to be a tight gubernatorial race.

"Part of Ehrlich's effort all along has been to try to break himself apart from the national Republican Party," Messitte said. "This does play nicely into the image Ehrlich has tried to cultivate."

Ehrlich's opponent in Tuesday's election, Baltimore Mayor Martin O'Malley, co-signed a letter with former Gov. Harry Hughes on Oct. 5 urging Ehrlich to preserve the Blackwater land.

One nearby property owner said he had mixed feelings about the state's purchase. "This is about as good a compromise as was going to come with this project," said Bill Giese, a U.S. Fish and Wildlife Service officer whose family lives near the Blackwater Wildlife Refuge. "But it's still a lot of houses, and we have to make sure the water is treated properly."

At Monday's news conference, developer Zentgraf appeared near tears. "I need to applaud everybody for reaching what I hope is a happy conclusion. We could have gone on a few more years in court, but I don't see that as productive," he said.

Discussions about the land aren't over. Zentgraf will have to submit his revised proposal to the Cambridge City Council, which likely will have to vote on rezoning the 326 acres of farmland where he still wants to build, said Anne Roane, planner for the city of Cambridge.

The land is now zoned for a "planned waterfront resort," Roane said. But the project is no longer along the waterfront, because the state Critical Area Commission ruled Oct. 4 that Zentgraf could not build on land beside the Little Blackwater River.

The state is proposing to buy those 313 protected riverfront acres, plus another 441 acres of farmland that lie more than 1,000 feet from the river and were open to development. tom.pelton@baltsun.com

chris.guy@baltsun.com

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property

Dise, Marianne E.

From: Jeff L. Blomquist [jblomquist@fblaw.com]
Sent: Friday, October 13, 2006 11:36 AM
To: Dise, Marianne E.
Cc: Jane Baynard ; Charles D. MacLeod; Amanda Stakem Conn
Subject: RE: Blackwater Resorts Community growth allocation request

Marianne,

Thank you for your prompt reply.

Please request the Commission office to mail a copy of the written notification of the CAC's decision directly to me at the below address.

I will send an assistant to the Commission's Office in Annapolis on Monday to obtain a copy of the decision and will assume that a copy can be obtained any time between 9:00 am and 4:30 pm unless you advise to the contrary.

Have a good weekend,

Jefferson L. Blomquist
Funk & Bolton, P.A.
9701 Apollo Drive, Suite 301
Largo, Maryland 20774

From: Dise, Marianne E. [mailto:MDise@dnr.state.md.us]
Sent: Friday, October 13, 2006 11:19 AM
To: Jeff L. Blomquist
Subject: RE: Blackwater Resorts Community growth allocation request

Jeff,

Thank you for your email. I am responding on behalf of the Critical Area Commission. I will address your questions in order:

1. The Panel Report is available at the Commission's office at 1804 West Street, Suite 100, Annapolis, MD 21401. The Report was distributed to all Commission members (I believe that Commissioner Bramble was in attendance) at the Commission's meeting on October 4, 2006, and to all members of the public in attendance who wanted a copy.
2. The Chairman's written notification to the County and City of the Commission decision is expected to be mailed early next week. When that letter is sent, you may obtain a copy from the Commission office, or from your client. If you wish to have a copy mailed directly to you, please let me know and I will request the Commission staff to do so.
3. The Commission's decision is its final decision.
4. Several times in the past, the Commission's action on a proposed amendment or refinement to a local Critical Area program has been challenged in the courts. Unfortunately, I cannot advise you, or your client, as to your options for challenging my client's decision.

10/13/2006

Please feel free to call me at 410-260-8351, or to email, with further questions.

Sincerely,

Marianne E. Dise,

Principal Counsel

Critical Area Commission for the Chesapeake and Atlantic Coastal Bays

-----Original Message-----

From: Jeff L. Blomquist [mailto:jblomquist@fblaw.com]

Sent: Thursday, October 12, 2006 6:03 PM

To: Serey, Ren; Dise, Marianne E.

Cc: Charles D. MacLeod; Amanda Stakem Conn; Jane Baynard

Subject: Blackwater Resorts Community growth allocation request

Ren/Marion,

As I believe you know, we (Funk & Bolton, P.A., Chip MacLeod, Amanda Stakem Conn and me) represent Dorchester County and the Dorchester County Council with respect to the growth allocation request relative to the Blackwater Resorts Community project.

Would you please send me a copy of the CAC Panel Decision/Report (I will pick up a copy of the report if you advise to which office I must travel to obtain a copy).

Would you please send us a copy of the CAC's decision with respect to this request (again, I will pick up a copy of the report if you advise to which office I must travel to obtain a copy).

Is the decision that was reported by the press on October 4, 2006 a final decision of the CAC?

Has the CAC provided written notice of the decision to anyone at the County, and if so, whom?

What if any right of appeal exists from the decision? Please advise of the appeal rights, or, if it is your position that there are no appeal rights, please advise.

Please respond at your earliest convenience, as we have to advise the County of its options so that it can make a determination of how it will proceed.

Regards,

Jefferson L. Blomquist, Esquire



FUNK & BOLTON
ATTORNEYS AT LAW

9701 Apollo Drive
Suite 301
Largo, Maryland 20774-4783
Phone: 301-386-0812
Fax: 301-386-1452



FUNK & BOLTON

ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION
TWELFTH FLOOR
36 SOUTH CHARLES STREET
BALTIMORE, MARYLAND
21201-3111
PHONE: 410.659.7700
FAX: 410.659.7773
www.fblaw.com

DAVID M. FUNK
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REN L. TUNDERMANN
CHARLES D. MACLEOD
TIFFANY HANNA ANDERSON
DARYN E. RUSH*
STEPHEN Z. MEEHAN
DEREK B. YARMIS*
JEFFERSON L. BLOMQUIST
J. DANIEL FARRELL*
LINDSEY A. RADER
JAMES F. TAYLOR
MICHAEL P. CUNNINGHAM*
MICHAEL R. MCCANN
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CHERYL A. C. BROWN

SENIOR COUNSEL
PETER C. ISMAY*

ASSOCIATES
AMY L. STRACHAN*
HISHAM M. AMIN
THOMAS KLEMM*
TAMAL A. BANTON
DESIRÉE S. WILLIAMS*
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MARYAM ZAFAR
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SALEEL V. SABNIS*
NICOLE M. SANDUSKY

OF COUNSEL
STEPHEN P. CARNEY
AMANDA STAKEM CONN
ERNEST A. CROFOOT
GARY C. HARRIGER
DONNA B. IMHOFF
DEBORAH R. RIVKIN
RONALD L. SOUDERS*
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STEPHEN WEAVER*
PAULINE K. WHITE

October 4, 2006

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▼ ADMITTED IN DELAWARE ONLY

Marianne Mason, Esquire
Deputy Counsel
Maryland Department of Natural Resources
Office of the Attorney General
580 Taylor Avenue
Annapolis, Maryland 21401

RECEIVED

OCT 6 2006

BNR - LEGAL DIVISION

Dear Ms. Mason:

As a courtesy, I have enclosed a copy of the Dorchester County Council's response to the Petitioners' Memorandum in the Blackwater Resort Communities case that was filed by the Chesapeake Bay Foundation et al. Because the Council's response concerns the application of the State critical area criteria found in the Dorchester County Code, we wanted to provide you with a copy our response.

I am sorry that I missed your presentation at the Maryland Association of Counties conference on critical areas law. I heard that the presentation was very informative.

