

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 COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS
IN THE CASE OF BLACKWATER COMMUNITIES
Case No. C-06-14613 (Circuit Court of Dorchester
County)

USA-5-1831-28 (2 folders)

Complaint/Petition of Egypt Road, LLC & The Thomas Land Group, LLC for the Judicial
Review of the Decision of DVR CAC in the case of Blackwater Communities Case No. C-06-14613

MSA-S 1831-28 (1 of 2)

THE CIRCUIT COURT OF MARYLAND
FOR DORCHESTER COUNTY

COMPLAINT/PETITION OF: *

EGYPT ROAD, LLC *
2015 Pig Neck Road *
Cambridge, MD 21613 *

and *

THE THOMAS LAND GROUP, LLC *
2015 Pig Neck Road *
Cambridge, MD 21613 *

FOR THE JUDICIAL REVIEW OF THE *
DECISION OF THE DEPARTMENT OF *
NATURAL RESOURCES, CRITICAL *
AREA COMMISISON FOR THE *
CHESAPEAKE AND ATLANTIC *
COASTAL BAYS *
1804 West Street, Suite 100 *
Annapolis, Maryland 21401 *

Civil Case No. C-06-14613

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 *

* * * * *

Pleadings Index Cont'd

- 7. January 8, 2007 Stipulation Regarding Filing of Opposition and Reply Brief
- 8. January 22, 2007 Stipulation Regarding Filing of Opposition and Reply Brief
- 9. February 15, 2007 Stipulation Regarding Filing of Opposition and Reply Brief
- 10. April 17, 2007 Joint Motion to Stay
- 11. April 20, 2007 Notice of Assignment
- 12. July 11, 2007 Stipulation of Dismissal

THE CIRCUIT COURT OF MARYLAND
FOR DORCHESTER COUNTY

COMPLAINT/PETITION OF:

*

EGYPT ROAD, LLC
2015 Pig Neck Road
Cambridge, MD 21613

*

*

and

*

THE THOMAS LAND GROUP, LLC
2015 Pig Neck Road
Cambridge, MD 21613

*

*

FOR THE JUDICIAL REVIEW OF THE
DECISION OF THE DEPARTMENT OF
NATURAL RESOURCES, CRITICAL
AREA COMMISISON FOR THE
CHESAPEAKE AND ATLANTIC
COASTAL BAYS
1804 West Street, Suite 100
Annapolis, Maryland 21401

*

Civil Case No. C-06-14613

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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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Pleadings Index

1. November 9, 2006 Notice of Administrative Agency of Judicial Review
2. November 22, 1006 Complaint for administrative Mandamus
3. December 4, 2006 Proposed Order
4. December 4, 2006 Memorandum in Support of Motion
5. December 4, 2006 Motion to Dismiss Count I of Complaint
6. December 4, 2006 Defendant’s Answer to Count II of Complaint

MILES & STOCKBRIDGE P.C.

July 10, 2007

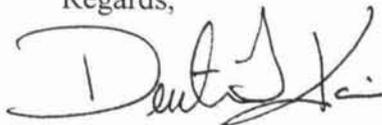
Michael L. Baker
Clerk of the Circuit Court
for Dorchester County
P.O. Box 150
206 High Street
Cambridge, MD 21613

Re: Petition of Ronald C. Edgar & Sons, LLC, No. 09-C-06-14104
Petition of Ronald C. Edgar & Sons, LLC, No. 09-C-06-14173
Petition of Ronald C. Edgar & Sons, LLC, No. 09-C-06-14350
Petition of Ronald C. Edgar & Sons, LLC, No. 09-C-06-14351
Petition of Ronald C. Edgar & Sons, LLC, No. 09-C-06-14429
Petition of Ronald C. Edgar & Sons, LLC, No. 09-C-06-14430
Petition of Ronald C. Edgar & Sons, LLC, No. 09-C-06-14503
Petition of Dorchester County, No. 09-C-06-14611
Complaint of Egypt Road, LLC, No. 09-C-06-14613

Dear Mr. Baker:

Enclosed for filing please find Stipulations of Dismissal in each of the above-captioned cases. We have been authorized by all counsel involved to sign the stipulations. Please call me if you have any questions.

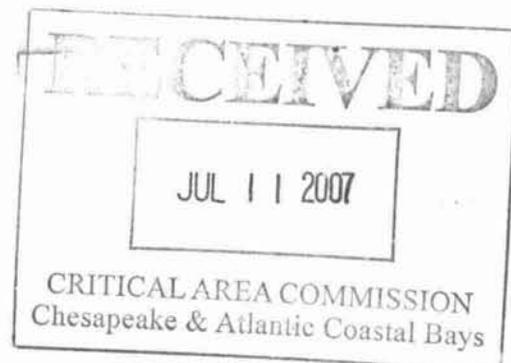
Regards,



Demetrios G. Kaouris

DGK:jld
Enclosures

cc: Marianne Dise, Esquire
Thomas Deming, Esquire
Jeff Blomquest, Esquire
Charles MacLeod, Esquire
Robert Collison, Esquire



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

Petitioners

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

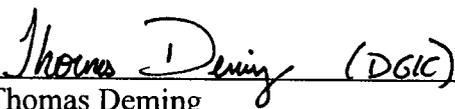
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* IN THE
* CIRCUIT COURT
* FOR
* DORCHESTER COUNTY
* MARYLAND
*
* Case No. C-06-014104
*
* * * * *

STIPULATION OF DISMISSAL

Petitioners Ronald C. Edgar & Sons, LLC, Good Luck Farms, Inc., Helen M. Malkus and Chesapeake Bay Foundation, Inc. and Respondents Egypt Road, LLC and The Thomas Land Group, LLC, by and through their undersigned attorneys, hereby stipulate to a dismissal of the above-captioned case as moot, pursuant to Maryland Rule 2-506.

Respectfully submitted,


Thomas Deming
506 Sunwood Lane
Annapolis, Maryland 21409
(410) 757-0100


Richard A. DeTar
Demetrios G. Kaouris
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(410) 822-5280

Attorneys for Petitioners Ronald C. Edgar & Sons, LLC, Good Luck Farms, Inc., Helen M. Malkus and Chesapeake Bay Foundation, Inc.