Sincerely,

Amanda Stakem Conn

Enclosures



FUNK & BOLTON

ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION
 TWELFTH FLOOR
 36 SOUTH CHARLES STREET
 BALTIMORE, MARYLAND
 21201-3111
 PHONE: 410.659.7700
 FAX: 410.659.7773
 www.fblaw.com
 Writer's Direct Dial: 410/659-7767
 aconn@fblaw.com

DAVID M. FUNK
 BRYAN D. BOLTON
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 RONALD L. SOUDERS*
 JOHN R. STIERHOFF
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 JOSEPH B. TETRAULT
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 PAULINE K. WHITE

October 3, 2006

ADMITTED IN MARYLAND EXCEPT AS OTHERWISE NOTED
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Clerk of the Court
 Circuit Court for
 Dorchester County
 Court House
 206 High Street
 Cambridge, Maryland 21613

Re: *Petition of: Ronald C. Edgar & Sons, LLC, et al.*
for Judicial Review of the Decision of: County Council of Dorchester
 Case No. C-06-014104

Dear Clerk:

Enclosed for filing, please find Respondent, Dorchester County Council's Motion to Supplement the Administrative Record, Memorandum in Support of Motion to Supplement the Administrative Record and Response to Petitioners' Motion for Order to Review, Correct and Supplement the Administrative Record, and proposed Order in connection with the above-referenced matter. An extra copy is also enclosed. Please date-stamp the extra copy and return it to me in the self-addressed, stamped envelope provided for that purpose.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Amanda Stakem Conn

ASC/DD
 Enclosures

cc: Thomas A. Deming, Esquire
 William W. McAllister, Jr., Esquire
 Ryan D. Showalter, Esquire
 Charles D. MacLeod, Esquire
 Jefferson L. Blomquist, Esquire

58058.009:98537

PETITION OF:
RONALD C. EDGAR & SONS, LLC, *et al*
Petitioners

* IN THE
* CIRCUIT COURT
* FOR
* DORCHESTER COUNTY
*
* CASE NO.: C-06-014104
*

FOR JUDICIAL REVIEW OF THE
DECISION OF:

COUNTY COUNCIL OF DORCHESTER COUNTY
IN THE CASE OF:

RESOLUTION NO. 2005-16, APPROVING
APPLICATION FOR EGYPT ROAD, LLC,
THE THOMAS LAND GROUP, LLC, AND
THE CITY OF CAMBRIDGE, FOR AWARD
OF GROWTH ALLOCATION

* * * * *

**DORCHESTER COUNTY COUNCIL'S MEMORANDUM IN SUPPORT
OF THE MOTION TO SUPPLEMENT THE ADMINISTRATIVE
RECORD AND RESPONSE TO PETITIONERS' MOTION
FOR ORDER TO REVIEW, CORRECT AND
SUPPLEMENT THE ADMINISTRATIVE RECORD**

Respondent, the Dorchester County Council (the "County Council"), by its undersigned counsel, submits several additional documents to be included in the Administrative Record (the "Record") and a revised exhibit list for the Record. These records should be placed in the back of Volume IV of the Record. The County Council also responds to Petitioners' Motion for Order to Review, Correct and Supplement the Administrative Record (the "Record Motion"), stating as follows:

I. INTRODUCTION.

Preliminarily, Petitioners' revisionist history about the Record needs to be corrected.

The County Council, un-attuned to *Bucktail, LLC v. Talbot County*, 352 Md. 530 (1999), did not maintain a contested case administrative record of the proceedings before it on Resolution 2005-16 (the "Resolution"), because the County Council deemed its consideration of

the Resolution to be a legislative matter, not a contested case adjudicative matter. Furthermore, the County Council deemed its growth allocation recommendation to be merely preliminary to the final determination required by the Critical Area Commission. Thus, the County Council has not segregated the records that it has gathered and that have been submitted to it on the proposed development by Egypt Road LCC and the Thomas Land Group LLC ("Developer") of 1080 acres more or less on the farms south of the school parcel off of Egypt Road (the "Project") that have been submitted to it since the winter 2003-2004 to the present in conjunction with: (1) the development agreement between the County and Developer; (2) the annexation of a majority of the 1080 acres proposed to be developed by Developer by the City of Cambridge; (3) the amendment to the County's comprehensive plan as a result of the annexation; (4) the joint hearing of the Dorchester County Planning Commission and the City of Cambridge Planning Commission on Developer's application for growth allocation and map/program amendments; and (6) the hearing on the Resolution. Furthermore, many of the documents submitted during the foregoing proceedings were given to Steve Dodd, the Dorchester County Director of Planning & Zoning, Wanda Cole, Dorchester County's Environmental Planner, and Ms. Cole's predecessor, for analysis in conjunction with the submittal of reports and statements of findings in conjunction with public hearings held on the above listed matters. Thus, the County did not maintain a contested case administrative record in the manner that it would for a contested case adjudicative proceeding before it.

After the Petition was filed in this matter and the County Council moved to dismiss the Petition, counsel for the County Council mistakenly assumed that the parties would want the County Council's Motion to Dismiss resolved for the purpose of determining whether there was a need to incur the expense of preparing the Record. Upon communicating with counsel for

Developer, counsel for the County Council was promptly disabused of that notion. The Developer desired to press forward with all due haste. At that juncture, the process of trying to assemble an administrative record commenced.

That process of trying to assemble an administrative record was complicated by the following factors:

1. The County Council did not have a single administrative assistant charged with maintaining a set of all submissions made during and in conjunction with public hearings for the period when the agreement between the developer and the County, the comprehensive plan amendment and the growth allocation request were pending before the County Council. Moreover, the administrative assistant to the County Council changed during the course of the consideration by the County Council of the development agreement, the comprehensive plan amendment, and the growth allocation request. Therefore, there was no record keeper with knowledge of the complete history of how the records in conjunction with the above matters relative to the Project were maintained.
2. The County Council did not have a complete set of the documents submitted during the course of the public hearing.¹ This, in large part, appears related to the following factors: (a) different County Council members took portions of the materials submitted during public proceedings in order to review such materials to more thoroughly familiarize themselves with the Project; (b) Messrs. Dodd and Cole generated and took materials submitted during the course of the public

¹ The staff to the County Council submits a package of information for each council meeting to the council members electronically that contains various documents. The packages of information for the December 20, 2005 and January 31, 2006 meetings were not kept. The information contained in the package concerning the Project for the February 14, 2006 and the February 21, 2006 meetings are already included in the Record.

hearing to prepare statements and findings for the consideration of the County Council; and (c) members of the press and the public who attended public hearing perused materials submitted during and immediately after public hearings which may have resulted in some of the materials being retained or inadvertently misplaced by such persons.

3. The audio recording equipment for recording all public sessions of the County Council had deficiencies that caused it to malfunction during the period when the Resolution was pending before the County Council. All of the proceedings on some of the nights when there was public discussion and/or comment on the Resolution were not recorded.²
4. The minutes of the County Council accurately reflect every meeting during which there was public discussion or comment on the Resolution.³
5. Ms. Cole, the County's Environmental Planner, had the most complete set of documents that were submitted during the course of the public hearings. She believes that she had all of the documents that were submitted except for a few of the plans.⁴ Ms. Cole knows that she gave her last copy of the Topographical Map which shows the environmental conditions of the Egypt Road property (the "Property") to one of the County Council members to review. *See* (R. 1067, 1085)("A *Topographical Map* for the Property and vicinity is attached as appendix A."). Ms. Cole also gave out copies of the map that was submitted by

² For example, a significant portion of the testimony of Wanda Cole, the County's Environmental Planner, at the December 20, 2005 meeting of the Council was not recorded. (R. 271). *See also* Part II.D, *infra*.

³ Minutes of hearings and meetings are the only documentation the Council is required by law to keep. Md. Ann. Code, State Gov't §10-509(b). *See also* Open Meetings Act Manual, Office of the Attorney General, 2004, p. 23 ("A public body may, but is not required to, tape record a session.").

⁴ Ms. Cole was not officially charged with keeping the documents for the Record.

the Developer's engineer that showed the amount of growth allocation that was needed for the Property. *See* (R. 983) (September 20, 2005 letter to Wanda Cole from Morris & Ritchie Associates, Inc.)(“Enclosed are four (4) copies of an exhibit showing the areas for the Blackwater Resort Communities Project Growth Allocation request”). Counsel for the County Council could not obtain another copy of the environmental conditions map that was part of the Record because Developer's engineer already had modified its electronic version of that plan to reflect the changes made to the master plan as a result of the conditions imposed by Resolution 2005-16. Developer's engineer recently found a copy of the unmodified plan that was submitted as part of the environmental site assessment in June, 2005.⁵ Counsel to the Council was able to obtain a copy of the map that showed the growth allocation acreage submitted by the Developer's engineer from the Developer's counsel.