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

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Attorneys for Respondent Dorchester County
Council

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

Petitioners

FOR JUDICIAL REVIEW OF THE
DECISION OF:

THE COMMISSIONERS OF THE CITY OF CAM BRIDGE *
IN THE CASE OF:

CITY COMMISSIONERS' APPROVAL OF
APPLICATION OF EGYPT ROAD, LLC AND
THE THOMAS LAND GROUP FOR AWARD
OF GROWTH ALLOCATION

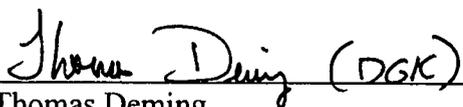
* IN THE
* CIRCUIT COURT
* FOR
* DORCHESTER COUNTY
* MARYLAND
* Case No. 09-06-14173

* * * * *

STIPULATION OF DISMISSAL

Petitioners Ronald C. Edgar & Sons, LLC, Good Luck Farms, Inc., Helen M. Malkus and Chesapeake Bay Foundation, Inc. and Respondents Egypt Road, LLC and The Thomas Land Group, LLC, by and through their undersigned attorneys, hereby stipulate to a dismissal of the above-captioned case as moot, pursuant to Maryland Rule 2-506.

Respectfully submitted,



Thomas Deming
506 Sunwood Lane
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Attorneys for Respondents Egypt Road, LLC and The Thomas Land Group, LLC

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Attorneys for the City of Cambridge

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

Petitioners

FOR JUDICIAL REVIEW OF THE
DECISION OF:

THE CITY OF CAMBRIDGE BOARD OF
APPEALS, CASE NO. 05-10-06

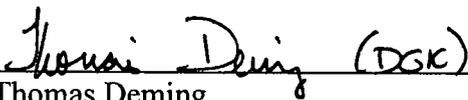
* IN THE
* CIRCUIT COURT
* FOR
* DORCHESTER COUNTY
* MARYLAND
* Case No. 09-06-14350

* * * * *

STIPULATION OF DISMISSAL

Petitioners Ronald C. Edgar & Sons, LLC, Good Luck Farms, Inc., Helen M. Malkus and Chesapeake Bay Foundation, Inc. and Respondents Egypt Road, LLC and The Thomas Land Group, LLC, by and through their undersigned attorneys, hereby stipulate to a dismissal of the above-captioned case as moot, pursuant to Maryland Rule 2-506.

Respectfully submitted,



Thomas Deming
506 Sunwood Lane
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PETITION OF RONALD C. EDGAR
& SONS, LLC, *et al.*

Petitioners

FOR JUDICIAL REVIEW OF THE
DECISION OF:

THE DORCHESTER COUNTY BOARD OF
APPEALS, CASE NO. 2295

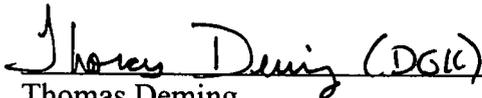
* IN THE
* CIRCUIT COURT
* FOR
* DORCHESTER COUNTY
* MARYLAND
* Case No. 09-06-14351

* * * * *

STIPULATION OF DISMISSAL

Petitioners Ronald C. Edgar & Sons, LLC, Good Luck Farms, Inc., Helen M. Malkus and Chesapeake Bay Foundation, Inc. and Respondents Egypt Road, LLC and The Thomas Land Group, LLC, by and through their undersigned attorneys, hereby stipulate to a dismissal of the above-captioned case as moot, pursuant to Maryland Rule 2-506.

Respectfully submitted,


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

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Attorneys for Respondent Dorchester County
Council

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

Petitioners

FOR JUDICIAL REVIEW OF THE
DECISION OF:

THE CITY OF CAMBRIDGE BOARD OF
APPEALS, CASE NO. 02-06

* IN THE
* CIRCUIT COURT
* FOR
* DORCHESTER COUNTY
* MARYLAND
* Case No. 09-06-14429

* * * * *

STIPULATION OF DISMISSAL

Petitioners Ronald C. Edgar & Sons, LLC, Good Luck Farms, Inc., Helen M. Malkus and Chesapeake Bay Foundation, Inc. and Respondents Egypt Road, LLC and The Thomas Land Group, LLC, by and through their undersigned attorneys, hereby stipulate to a dismissal of the above-captioned case as moot, pursuant to Maryland Rule 2-506.

Respectfully submitted,


Thomas Deming
506 Sunwood Lane
Annapolis, Maryland 21409
(410) 757-0100

Attorneys for Petitioners Ronald C. Edgar & Sons, LLC, Good Luck Farms, Inc., Helen M. Malkus and Chesapeake Bay Foundation, Inc.


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Attorneys for the City of Cambridge

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

Petitioners

FOR JUDICIAL REVIEW OF THE
DECISION OF:

THE CITY OF CAMBRIDGE BOARD OF
APPEALS, CASE NO. 05-06

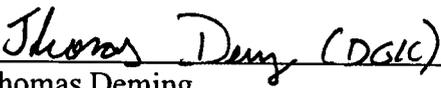
* IN THE
* CIRCUIT COURT
* FOR
* DORCHESTER COUNTY
* MARYLAND
* Case No. 09-06-14430

* * * * *

STIPULATION OF DISMISSAL

Petitioners Ronald C. Edgar & Sons, LLC, Good Luck Farms, Inc., Helen M. Malkus and Chesapeake Bay Foundation, Inc. and Respondents Egypt Road, LLC and The Thomas Land Group, LLC, by and through their undersigned attorneys, hereby stipulate to a dismissal of the above-captioned case as moot, pursuant to Maryland Rule 2-506.

Respectfully submitted,



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Attorneys for Petitioners Ronald C. Edgar & Sons, LLC, Good Luck Farms, Inc., Helen M. Malkus and Chesapeake Bay Foundation, Inc.



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Attorneys for the City of Cambridge

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

Petitioners

FOR JUDICIAL REVIEW OF THE
DECISION OF:

COMMISSIONERS OF THE CITY OF
CAMBRIDGE

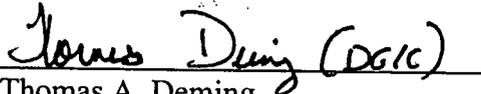
IN THE MATTER OF AUGUST 21, 2006,
DECISION APPROVING FINAL MASTER
DEVELOPMENT PLAN

* * * * *

STIPULATION OF DISMISSAL AS MOOT

Petitioners Ronald C. Edgar & Sons, LLC, Good Luck Farms, Inc., Helen M. Malkus and Chesapeake Bay foundation, Inc. and Respondents Egypt Road, LLC and the Thomas Land Group, LLC, and the Commissioners of the City of Cambridge, by and through their undersigned attorneys, hereby stipulate to a dismissal of the above-captioned case as moot, pursuant to Maryland Rule 2-506.

Respectfully submitted,



Thomas A. Deming
506 Sunwood Lane
Annapolis, Maryland 21409
(410) 757-0100

Attorney for Petitioners Ronald C. Edgar & Sons, LLC, Good Luck Farms, Inc., Helen M. Malkus, and the Chesapeake Bay Foundation, Inc.



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

Robert S. Collison (DGC)

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Cambridge, MD 21613
(410) 228-1911

Attorneys for the City of Cambridge

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 OF DISMISSAL WITH PREJUDICE

Dorchester County, Egypt Road, LLC and The Thomas Land Group, LLC and the Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, Respectfully submitted, by and through their undersigned attorneys, hereby stipulate to a dismissal of the above-captioned case with prejudice pursuant to Maryland Rule 2-506.

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. Duse
Assistant Attorney General
Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401
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Attorneys for the Critical Area Commission
for the Atlantic and Coastal Bays

~~Jefferson L. Blomquist (DGK)~~

Jefferson L. Blomquist
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9701 Apollo Drive
Suite 301
Largo, MD 20774-4783
(301) 386-0812

Attorneys for Respondent Dorchester County
Council

IN THE CIRCUIT COURT FOR DORCHESTER COUNTY, MARYLAND

COMPLAINT/PETITION OF *
EGYPT ROAD, LLC *
2015 Pig Neck Road *
Cambridge MD 21613 *

and *

THE THOMAS LAND GROUP, LLC *
2015 Pig Neck Road *
Cambridge MD 21613 *

FOR JUDICIAL REVIEW OF THE *
DECISION OF THE DEPARTMENT OF *
NATURAL RESOURCES, CRITICAL AREA *
COMMISSION FOR THE CHESAPEAKE *
AND ATLANTIC COASTAL BAYS *
1804 West Street, Suite 100 *
Annapolis, Maryland 21401 *

Civil Case No. 09-C-06-14613

IN THE CASE OF BLACKWATER *
COMMUNITIES – GROWTH ALLOCATION *

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

* * * * *

STIPULATION OF DISMISSAL WITH PREJUDICE

Egypt Road, LLC and The Thomas Land Group, LLC and the Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, by and through their undersigned attorneys, hereby stipulate to a dismissal of the above-captioned case with prejudice pursuant to Maryland Rule 2-506.

Respectfully submitted,



Richard A. DeTar
Demetrios G. Kaouris
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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

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

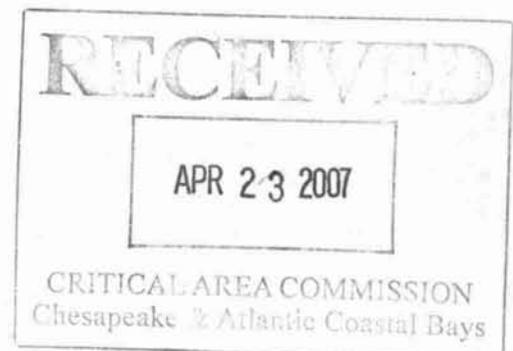
Md Toll Free (800)340-9186 License/Recording (410)228-0480 Law (410)228-0481

Case Number: 09-C-06-014613 AA

Marianne E Dise Esq

Assistant Attorney General/Md Dept Of Natural Resources
1804 West Street Suite 10
Annapolis, MD 21401

FOLD HERE



CIRCUIT COURT FOR DORCHESTER COUNTY
Michael L. Baker, Clerk
206 High Street
P.O. Box 150, Cambridge, MD 21613
TTY for Deaf: (800)-735-2258
MD Toll Free: 800-340-9186 Telephone: 410-228-0481

NO. 09-C-06-014613

DATE: April 20, 2007

Egypt Road LLC, et al vs Dept Of Natural Resources Critical Area Comm For The Chesapea

NOTICE OF ASSIGNMENT

A Trial/Hearing has been scheduled in the above matter in the Circuit Court for Dorchester County, Court House, 206 High Street, Cambridge, MD, as follows:

DATE AND TIME OF TRIAL/HEARING: 07/11/07 01:30 P.M.

TYPE OF TRIAL/HEARING: Status Conference

JUDGE: J. W. Sause, Jr.

NOTICE TO COUNSEL

The Court has directed me to inform you that unless application for postponement of the trial or hearing is made within TEN (10) days after receipt of this notice, or any emergency has occurred thereafter, the aforementioned trial or hearing will be held as scheduled.

In all Jury cases, attorneys shall be present in chambers thirty (30) minutes prior to the time set for trial, for the purpose of disposing of any preliminary matters.

****AT PRETRIAL CONFERENCES - ALL PARTIES MUST BE PRESENT****

REQUESTS FOR A POSTPONEMENT MUST BE IN WRITING, IN THE FORM OF A MOTION, WITH A COPY TO ALL ATTORNEYS OF RECORD. IT IS REQUESTED THAT COUNSEL CONTACT THE ASSIGNMENT CLERK AND GIVE AN ESTIMATION OF TRIAL TIME.

A JURY ASSESSMENT FEE will be made in any case withdrawn from the trial **assignment within 48 hours** prior to the assigned date; Saturday, Sunday and intervening legal holiday excluded.