Volumes I and II of the Record contain those documents, minus the Resolution, that were originally assembled by Ms. Sherry Wood, one of the administrative assistants in the Department of Planning and Zoning who was assigned to assist counsel for the County Council in the preparation of the administrative record. The documents gathered by Ms. Wood were organized into Volumes I and II of the Record. Counsel for the County Council, upon review of the transcripts of the testimony, realized that those two volumes did not contain all of the documents that the testimony reflected had been submitted for consideration in conjunction with the public hearing on the Resolution. The County did not transmit those volumes to the Court when it

⁵ Presumably, the Commission has a copy of the environmental conditions plan that was submitted as part of the administrative record, because the County had sent a copy to the Commission when it requested the Commission's comments on the Project prior to the October 2005 hearing of the Dorchester County Planning Commission.

transmitted those volumes to counsel for the parties, because counsel knew those two volumes did not contain the entire administrative record.

In addition, shortly after Volumes I and II of the Record were transmitted to counsel for the parties on July 5, 2006, Developer's counsel contacted counsel for the County Council to express their views on documents that were in the administrative record but were missing from the first two volumes. Developer's counsel subsequently sent a list of documents they thought were missing. To the extent that the County had such documents and there were references to such documents in the transcripts of the hearing as being submittals made by the Developer, such documents were included within Volumes III and IV of the Record.

Counsel for the County met with Messrs. Dodd and Cole and spoke with Ms. Donna Lane, the administrative assistant to Jane Baynard, the Dorchester County Manager, prior to preparing Volumes III and IV of the Record, in order to try to assemble as complete of an administrative record as possible under the circumstances.

Volumes I through IV were transmitted to the Court on July 25, 2006, because they constituted the most complete reconstruction of the Record that counsel for the County Council could prepare. With the exception of the Resolution, which was publicly recorded and produced as an exhibit to pleadings filed by Petitioners and as an exhibit to the Motion to Dismiss filed by the County Council, Volumes I through IV of the Record constitute what counsel for the County Council thought was the complete Record as of July 25, 2006.

The comments made by Petitioners in their Rule 7-207 Memorandum (Petitioners' Memorandum") provided the first word of any kind from Petitioners suggesting that the Record was incomplete. The County Council began preparing a Motion to Supplement the Administrative Record before Petitioners' Memorandum was received because counsel to the

County Council noticed that several documents mentioned in the Record were not in the Record. Before that motion was filed, counsel for the County Council received the Petitioners' Memorandum and the Record Motion, which contains further statements about allegedly missing documents from the Record.

In preparing this motion and response, counsel for the County Council again met with Messrs. Dodd, Cole and Lane to make an exhaustive attempt to gather and review all of the documents submitted in conjunction with the Resolution. This motion and response incorporates what counsel for the County Council has learned and discovered as a result of those meetings. As the Court will see from the supplemental records that are being filed herein, the County has been able to locate some additional documents that should be in the Record. ⁶

In some instances, Petitioners' claims that certain documents existed and should have been included in the Record are simply incorrect. Similarly, seven documents that Petitioners claim are missing are currently in the Record. In one instance, a Chesapeake Bay Foundation ("CBF") document is missing despite the County's reasonable and repeated efforts to locate it. The County Council responds more fully to Petitioners' claims contained in their Memorandum and Record Motion below.

II. THE ADMINISTRATIVE RECORD

A. Development Plans.

Petitioners state in their Memorandum that the Record does not contain the latest version of the development plan for the Blackwater Resort Communities that was before the County Council on February 21, 2006. The Record does contain the August 2005 version of the development plan which was the plan before the County Council on February 21, 2006. (R.

⁶ Black and white copies of photographs referenced in a letter that was located are included and will be substituted for color copies if Petitioners want to pay for such copies.

1340-1387). The Petitioners are mistaken that the Developer made wholesale changes to the development plan before the plan was submitted to the Council for the February 21, 2006 vote. The difference between the August 2005 application and what the Council voted on in February 2006 was the amount of growth allocation that was required for the plan.⁷ The difference in the growth allocation acres was the result of the new policy adopted by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "Commission") for golf courses in the RCA. (R. 865-875). This policy, which was adopted by the Commission on August 3, 2005, required the developer to alter the growth allocation request from 157 acres to 313.12 acres. *See* (R. 145) (Staff report noting the request for 313.12 acres of growth allocation). An exhibit has been located that was submitted by the Developer's architect on September 20, 2005 that reflects the new growth allocation request. *See* (R. 983) (September 20, 2005 letter to Wanda Cole from Morris & Ritchie Associates, Inc.)(“Enclosed are four (4) copies of an exhibit showing the areas for the Blackwater Resort Communities Project Growth Allocation request”).⁸ This map is being added to the Record. In addition, we have located another map submitted by Morris & Ritchie as part of the environmental assessment that shows the topography/environmental conditions of the Property.

The Petitioners, on page 17 of the Petitioners' Memorandum, refer to the lack of a revised development plan in the Record that would have reflected the prohibition on residential development in the Critical Area. This growth allocation condition, that "no residential dwelling units (single, duplex or multi-family) shall be constructed within the critical area portions of the Project area" was included in Resolution 2005-16. (Respondent's Mot. to Dismiss, Ex. 1).

⁷ Mr. Sandy McAllister, counsel for the Developer, testified at the December 20, 2005 meeting of the Dorchester County Council that although the growth allocation request was now 312 acres "no significant component of the project [has] been modified." (R. II, 283).

⁸ The Petitioners list the map as being missing on page 11 in the Record Motion.

Because the condition was added by the County Council for the very first time in the Resolution, there was no development plan before the County Council at the time that it adopted the Resolution which reflected this condition. The only development plan that reflects this new restriction on the location of residential units was filed with the City of Cambridge for development plan approval after the Record closed on February 21, 2006. Thus, the development plan that contains no residential units in the Critical Area is not part of the Record at issue in this case. The County has attached a black and white copy of the new master plan, which was prepared in April 2006 to the knowledge and information of the County Council, as Exhibit 4 to its Response Memorandum, and gladly consents to making such plan a part of the Record, should the other parties to this proceeding likewise consent.

B. Correspondence and Testimony from the Chesapeake Bay Foundation.

Petitioners, in the Memorandum and the Record Motion, state that the Record lacks two pieces of correspondence from CBF and the written testimony of a representative of the Chesapeake Bay Foundation ("CBF") that was presented to the County Council on December 20, 2005.⁹ A January 31, 2006 letter from Jon A. Mueller, Director of Litigation for CBF, is being added to the Record. A February 21, 2006 letter from Mr. Mueller to the County Council concerning the decision on growth allocation for the Blackwater Resort Community is not being included in the Record because this letter was not stamped as being received by the County Council until February 22, 2006, and it was not faxed to the County until 5:10 pm on February 21, 2007, which is 40 minutes after the close of business. (See the copy of the fax cover sheet in the Record Motion that shows that the February 21, 2006 letter was not transmitted until 5:10

⁹ A February 21, 2006 letter from Kim Coble, Executive Director of CBF, to the members of the Dorchester County Council that included a poll is part of the Record. (R. III, 607-617). It appears to have been faxed to the Council at 2:00 p.m. on February 21, 2006. *Id.*

p.m. on February 21, 2006.) A copy of the February 21, 2006 letter from CBF, which shows that it was date stamped on February 22, 2006, is attached. (Ex. 1).

As for the testimony of the representative of CBF at the public hearing held on December 20, 2006, despite repeated searches of various files, the County Council has not located the written testimony of Mr. Maurer. Both the County Council minutes and the transcribed testimony of the public hearing reflect that Mr. Maurer submitted written testimony on that date. It is likely that Mr. Maurer's testimony was inadvertently picked up from the Council table by citizens or reporters who often take copies of testimony after a public hearing has ended. There is no attempt on behalf of the Council to keep the CBF's written testimony from the Record.¹⁰ Since the Petitioner, CBF, is likely to have possession of that written testimony, the Council is willing to accept a copy of the testimony from CBF to be included in the Record.