ANYONE NEEDING AUXILIARY AID, SERVICE OR ACCOMMODATION IS ASKED TO CONTACT THE ASSIGNMENT CLERK 10 DAYS PRIOR TO THE ABOVE TRIAL DATE.

Donna Pyle/Joyce Marshall
Assignment Clerks

CC: Richard Allen DeTar Esq
William W. McAllister Jr.
Saundra K Canedo Esq

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

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

Received in the
Circuit Court on
4-17-07
By Michael L. Baker, Clerk

Civil Case No. 09-C-06-014613

* * * * *

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").

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 file a Stipulation of Dismissal in this case.

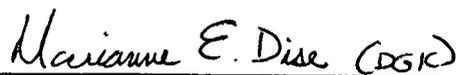
WHEREFORE, Egypt Road and the Commission respectfully request that the above-captioned case be stayed.

Respectfully submitted,



Richard A. DeTar
Demetrios G. Kaouris
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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

*

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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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



9

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

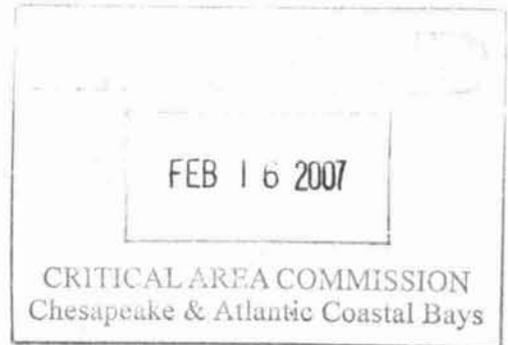
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STIPULATION REGARDING FILING OF OPPOSITION AND REPLY BRIEF

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 Count I of 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. 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.

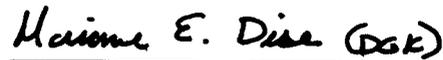
4. Egypt Road and the Commission further stipulate that the Commission shall have until April 9, 2007 to file a Reply to the Opposition filed by Egypt Road.

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
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Critical Area Commission
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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

IN THE CASE OF BLACKWATER
COMMUNITIES – GROWTH ALLOCATION

*

OR IN THE ALTERNATIVE
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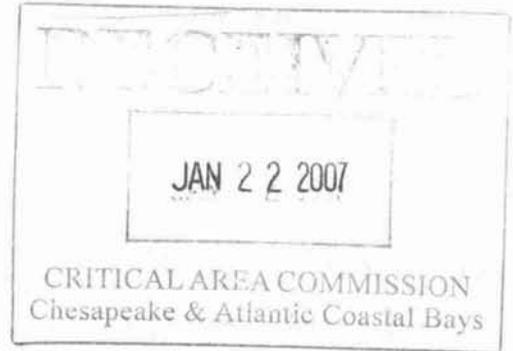
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* * * * *

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 Count I of 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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Attorneys for The Thomas Land Group, LLC
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Attorneys for the Critical Area Commission
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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

*

*

*

*

* * * * *

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 Count I of the Complaint.
2. The parties stipulate that Egypt Road shall have until January 15, 2007 to file an Opposition to the Motion to Dismiss Count I.

3. The parties further stipulate that the Commission shall have until February 7, 2007 to file a Reply to the Opposition to be filed by Egypt Road.

Respectfully submitted,

Richard A. DeTar
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(410) 822-5280

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

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Assistant Attorney General
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Attorneys for the Critical Area Commission
for the Atlantic and Coastal Bays



6

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.

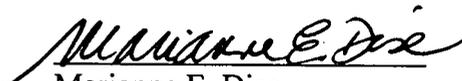
33. The remaining paragraphs of the Complaint (numbered A through K), are statements of the relief requested to which no response is required or provided.

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

5

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:

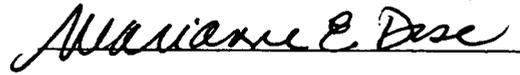
1. The action of the Critical Area Commission on the proposed amendment to Dorchester County’s and the City of Cambridge’s local Critical Area programs was a quasi-legislative action, and, as such, for the reasons set forth in the accompanying Memorandum in Support of Motion to Dismiss, is not subject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

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", 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

4

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

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

3

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

2

IN THE CIRCUIT COURT FOR DORCHESTER COUNTY, MARYLAND

COMPLAINT/PETITION OF *
EGYPT ROAD, LLC *
2015 Pig Neck Road *
Cambridge MD 21613 *

and *

THE THOMAS LAND GROUP, LLC *
2015 Pig Neck Road *
Cambridge MD 21613 *

FOR JUDICIAL REVIEW OF THE *
DECISION OF THE DEPARTMENT OF *
NATURAL RESOURCES, CRITICAL AREA *
COMMISSION FOR THE CHESAPEAKE *
AND ATLANTIC COASTAL BAYS *
1804 West Street, Suite 100 *
Annapolis, Maryland 21401 *

Civil Case No. C-06-14613

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 *

Serve On: Marianne D. Mason *
Assistant Attorney General *
Critical Area Commission for the *
Chesapeake and Atlantic Coastal *
Bays *
580 Taylor Avenue, C-4 *
Annapolis MD 21401 *

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COMPLAINT FOR ADMINISTRATIVE MANDAMUS
OR IN THE ALTERNATIVE FOR DECLARATORY JUDGMENT

Egypt Road, LLC and The Thomas Land Group, LLC (collectively "Egypt Road"), by and through their attorneys, William W. McAllister, Jr., Richard A. DeTar, Demetrios G. Kaouris and Miles & Stockbridge P.C., hereby file this Complaint for Administrative Mandamus or in the Alternative for Declaratory Judgment against The Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "Critical Area Commission"). In support hereof, Egypt Road states as follows:

The Parties

1. Egypt Road, LLC is a limited liability company organized under the laws of the State of Maryland with its principal place of business in Cambridge, Maryland.
2. The Thomas Land Group, LLC is a limited liability company organized under the laws of the State of Maryland with its principal place of business in Cambridge, Maryland.
3. The Critical Area Commission is a state agency established pursuant to Section 8-1803 of the Natural Resources Article of the Maryland Code.¹

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over this case pursuant to Maryland Rule 7-401 *et seq.* and Sections 3-403 and 3-406 of the Courts and Judicial Proceedings Article of the Maryland Code.
5. This Court has personal jurisdiction over the Critical Area Commission pursuant to Section 6-102 of the Courts and Judicial Proceedings Article of the Maryland Code because the Critical Area Commission is organized under the laws of the State of Maryland.
6. Venue is appropriate in Dorchester County because the real property that is the subject of this case is located in Dorchester County.