C. Council Resolution 2005-16.

As for the Council Resolution 2005-16, it was not included in the record because it was already in front of this Court as Exhibit 1 to the Petition and Exhibit 1 to Dorchester County Council's Motion to Dismiss. Resolution 2005-16 does include all of the referenced exhibits. If this Court so directs, the Council will include it in the Record, although doing so certainly seems superfluous and Petitioners certainly have no basis to contend they do not know what constitutes the Resolution.¹¹

Petitioner also claims that the Council failed to produce the City Planning Commission Findings dated February 8, 2006 which is noted in Council Resolution 2005-16, Exhibit A. The Council took notice of the City Planning Commission Findings within Exhibit A of the

¹⁰ The County went to considerable effort to respond to CBF's document requests during the County's consideration of the Project. The attached correspondence and email from Ms. Cole to CBF demonstrate that the County shared information with CBF so that CBF could testify at a public hearing with the latest available information. (Ex. 2).

¹¹ The Developer's counsel also included Resolution 2005-16 in their response to Petitioners' Memorandum.

Resolution because the Egypt Road property is under the planning and zoning authority of the City of Cambridge. See Art. 23A, §19(s)("[W]here any area is annexed to a municipality authorized to have and having then a planning and zoning authority, the said municipality shall have exclusive jurisdiction over planning and zoning and subdivision control within the area to be annexed."). These Findings were not included in the Record because they are not contained in the Council's files or in the package of information that was transmitted to the County Council for the February 21, 2006 meeting.

D. County Council Meetings.

Minutes from the January 31, 2006 and February 14, 2006 meetings of the Dorchester County Council are being included in the Record. The transcript from the January 31, 2006 meeting is being included in the Record. A transcript from the February 14, 2006 meeting is not available. The tape for the February 14, 2006 meeting does not include the discussion on the Blackwater Project because of technical difficulties.

E. Drafts of the Council Resolution 2005-16.

Petitioners assert that drafts of Resolution 2005-16 that were before the Council prior to the vote on the Resolution on February 21, 2006 are required to be in the Record. Other than the resolution that was available for the December 20, 2005 hearing, these documents are not being produced and added to the Record for two reasons. First, no such drafts were part of the public hearing or a Council meeting and considered by the County Council during the course of the public hearing. The Resolution, which was officially introduced and read into the record, is the same Resolution that ultimately was adopted by the County Council on February 21, 2006. There were no amendments offered to the Resolution during the legislative process. Resolution

2005-16, which is before this Court and the Parties to this proceeding, is the only resolution at issue in this case and properly a part of the Record. Second, any drafts of Resolution 2005-16 that may have been prepared prior to the introduction of the Resolution at the commencement of the public hearing process are privileged pursuant to the attorney-client privilege, the legislative privilege, and the deliberative privilege. As privileged documents, the Council is not required to produce them for the Record.¹²

F. Other Miscellaneous Documents.

Petitioners list a variety of documents on page 11 of the Record Motion that they assert are missing from the record. All but one of them is currently in the Record. We will address each record in the order it was presented in the Record Motion.

1. Exhibit 3. (I, 4-6). Letter to Dorchester County Planning Commission from Douglas Worrall. Missing Attachment.

The attachment to this letter, a June 9, 2005 letter to Councilman Glenn Bramble, is in the Record and can be found in Volume IV, p. 1049-1050.

2. Exhibit 86. (III, 605-606). Letter to Cambridge Mayor Rippons from Cambridge Citizens for Planned Growth. Missing Attachment.

The attachment, "Voluntary Environmental Guidelines Recommended for Golf Course in Worcester County and the Delmarva Peninsula," is in the Record and can be found in Volume III, p. 650-682.

¹² Legislative privilege is the common-law privilege enjoyed by county and municipal legislators that protects communications, both oral and written, that occur concerning legislative matters. *See Montgomery County v. Schooley*, 97 Md. App. 107, 627 (1993)(municipal legislators enjoy the protection of immunity when acting in the sphere of legitimate legislative activity).

3. Exhibit 113. (III, 703). E-mail to Barbara O'Ferrall, William Nichols, and David Yockey. Missing Attachment.

The attachment, a critique of the Blackwater Resorts Golf Course by Mr. Newell, is in the Record and can be found in Volume III, p. 720-731.

4. Exhibit 183. (IV, 983-984). Letter to Dorchester County Planning Commission from Morris Ritchie Associates. Missing Attachment.

See Part II.A *supra*. The attachment, the growth allocation acreage map, is being added to the Record.

5. Exhibit 189 (IV, 1047-1048). Letter to Steve Dodd from Miles Stockbridge. Missing Attachment.

The attachment, the Applicant's original application for growth allocation and supporting documentation, are part of the Record as follows:

- a. Application – Volume IV, p. 1015-1016;
- b. Check – Volume IV, 1014;
- c. Environmental Site Assessment – Volume IV, 1062-1112; and
- d. Application Narrative – Volume IV, 1017-1027.

III. RELIEF REQUESTED.

Petitioner requests this Court to order the County Council to review its records including Planning Department files and to review the Council's hearings held after October 13, 2005. Petitioner also requests this Court to postpone the hearing scheduled on October 19, 2006 to a later date. Nothing further will be accomplished by ordering the County to review its records further. The County has, to the best of its ability, included everything within the administrative record that it deems to belong in the administrative record. Unless there is something specific

that someone can establish is missing from the Record, the Record, subject to the disclosures herein, is complete.

As for additional time, the County Council does not believe that Petitioners have been prejudiced by the Record or that the minor omissions corrected by this motion and response contain anything of significance in support of the positions advocated by Petitioners.

WHEREFORE, the County Council respectfully requests this Court to deny Petitioners' Motion for Order to Review, Correct and Supplement the Administrative Record.

Respectfully submitted,



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Jefferson L. Blomquist
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Chestertown, Maryland 21620-1350
*Attorneys for Respondents,
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To:

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Deputy Counsel
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Baby boomers retirement will place massive strains on U.S.
Page 3A

Suit: Prince George's school won't let girl read Bible
Page 1B



October 5, 2006 • Volume 118 • Number 4

DEVELOPMENT

Prime part of Blackwater nixed

Critical Area Commission's vote against resort plan could kill 2,700-home project

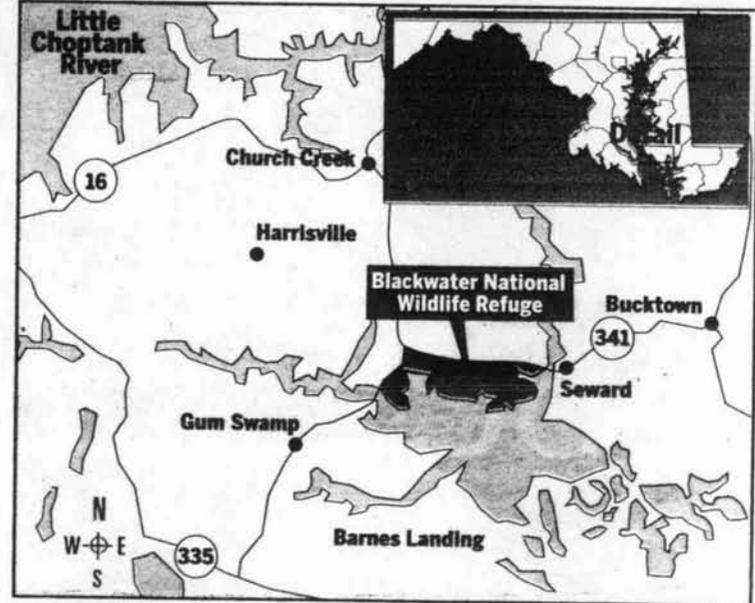
BY JEN DEGREGORIO
jennifer.degregorio@mddailyrecord.com

The Maryland **Critical Area Commission** yesterday voted unanimously against a developer's plan to build a sprawling commercial and housing project along the shores of the Little Blackwater River in Cambridge.