¹ Sections 8-1801 through 8-1817 of the Natural Resources Article of the Maryland Code shall be referred to herein as the Critical Area Law.

The Facts

7. Egypt Road is the owner of 1,080 acres of real property depicted as Parcels 2 and 13 on Tax Map 52 and Parcel 2 on Tax Map 41 of the Tax Maps for Dorchester County, Maryland (the "Property").

8. In July 2005, Egypt Road filed an application with Dorchester County (the "County") requesting that the County provide the City of Cambridge with up to 315.6 acres of growth allocation for Egypt Road to develop a resort hotel, golf course, conference center and residential community on the Property (the "Project").

9. After several public hearings, the Dorchester County Council (the "County Council") on December 20, 2006 voted to approve Egypt Road's application and awarded to the City of Cambridge 313.12 acres of growth allocation for the Project. On February 21, 2006, the County Council passed a resolution and a finding of fact supporting its decision to award growth allocation to the City of Cambridge in connection with the Project.

10. Egypt Road also applied to the City of Cambridge for growth allocation for the Project. The purpose of the growth allocation request was to reclassify the 313.12 acres of the Property from a critical area designation of Resource Conservation Area (RCA) to a designation of Intensely Developed Area (IDA).

11. On March 13, 2006, the City of Cambridge Commissioners awarded Egypt Road 313.12 acres of growth allocation to the Property for the purpose of reclassifying the critical area designation of the Property from RCA to IDA. On March 27, 2006, the City of Cambridge Commissioners adopted Resolution No. 06-003 that included findings of fact to support their decision.

12. In accordance with Section 8-1809 of the Natural Resources Article of the Maryland Code, Section 205 of the City of Cambridge Zoning Ordinance, and Section 155-38.N of the Dorchester County Zoning Ordinance, the Dorchester Council's and the City of Cambridge Commissioners' award of growth allocation to the Property and the reclassification of the critical area designation of the Property from RCA to IDA was forwarded to the Critical Area Commission for its review and approval.

13. The Critical Area Commission held a public hearing on the County Council's and City of Cambridge Commissioners' growth allocation award at Maple Dam Elementary School in Cambridge, Maryland on July 20, 2006.

14. The Critical Area Commission thereafter met on several occasions to discuss the County Council's and City of Cambridge Commissioners' award of growth allocation for the Property and the reclassification of the Property from RCA to IDA.

15. The Critical Area Commission prepared a panel report, a copy of which is attached hereto as Exhibit 1, setting forth the reasons why it was not approving the award of growth allocation for the Property and the change in the critical area classification of the Property from RCA to IDA.

16. On or about October 4, 2006, the Critical Area Commission voted to decline to approve the County Council's and the City of Cambridge Commissioners' award of growth allocation to the Property and the reclassification of the critical area designation of the Property from RCA to IDA.

Count I
(Administrative Mandamus Pursuant to Md. Rules 7-401, et seq.)

17. Paragraphs 1 through 16 are incorporated herein by reference as if set forth in full herein.

18. Pursuant to Maryland Rule 7-401 and this Court's inherent power to review quasi-judicial actions of administrative agencies, this Court is authorized to review the October 4, 2006 decision of the Critical Area Commission.

19. This action for administrative mandamus is authorized by Maryland Rule 7-401 because the action of the Critical Area Commission was quasi-judicial in nature and no appeal from the Critical Area Commission's decision to this Court is expressly authorized by law.

20. Egypt Road is requesting judicial review of the October 4, 2006 decision of the Critical Area Commission declining to approve the award of 313.12 acres of growth allocation for the Property and the change of the critical area designation of the Property from RCA to IDA.

21. Egypt Road was a party to the proceedings before the Critical Area Commission.

WHEREFORE, Egypt Road respectfully requests that this Honorable Court reverse the decision of the Critical Area Commission, uphold the County Council's and the City of Cambridge's award of 313.12 acres of growth allocation for the Property and the change of the critical area designation of the Property from RCA to IDA, and award such other and further relief this Court deems to be appropriate.

Count II – In the Alternative
(Declaratory Judgment)

22. Paragraphs 1-21 are incorporated by reference as if set forth in full herein.

23. In the event administrative mandamus pursuant to Maryland Rule 7-401 *et. seq.* is not available to review the decision of the Critical Area Commission, Egypt Road is filing this Count II for Declaratory Judgment against the Critical Area Commission and, *inter alia*, requesting that the Court grant relief by way of mandamus.

24. The Critical Area Commission acted in an arbitrary, capricious and otherwise illegal manner in connection with its refusal to approve the County Council's and the City of

Cambridge's award of growth allocation to the Property and the change in the critical area designation of the Property from RCA to IDA.

25. The Critical Area Commission's decision is affected by an error of law and/or is otherwise arbitrary and capricious because the Critical Area Commission refused to approve the award of growth allocation, in part, because the Property is not adjacent to property designated IDA or Limited Development Area ("LDA"). The Critical Area Commission is not authorized to refuse to approve a growth allocation request that does not meet this guideline.

26. The Critical Area Commission failed to consider overwhelming evidence in the record that the real property located to the north of and adjacent to the Property (although not designated IDA or LDA) is a school site with large structures and intensive uses and the County's determination that locating growth allocation in the City of Cambridge to be served by existing public infrastructure was more appropriate than adjacent to "pockets" of IDA in relatively undeveloped areas of the County. Accordingly, the Critical Area Commission's decision was not supported by evidence in the record, and is arbitrary and capricious.