But because the commission controls only so-called critical areas, or waterfront, the vote stops xjust the commercial portion of the proposed Blackwater Resort. That translates in this case to just 313 of 1,100 acres. Nonetheless, critics of the project, who fear damage to the nearby Blackwater National

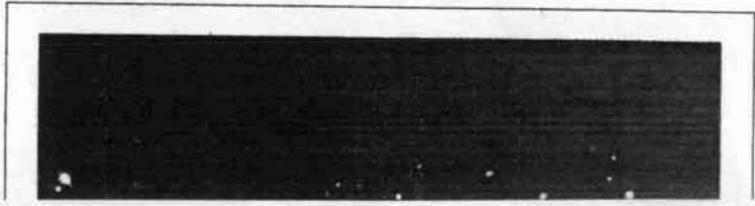
Wildlife Refuge, called the vote a victory for "due process." They say the most critical piece of the project has been thwarted. "According to the process set up to show the impact, we do not have the answers to know what the impact on water quality is," said Alan Girard, a project manager with the **Chesapeake Bay Foundation**. The commission's decision

SEE BLACKWATER PAGE 9A



TECHNOLOGY

'Virtual teaching'



Blackwater

Continued from page 1A

"demonstrates to people that process is important, that water quality is important," Girard said.

Developer Duane Zentgraf caused a stir this year with his proposal to create a Blackwater Resort on land annexed by the city of Cambridge. His plan consisted of 2,700 homes, a golf course, commercial center and a hotel and conference center.

Opponents said the Blackwater Resort would promote sprawl and hurt the

wildlife refuge, while proponents said it would bring an economic boon to Dorchester County and Cambridge. The issue went as far as the General Assembly, although a bill that would have blocked the development was defeated.

The governments of Dorchester and Cambridge approved the project, but developers needed the state commission's vote to move forward.

"We did not have sufficient information to make a determination," said Ren Serey, executive director of the commission.

In a 10-page report, a commission

panel wrote that it lacked data to show the impact on water quality and natural habitat. In some cases, the report said, the developer failed to provide required studies.

The report said the developer needed to provide a 300-foot buffer between commercial development and the wetlands. It also criticized the project for being so far away from other developed areas.

By allowing the Blackwater Resort to move forward, the report said, the commission risked promoting "a sprawling development pattern that is not conducive to agricultural preservation or the con-

servation of natural resources."

That was music to the ears of William Baker, president of the bay foundation.

"This is about as strong a denial as I've ever seen," Baker said to a group of reporters who flocked around him after the vote. He added that "science and technological reasoning has won out over politics."

But the commission's decision does not mean the battle is over.

"Most of the acreage is outside of the critical area, so the developer may want to speak to the city about how it can revise its plan," Serey said.

The developer's next step, however, remains unclear.

"There are lots of options and we will consider all of them," said Sandy McAlister, the developer's attorney.

But yesterday's decision was enough to please Flora Knauer, who traveled from her lifelong home in Cambridge to see the commission vote. The 62-year-old has sisters who own farms near the site of the proposed Blackwater Resort.

"I'm just so grateful that the Critical Area Commission took the time and integrity to do exactly what the law says," Knauer said. "I hope this will set a precedent for other farm areas in the state."

HGSI

Continued from page 3A

Parrott added.

A deal for Albuferon with Novartis could be worth a total of \$507.5 million in development and milestone payments to Human Genome Sciences, including a \$45 million up-front payment made when the deal closed in June.

And an agreement for LymphoStat-B with GlaxoSmithKline already this year brought \$24 million to the Rockville company, and will result in a 50/50 split of any proceeds from worldwide commercialization of the drug.

Albuferon already has received regulatory concurrence for its Phase III trials from European and U.S. officials, and LymphoStat-B has gotten the go-ahead from European officials, though the company still is awaiting word on a special application made to the U.S. **Food and Drug Administration.**

One of the company's main goals for this year was accomplished, said Parrott, in trimming its cash burn to an expected \$75 million to \$125 million from \$230 million last year, in part by reducing its total square

Also, in May Human Genome Sciences sold its 290,000-square-foot large-scale manufacturing facility, its 635,000-square-foot corporate headquarters and land at that headquarters site to BioMed Realty for \$425 million.

The company then leased back those facilities for the next 20 years for \$40 million per year.

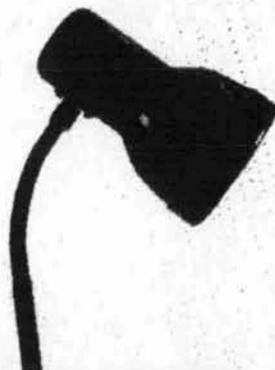
The sale resulted in a windfall of \$380 million to Human Genome Sciences. The company expects cash burn from 2007 onward to average about \$150 million per year.

The firm also this year received news that the United States would purchase 20,000 doses of ABthrax, its anthrax treatment can-

didate, for the Strategic National Stockpile — a total of about \$165 million in revenue, most of it to be paid in 2008 with the delivery of its order.

Human Genome Sciences still is working on producing enough of the treatment for use in its remaining clinical trials, and next year will begin those studies as well as producing the doses for the stockpile.

The company's stock, HGSI on the Nasdaq Stock Market, yesterday closed at \$12.45, up 3.66 percent from the day before, and was trading yesterday at a volume of 7,240,211 shares; its three-month average volume is 2,172,160 shares.



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Blackwater Appreciation Day

Today is **Blackwater Appreciation Day** on the Eastern Shore. If you are in the Cambridge area, or just passing through, you might want to head to Stump Farm - 2279 Church Creek Rd. The Chesapeake Bay Foundation is throwing a party to celebrate a rare victory -- the **vote by the Maryland Critical Areas Commission** to allow a developer to build a big, dumb development near the Blackwater Wildlife Refuge and along the Little Blackwater River. The Bay Foundation says: "This is truly monumental and, in fact, the first time a "growth allocation" has been denied by the CAC."

If you were among the 27,000 who signed the **CBF's petition against Blackwater Resort**, the CBF suggests sending a thank-you note to the CAC for its decision. It never hurts to say thanks, but in my book the CAC did what it should have done all along -- protect an area designated as critical in the Chesapeake watershed. This proposal, which would have doubled the size of Cambridge within a decade or so, countered not only critical areas principles but the goals of Smart Growth. The governor took a walk on the whole thing, saying it was a local issue. But the CAC, appointed by the governor, decided otherwise. The critical areas of the bay are everyone's business and should be protected by the state.

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Dise, Marianne E.

From: thomas deming [tdeming@cablespeed.com]
Sent: Monday, December 04, 2006 1:55 PM
To: thomas deming; Kaouris, Demetrios; jblomquist@fblaw.com; cmacleod@fblaw.com; rob@cambridgetitle.net; Dise, Marianne E.
Cc: Jon Mueller ext. 2162
Subject: Re: Joint Memorandum

Demetrios -

Jon Mueller and I have reviewed the Joint Memorandum as modified. We agree that it accurately reflects the views of Petitioners in the several pending cases. Again, thank you for taking the lead on this.

Tom Deming

----- Original Message -----

From: thomas deming
To: thomas deming ; Kaouris, Demetrios ; jblomquist@fblaw.com ; cmacleod@fblaw.com ; rob@cambridgetitle.net ; mdise@dnr.state.md.us
Cc: Jon Mueller ext. 2162
Sent: Monday, December 04, 2006 12:09 PM
Subject: Re: Joint Memorandum

Demetrios -

Even as I was sending the message below, my fax machine in the other room was receiving your correct, modified version with all the changes I requested.

In order that I can show Jon Mueller how the document will be changed, please e-mail to me the draft showing the revisions.

Tom Deming

----- Original Message -----

From: thomas deming
To: Kaouris, Demetrios ; jblomquist@fblaw.com ; cmacleod@fblaw.com ; rob@cambridgetitle.net ; mdise@dnr.state.md.us
Cc: Jon Mueller ext. 2162
Sent: Monday, December 04, 2006 11:59 AM
Subject: Re: Joint Memorandum

Demetrios -

There must be a mistake. The attachment to your e-mail contains none of the changes that I recommended. Was the wrong version attached?

Tom Deming

----- Original Message -----

From: Kaouris, Demetrios
To: tdeming@cablespeed.com ; jblomquist@fblaw.com ; cmacleod@fblaw.com ; rob@cambridgetitle.net ; mdise@dnr.state.md.us
Sent: Monday, December 04, 2006 11:25 AM

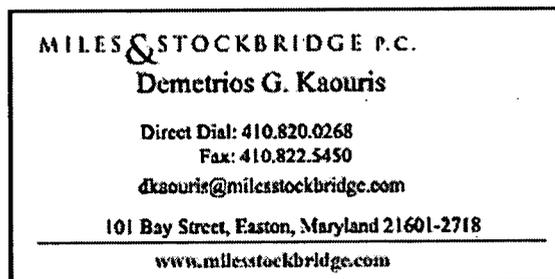
12/4/2006

Subject: Joint Memorandum

Counsel,

Attached please find a revised Joint Memorandum that incorporates changes suggested by Tom as well as other minor changes we made. We intend to file a separate motion to stay the case Egypt Road filed against the CAC, and therefore have removed Ms. Dise from the certificate of service. We also will include Rob in the joint memorandum to be filed in the cases that involve a decision by the city commissioners and/or an agency of the city.

Please let me know if the Joint Memorandum is acceptable. Thank you.



bio vcard location

In accordance with Internal Revenue Service rules, any federal tax advice provided in this communication is not intended or written by the author to be used, and cannot be used by the recipient, for the purpose of avoiding penalties which may be imposed on the recipient by the IRS. Please contact the author if you would like to receive written advice in a format which complies with IRS rules and may be relied upon to avoid penalties.

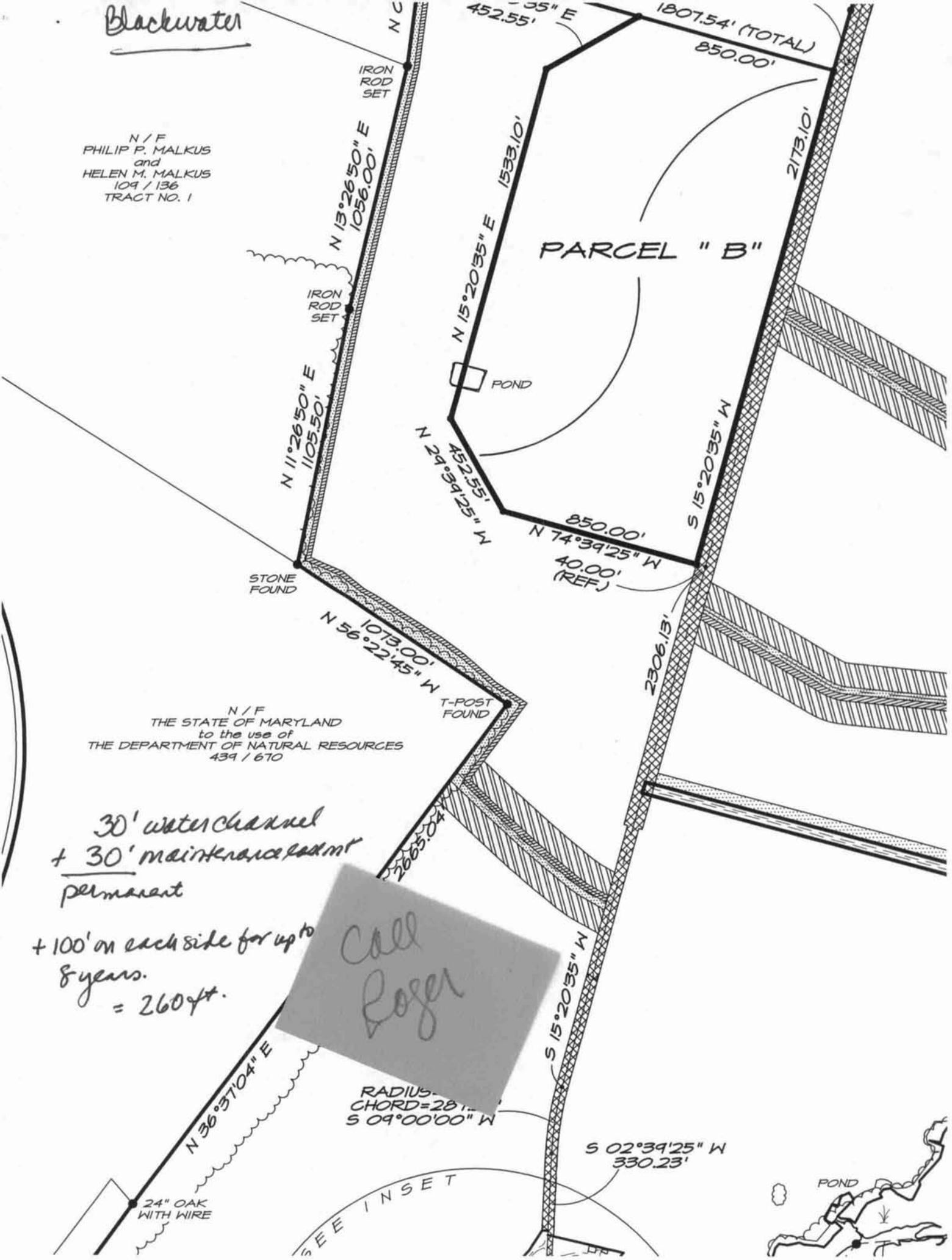
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12/4/2006

Blackwater

N / F
 PHILIP P. MALKUS
 and
 HELEN M. MALKUS
 109 / 136
 TRACT NO. 1



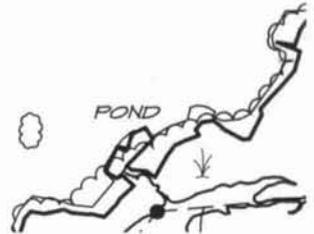
N / F
 THE STATE OF MARYLAND
 to the use of
 THE DEPARTMENT OF NATURAL RESOURCES
 439 / 670

30' water channel
 + 30' maintenance road mt
 permanent

+ 100' on each side for up to
 8 years.
 = 2604ft.