27. The Critical Area Commission's decision is contrary to law because it applied the guidelines set forth in Section 8-1808.1(c)(1) of the Natural Resources Article of the Maryland Code. Section 8-1808.1 of the Natural Resources Article of the Maryland Code does not authorize the Critical Area Commission to apply the guidelines. The application of the guidelines is left to the discretion of the local jurisdiction, in this case the County Council and the City of Cambridge Commissioners. The Critical Area Commission exceeded its authority and/or jurisdiction in applying the guidelines and refusing to approve the award of growth allocation by the County Council and the City of Cambridge Commissioners.

28. The Critical Area Commission failed to consider the overwhelming evidence in the record before the County Council and the City of Cambridge Commissioners establishing that the guidelines and criteria set forth in the Critical Area Law were applied by the County Council and the City of Cambridge Commissioners in a manner consistent with the purposes, policies and goals of the Critical Area Law and criteria adopted by the Commission. Consequently, the Critical Area Commission acted in an arbitrary and capricious manner.

29. The Critical Area Commission erred as a matter of law because it failed to make findings of fact based upon evidence in the administrative record.

30. The Critical Area Commission exceeded its authority and otherwise made an error of law because it refused to approve the County Council's and the City of Cambridge Commissioners' award of growth allocation on the ground that certain information or documents are not contained within the administrative record. The information or documents determined by the Critical Area Commission to be necessary for it to approve the growth allocation award include, but are not limited to: final stormwater plans, a Buffer Management Plan and unspecified "scientific information" that the Little Blackwater River system will not be impacted by the proposed project. There is no statutory authority in the Critical Area law or regulations requiring that such information or documents be included in the record.

31. The Critical Area Commission's decision is arbitrary and capricious because it engaged in unsupported speculation including, but not limited to, concluding that, "the proposed project may promote development on surrounding lands." The fact that lands adjacent to the Property may be developed in the future is not a basis to deny the award of growth allocation and the change in the critical area designation of the Property from RCA to IDA.

32. The Critical Area Commission made an error of law or otherwise exceeded its authority and jurisdiction because it refused to approve the award of growth allocation and the change in the critical area designation of the Property based in part on its view, which was contrary to those of the City and County, that the award of growth allocation was not consistent with the City of Cambridge and Dorchester County Comprehensive Plans. The Critical Area Commission has no authority under the Critical Area Law to review consistency with the Comprehensive Plans of Dorchester County or the City of Cambridge.

33. The Critical Area Commission acted in an arbitrary and capricious manner and abused its discretion because it relied upon its own critical area mapping error as a basis to refuse to approve the award of growth allocation and the change in the critical area designation of the Property.

34. The Critical Area Commission erred as a matter of law because it applied an incorrect standard in its review of the decision of the Dorchester County Council and the City of Cambridge Commissioners. The Critical Area Commission undertook a *de novo* review, which is not authorized under the Critical Area Law.

35. The Critical Area Commission's application of the Critical Area Law is unconstitutional. The Critical Area Commission concluded that all development on the Property must take place more than 300-feet from the Little Blackwater River. This results in an area of 111 acres of the Property being unavailable for development. Consequently, the Critical Area Commission's decision constitutes regulatory taking of a portion of the Property in violation of the United States Constitution and the Maryland Declaration of Rights.

36. The CAC acted arbitrarily and capriciously because it has previously approved several amendments of the critical area designation of property from RCA to IDA or LDA when

such property was not located adjacent to property designated IDA or LDA. In a county such as Dorchester County, it is a challenge to use growth allocation in areas adjacent to existing LCA and/or IDA. The Critical Area Commission's inconsistent application of the adjacency guideline is arbitrary and capricious.

37. As a result of the Critical Area Commission's errors of law, failure to consider evidence in the record and otherwise arbitrary and capricious conduct, it declined to approve the award of growth for the Property and the change in the critical area designation of the Property from RCA to IDA.

38. There is a justiciable controversy between Egypt Road and the Critical Area Commission with respect to its decision to refuse to approve the City of Cambridge Commissioners' award of growth allocation to the Property and the change in the critical area designation of the Property from RCA to IDA. It is Egypt Road's contention that the Property is entitled to growth allocation and the critical area designation of the Property should be to IDA.

39. A determination by this Court will end the controversy between the parties as to whether the Critical Area Commission improperly refused to approve the County Council's and City of Cambridge Commissioners' award of growth allocation to the Property and the change of the critical area designation of the Property from RCA to IDA.

WHEREFORE, Egypt Road respectfully requests that the Court grant the following relief:

A. Declare that the Critical Area Commission's failure to approve the amendment to the City of Cambridge's Critical Area Protection Program and the award of growth allocation to Egypt Road changing the critical area designation of the property from RCA to IDA was arbitrary and capricious and otherwise illegal.

B. Declare that the Critical Area Commission does not have the authority to deny a growth allocation request because the property receiving growth allocation is not adjacent to property designated LDA or IDA.

C. Declare that the Critical Area Commission does not have the authority to apply the guidelines set forth in Section 8-1808.1 of the Natural Resources Article of the Maryland Code and that the application of the guidelines is left to the discretion of a local jurisdiction.

D. Declare that the Critical Area Commission does not have the authority to require documents and information be contained in the administrative record that are not required to be included in such record by the Critical Area Law.

E. Declare that the Critical Area Commission, in considering whether to approve an award of growth allocation by a local jurisdiction, has no authority to examine consistency with the Comprehensive Plan of a local jurisdiction.

F. Declare that the Critical Area Commission has no authority to refuse to approve a growth allocation request on the ground that there was an error in the map of the critical area of property when the Critical Area Commission approved the map.

G. Declare that the Critical Area Commission is not authorized to undertake a *de novo* review of the decision of a local jurisdiction's decision awarding growth allocation and reclassifying property from RCA to IDA.