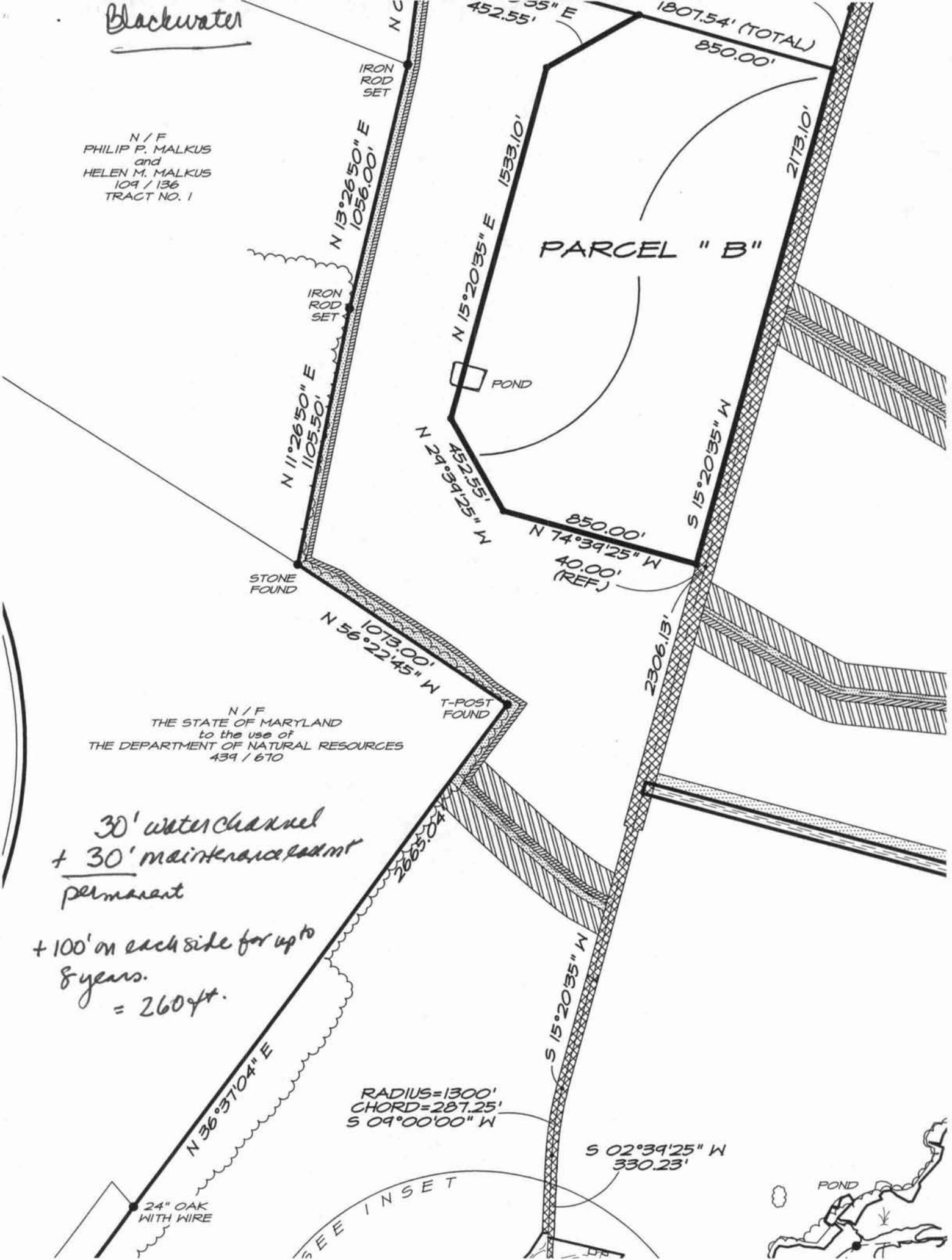
Call
 Roger

RADIUS
 CHORD = 281
 $S 09^{\circ}00'00'' W$



Blackwater

N / F
 PHILIP P. MALKUS
 and
 HELEN M. MALKUS
 109 / 136
 TRACT NO. 1

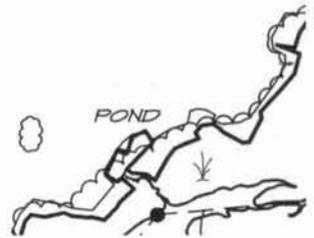


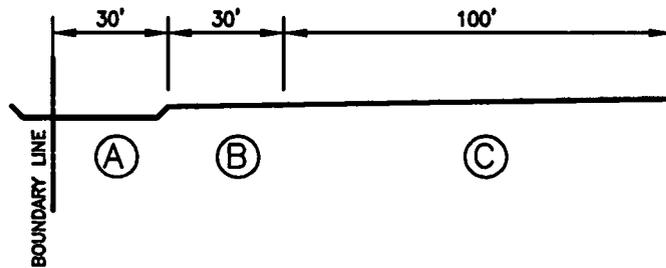
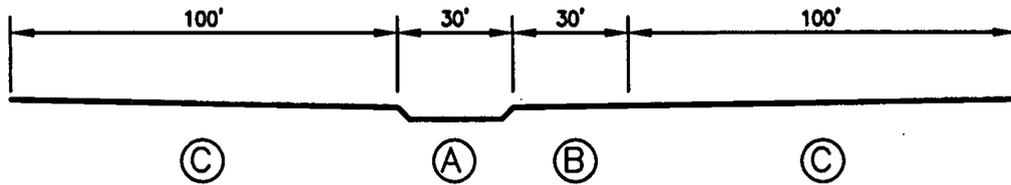
N / F
 THE STATE OF MARYLAND
 to the use of
 THE DEPARTMENT OF NATURAL RESOURCES
 439 / 670

30' water channel
 + 30' maintenance easement
 permanent

+ 100' on each side for up to
 8 years.
 = 2604'

RADIUS=1300'
 CHORD=287.25'
 $S 09^{\circ}00'00'' W$





- (A) 30' PERMANENT DRAINAGE EASEMENT
- (B) 30' PERMANENT ACCESS & MAINTENANCE EASEMENT; 30' TEMPORARY GRADING EASEMENT
- (C) 100' TEMPORARY STREAM RESTORATION & MITIGATION EASEMENT



MORRIS & RITCHIE ASSOCIATES, INC.
 ENGINEERS, ARCHITECTS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
 404 S. BEDFORD STREET, SUITE 5
 GEORGETOWN, DE 19947
 (302) 855-5734
 FAX: (302) 855-0157
 MRAGTA.COM

BLACKWATER RESORT

EASEMENT SECTION

COUNTY, STATE

SCALE: 1" = 50'

DATE: 11-20-08

DRAWN BY: EWW

DESIGN BY:

REVIEW BY:

JOB NO. : 12913

Roger/Joe:

Mary Owens has reviewed the drawing you sent (Roger), and she has serious concerns, essentially as described by Ren in his email below. One of the major 'unknowns' and thus a reason for the Commission's disapproval of the growth allocation, was the skimpy information on stormwater treatment and discharge, given that the developer had proposed treating 80+% of the stormwater for the homes (outside the CA) with ponds, etc. located inside the CA (on the land the State will now own). The Commission's concern included quality as well as quantity of discharge to the Little Blackwater - concern shared by the USFWS. It seems that the developer still plans to discharge his stormwater through the Critical Area -only now, it will be across state lands. Have the sale docs been signed? Do they reference any obligations on anyone's part to deal w/ stormwater or to deal w/ the CAC? Marianne

-----Original Message-----

From: Serey, Ren

Sent: Friday, December 01, 2006 4:14 PM

To: Dise, Marianne E.; Owens, Mary

Subject: RE: Blackwater - Draft contract exhibit and easementcross-sections

Marianne: Mary is the key person to review these drawings, but I think they represent potentially a significant problem. The developer will retain about 300 acres outside the Critical Area and, according to the news reports, will build several hundred houses there. We don't know how stormwater will be managed, and the State may have no control over it, unless there is specific language in the sales documents.

The State as landowner may be agreeing to let the stormwater flow through the Critical Area. This makes sense because it has nowhere else to flow, but without some knowledge or assurances about what happens outside the Critical Area, we don't know to what extent the developer intends to treat stormwater on state lands in the Critical Area, or to what extent the developer will be required to properly manage the flow in the Critical Area. This reminds me of the Hyatt deal. The Commission was essentially stuck with whatever was worked out with the developer. Here, we'll be negotiating with a State agency (DNR? DGS?), and the agency may be constrained by the language of the agreement.

When we were reviewing the Blackwater growth allocation we assumed that there would be considerable problems ahead regarding stormwater management and that the developer was probably going to propose some combination of treatment and discharge through a newly managed and reconfigured stream system in the Critical Area. This system may or may not have worked; I think Mary thought it was going to need a lot of special construction techniques. The result now could be that the Commission, if it has any latitude in the future to require someone to be responsible for proper management, will be trying to get a State agency to expend funds it won't want to expend. And, if this deal follows the Hyatt model in terms of prior obligations, we'll have a private landowner (and the landowner's attorney) outside the Critical Area demanding that the State fulfill its obligations under the contract, and expecting the State agency to make everything work quickly and smoothly with the Commission.

We should see the contract.

Ren

-----Original Message-----

From: Dise, Marianne E.

Sent: Friday, December 01, 2006 3:32 PM

To: Serey, Ren; Owens, Mary

Subject: FW: Blackwater - Draft contract exhibit and easementcross-sections

Would you take a look at this plat/survey? The big slashes across the property are ditches - 60 ft. wide, for stormwater drainage from the developer's property.

-----Original Message-----

From: Medoff, Roger

Sent: Wednesday, November 29, 2006 4:39 PM

To: Dise, Marianne E.