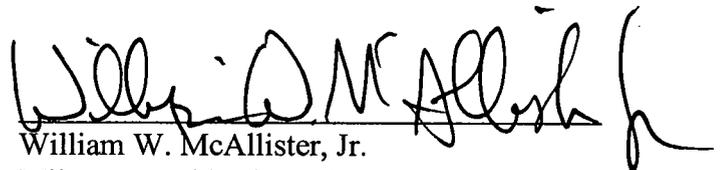
H. Declare that the Critical Area Commission's imposition of a 300 foot set back from the Little Blackwater River constituted an unconstitutional taking of property in violation of the United States Constitution and the Maryland Declaration of Rights.

I. Declare that the County Council's and the City of Cambridge's award of growth allocation for the Property and the change of the critical area designation of the Property from RCA to IDA is deemed approved by the Critical Area Commission.

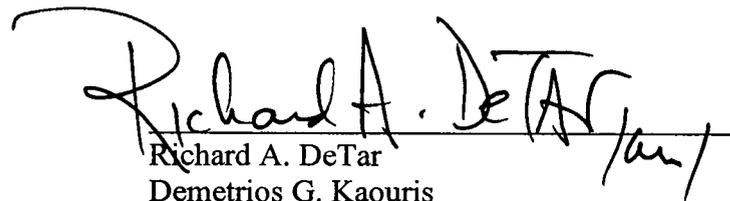
J. Order the Critical Area Commission to approve the award of growth allocation for the Property and the change in the critical area designation of the Property from RCA to IDA.

K. Award such other and further relief this Court concludes is appropriate in this case.

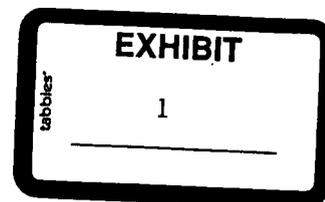
Respectfully submitted,



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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.

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-06-014613 AA

Egypt Road LLC, et al vs Dept Of Natural Resources Critical Area Comm For The Ch

Dept Of Natural Resources Critical Area Comm For The Chesapeake & Atlantic
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-06-014613.

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: November 9, 2006

SIGNATURE: Marianne E. Dize

RECEIVED
NOV 09 2006
CRITICAL AREA COMMISSION

CIRCUIT COURT FOR DORCHESTER COUNTY

Michael L. Baker
Clerk of the Circuit Court
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P.O. Box 150
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Michael L. Baker

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Clerk of the Circuit Court
of Dorchester County



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

DATE RECEIVED: _____

SIGNATURE: _____

Circuit Court for Dorchester County, Maryland

City or County

CIVIL-NON-DOMESTIC CASE INFORMATION REPORT

Directions:

Plaintiff: This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111(a). A copy must be included for each defendant to be served.

Defendant: You must file an Information Report as required by Rule 2-323(h).

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS AN ANSWER OR RESPONSE.

FORM FILED BY: PLAINTIFF DEFENDANT CASE NUMBER: C-06-14613
(Click to insert)

CASE NAME: Egypt Road LLC Plaintiff v Department of Natural Resources Defendant

JURY DEMAND: Yes No Anticipated length of trial: _____ hours or 1 days
RELATED CASE PENDING? Yes No If yes, Case #(s), if known: _____

Special Requirements? Interpreter/communication impairment Which language _____
(Attach Form 1-332 if Accommodation or Interpreter Needed) Which dialect _____
 ADA accommodation: _____

NATURE OF ACTION (CHECK ONE BOX) DAMAGES/RELIEF

TORTS <input type="checkbox"/> Motor Tort <input type="checkbox"/> Premises Liability <input type="checkbox"/> Assault & Battery <input type="checkbox"/> Product Liability <input type="checkbox"/> Professional Malpractice <input type="checkbox"/> Wrongful Death <input type="checkbox"/> Business & Commercial <input type="checkbox"/> Libel & Slander <input type="checkbox"/> False Arrest/Imprisonment <input type="checkbox"/> Nuisance <input type="checkbox"/> Toxic Torts <input type="checkbox"/> Fraud <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Lead Paint <input type="checkbox"/> Asbestos <input type="checkbox"/> Other _____	LABOR <input type="checkbox"/> Workers' Comp. <input type="checkbox"/> Wrongful Discharge <input type="checkbox"/> EEO <input type="checkbox"/> Other _____	A. TORTS Actual Damages <input type="checkbox"/> Under \$7,500 <input type="checkbox"/> Medical Bills <input type="checkbox"/> \$7,500 - \$50,000 \$ _____ <input type="checkbox"/> \$50,000 - \$100,000 <input type="checkbox"/> Property Damages <input type="checkbox"/> Over \$100,000 \$ _____ <input type="checkbox"/> Wage Loss \$ _____		
	CONTRACTS <input type="checkbox"/> Insurance <input type="checkbox"/> Confessed Judgment <input type="checkbox"/> Other _____	B. CONTRACTS <input type="checkbox"/> Under \$10,000 <input type="checkbox"/> \$10,000 - \$20,000 <input type="checkbox"/> Over \$20,000	C. NONMONETARY <input checked="" type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Injunction <input type="checkbox"/> Other _____	
	REAL PROPERTY <input type="checkbox"/> Judicial Sale <input type="checkbox"/> Condemnation <input type="checkbox"/> Landlord Tenant <input type="checkbox"/> Other _____	OTHER <input type="checkbox"/> Civil Rights <input type="checkbox"/> Environmental <input type="checkbox"/> ADA <input checked="" type="checkbox"/> Other Administrative Review		

ALTERNATIVE DISPUTE RESOLUTION INFORMATION
Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)
A. Mediation Yes No C. Settlement Conference Yes No
B. Arbitration Yes No D. Neutral Evaluation Yes No

TRACK REQUEST
With the exception of Baltimore County and Baltimore City, please fill in the estimated LENGTH OF TRIAL. THIS CASE WILL THEN BE TRACKED ACCORDINGLY.
 1/2 day of trial or less 3 days of trial time
 1 day of trial time More than 3 days of trial time
 2 days of trial time

PLEASE SEE PAGE TWO OF THIS FORM FOR INSTRUCTIONS PERTAINING TO THE BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM AND ADDITIONAL INSTRUCTIONS IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY.

Date 11/3/06 Signature [Handwritten Signature]

BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

For all jurisdictions, if Business and Technology track designation under Md. Rule 16-205 is requested, attach a duplicate copy of complaint and check one of the tracks below.