Subject: FW: Blackwater - Draft contract exhibit and easementcross-sections

Marianne -

Attached is the Blackwater survey I mentioned to you on the phone. Please call me when you have a moment.

Thanks,

Roger

Roger H. Medoff

Assistant Attorney General

Maryland Department of Natural Resources

580 Taylor Avenue, C-4

Annapolis, Maryland 21401

Tel: 410-260-8354

Fax: 410-260-8364

Email: rmedoff@dnr.state.md.us

-----Original Message-----

From: Sally Lowe [mailto:Sally.Lowe@dgs.state.md.us]

Sent: Monday, November 27, 2006 11:00 AM

To: Evans, Charlie; Medoff, Roger

Cc: Jerry Krebs; Nelson Reichart; Price, Chip; Saunders, Kristin M; Brower, Tim

Subject: Fwd: Blackwater - Draft contract exhibit and easementcross-sections

>>> "Showalter, Ryan" <rshowalt@MilesStockbridge.com> 11/27/2006 10:54 am >>>

Sally,

Attached please find the draft contract exhibit identifying the lands to be retained by Egypt Road LLC and The Thomas Land Group LLC and the areas of easement reservations. The second attachment provides cross-sections of the proposed easements. The easements will be labeled on the final contract exhibit.

Ryan

Ryan Showalter
410.820.0225
rshowalt@MilesStockbridge.com
<<http://milesstockbridge.datapointinc.com/Images/rshowalt.map>>

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Cambridge to change the critical area designation of the Property from Resource Conservation Area (RCA) to Intensely Developed Area (IDA). The case Egypt Road filed against the CAC is entitled Complaint/Petition of Egypt Road, LLC and The Thomas Land Group, LLC For Judicial Review of the Decision of the Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays in the Case of Blackwater Communities – Growth Allocation or in the Alternative Complaint for Declaratory Judgment Against the Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, Case No. C-06-14613 (Circuit Court for Dorchester County). Dorchester County also filed a Complaint against the CAC challenging its refusal to approve the City of Cambridge's award of growth allocation to Egypt Road. That case is entitled Dorchester County v. Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, No. 09-06-14611 (Circuit Court for Dorchester County).

5. On November 4, 2006, the State of Maryland and Egypt Road reached a Memorandum of Understanding (the "MOU") setting forth the major terms of an agreement relating to the development of the Property, the details of which were to be negotiated by the State of Maryland and Egypt Road and adopted into a formal written contract. Pursuant to the MOU, the State of Maryland will purchase almost all of the land located in the critical area, and Egypt Road will retain and seek to develop the portion of the Property located outside of the critical area.

Deleted: parties

6. The State of Maryland and Egypt Road are continuing to negotiate the detailed contract that is contemplated by the MOU. That contract will be contingent upon and subject to approval by the Board of Public Works of Maryland (the "Board of Public Works"). The Board of Public Works is expected to consider the approval of the purchase of a portion of Property within the critical area at one of its meetings scheduled in December of 2006 or January of 2007.

Deleted: parties to the MOU

7. Pursuant to the MOU, the closing on the State of Maryland's purchase of a portion of the Property is expected to take place on or before March 1, 2007.

8. The above-captioned case should not be dismissed at this time because to do so would be premature. Rather, the case should continue to be stayed.

9. The parties propose the filing of a status update, with this Court on or before January 15, 2007, to advise the Court of the status of the various approvals necessary to consummate the State of Maryland's purchase of a portion of the Property.

10. In accordance with the Court's Order dated November 17, 2006, this Joint Memorandum accurately reflects the view of all counsel of record in this case.

Respectfully submitted,

Richard A. DeTar
Demetrios G. Kaouris
Miles & Stockbridge, P.C.
101 Bay Street
Easton, Maryland 21601
(410) 822-5280

Attorneys for Egypt Road, LLC and The
Thomas Land Group, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of December 2006, a copy of the foregoing Joint Memorandum Re: Status of Action was mailed first class, postage prepaid to:

Charles D. MacLeod, Esquire
Jefferson L. Blomquist, Esquire
Amanda Stakem Conn, Esquire
Funk & Bolton, P.A.
315 High Street, #202
Chestertown, Maryland 21620-1350

Thomas A. Deming, Esquire
506 Sunwood Lane
Annapolis, Maryland 21409

Deleted: pending action by the Board of Public Works and the purchase of a portion of the Property by the State of Maryland. If the portion of the Property contemplated by the MOU is purchased by the State of Maryland, the parties will file a dismissal of the above-captioned case as well as the other pending cases that relate to the award of growth allocation, the CAC's refusal to approve the award of growth allocation and the development of the Property. If the purchase is not consummated by the State or if one or more contingencies are not met, the parties will advise the Court and proceed with the above-referenced case as well as the other cases relating to the development of the Property

Deleted: s

Deleted: and April 15, 2007

Deleted: November

Deleted: Robert S. Collison, Esquire¶
Robert S. Collison, P.A.¶
311 High Street¶
P.O. Box 1176¶
Cambridge MD 21613¶
¶
Marianne Dise, Esquire¶
Assistant Attorney General¶
Critical Area Commission¶
1804 West Street, Suite 100¶
Annapolis, MD 21401.¶
¶

Demetrios G. Kaouris

Dise, Marianne E.

From: thomas deming [tdeming@cablespeed.com]
Sent: Monday, December 04, 2006 9:56 AM
To: Kaouris, Demetrios; jblomquist@fblaw.com; cmacleod@fblaw.com; rob@cambridgetitle.net; Dise, Marianne E.
Cc: Jon Mueller ext. 2162
Subject: Re: Blackwater Project - joint memo re status of action.doc

*Roger:
There was an
MOU. No final
agreement yet, but
DNR + owner working
on it. P6 - Dec or Jan is the
target.
P7 - Closing Date -
MOU provided on or
before 3/1 -
Closing date.
But - According
to the agent 3 days after all
conditions have been
met in the
Agmt."*

Demetrios -

Thank you for taking the lead on drafting a response to Judge Sause's orders of November 17, 2006. Those orders require that the response contain a statement that the response accurately reflects the views of all counsel of record. In order for that statement to be made with respect to my clients, the following changes must be made.

In paragraphs 5 and 6, reference to "the parties" is confusing, since not all "parties" to the subject litigation are involved in the negotiations towards a State purchase of the property. Instead of reference to "the parties" in these paragraphs, in each instance substitute "the State of Maryland and Egypt Road."

With respect to paragraph 8, since my clients are not part of these negotiations, we cannot agree in advance to dismissal of the litigation in the event that a deal is consummated for purchase by the State of "a portion" of the property. For all we know, the size of the portion to be purchased may be the subject on the present, ongoing negotiations. All that we can agree to for the content of paragraph 8 is the first sentence.

With respect to paragraph 9, please indicate one status report, on January 15, 2007. If the deal is not done by then, the parties to the litigation will have to reconsider whether continuing the stays is appropriate at that point.

Again, unless these changes are made, you do not have my approval for inclusion of a statement that the response accurately reflects the views of all counsel of record.

Please confirm as soon as possible today that these changes will be made. If I have not received your response by 2:00 p.m. today, then I may prepare a separate report to the court on behalf of petitioners Ronald C. Edgar & Sons, et al.

Tom Deming

----- Original Message -----

From: Kaouris, Demetrios
To: tdeming@cablespeed.com ; jblomquist@fblaw.com ; cmacleod@fblaw.com ; rob@cambridgetitle.net ; mdise@dnr.state.md.us
Sent: Friday, December 01, 2006 11:29 AM
Subject: Blackwater Project - joint memo re status of action.doc

Counsel,

Attached is a draft memorandum for case no 14104. We intend to file differing versions of the memoranda (changing only the first paragraph to identify the nature of the case) in each of the cases identified by Judge Sause, i.e. Case Nos. 14173, 14350, 14351, 14429, and 14430. We believe we should also file a joint memorandum in each of the cases involving the critical area commission, i.e. Case Nos. 14611 and 14613.

Please let me know whether you have any changes or thoughts on the memorandum. We would like to file the memoranda today, but no later than Monday. You may reach me today at 410-228-4545.