Expedited

Trial within 7 months of Defendant's response



Standard

Trial - 18 months of Defendant's response

EMERGENCY RELIEF REQUESTED _____

Signature

Date

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY PLEASE FILL OUT THE APPROPRIATE BOX BELOW.

CIRCUIT COURT FOR BALTIMORE CITY (check only one)

- Expedited Trial 60 to 120 days from notice. Non-jury matters.
- Standard-Short Trial seven months from Defendant's response. Includes torts with actual damages up to \$7,500; contract claims up to \$20,000; condemnations; injunctions and declaratory judgments.
- Standard-Medium Trial 12 months from Defendant's response. Includes torts with actual damages over \$7,500 and under \$50,000, and contract claims over \$20,000.
- Standard-Complex Trial 18 months from Defendant's response. Includes complex cases requiring prolonged discovery with actual damages in excess of \$50,000.
- Lead Paint Fill in: Birthdate of youngest plaintiff _____.
- Asbestos Events and deadlines set by individual judge.
- Protracted Cases Complex cases designated by the Administrative Judge.

CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

To assist the Court in determining the appropriate Track for this case, check one of the boxes below. This information is not an admission and may not be used for any purpose other than Track Assignment.

- Liability is conceded.
- Liability is not conceded, but is not seriously in dispute.
- Liability is seriously in dispute.

CIRCUIT COURT FOR BALTIMORE COUNTY

- Expedited (Trial Date-90 days) Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus.
- Standard (Trial Date-240 days) Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud and Misrepresentation, Intentional Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases.
- Extended Standard (Trial Date-345 days) Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury Cases (medical expenses and wage loss of \$100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency.
- Complex (Trial Date-450 days) Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product Liabilities, Other Complex Cases.

Correspondence

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-1831-28 (2012)

Correspondence

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
COMMISSION FOR THE CHESAPEAKE AND
ATLANTIC COASTAL BAYS
IN THE CASE OF BLACKWATER COMMUNITIES
Case No. C-06-14613 (Circuit Court of Dorchester County)



Robert L. Ehrlich, Jr., Governor

Michael S. Steele, Lt. Governor

C. Ronald Franks, Secretary

December 15, 2006

MEMORANDUM

TO: C. Ronald Franks, Secretary, DNR

FROM: Gene Piotrowski, Director, Public lands Policy and Planning

SUBJECT: Blackwater Acquisition – Team Report – Findings and Recommendations

Last week you asked that a team of DNR resource professionals meet and discuss the acquisition of a 740 acre property currently owned by the Thomas Land Group, LLC and the Egypt Road, LLC, formerly part of the planned Blackwater Resort Community development, and to provide you recommendations regarding if, and under what conditions, acquisition should occur. On December 13, 2007 that group met (see team listing) on site, along with selected invitees including Nelson Reichart (DGS), Gary Setzer (MDE) and George Beston (MDE). Ryan Showalter, an attorney representing the developer was also on site. We spent approximately two hours discussing issues of concern and receiving factual information on the scope and timing of construction of the housing development on the 331 acres retained by the developer. Following the site visit the DNR team, Setzer, Beston and Showalter traveled to the City of Cambridge offices to meet with Anne Roane, Cambridge City Planner, William McAllister (attorney for the developer) and Duane Zentgraf, the developer.

Several issues and concerns were raised and discussed during the day. The majority of the field visit entailed discussion of the temporary construction and maintenance easements for the 9 existing drainage ditches. Setzer (MDE) explained that the ditches are considered “waters of the U.S.” and established water conveyance structures that cannot be removed. Further he said that common law allows the upstream owner to discharge water from his land onto the downstream owner. Clarification was made that water quantity can increase but flow rate must stay the same and must avoid damage to the downstream owner’s property. In the case of the planned development that means that the ditches on the area that DNR would own will most likely have to be widened and deepened to maintain current rate of flow and accommodate 10 year storms. Smith asked why maintenance easements would even be necessary. He said that a well designed stream restoration project would be self-maintaining and that normal mowing would not be desirable, causing damage to the stream and wetlands that would be created. Owens stated that other developments in the area implemented stream restoration projects without maintenance easements. It was agreed that the City needed to be brought into the discussion so that inadvertent damage would not occur. Alternatives to formal easements were identified as use agreements, rights-of-entry or a MOU outlining process and guidelines for maintenance. Showalter (developer’s attorney) said he would talk with the county roads engineer to discuss options to a easement to the county for maintenance.

Discussion of easements evolved into concerns about valuation for appraisal purposes. Brower and Saunders made the point that the value of the acreage eased is reduced by virtue of loss of full use by DNR.

In many ways the manner in which DNR lands can be managed is moderated and "diminished" because of the ditches and the restoration that will be put in place to accommodate increased flow by the development. Evans said the restoration and environmental improvements paid in part by the developer offsets that diminishment of use. There was a brief discussion with no clear agreement reached on what constituted "restoration" or the limits (footage from ditch/stream) that the developer would be responsible for, especially if the reconfiguration (meanderings) created greater stream length.

After a brief "windshield" tour of the property's extent along Egypt Road, the group left the site and reconvened at the City offices. I began the discussion with a recap of our desire to investigate options to avoid easements altogether on the property. The City planner seemed to have no problem with that and Showalter again said he'd talk with the county roads engineer to discuss.

Zentgraf said that March 1, 2008 was his deadline to have a fully agreed upon restoration plan and he asked if that was going to be a problem. I replied that we would convene the task force as soon after settlement as possible but that coming to a consensus with as diverse a group as has been described may not be done in short order. Smith said time would be needed to conduct the engineering and modeling and that could take several weeks to a couple of months if time could be made available. Smith said that knowing the elevation of the inverts for the outfall along Egypt Road at the DNR is critical to begin calculations on restoration and stormwater infiltration options. Showalter said he'd talk to the developer's engineering firm to get that information, probably by Thursday afternoon (12/14/06). It was suggested that further discussions flesh out the important elements leading to development of the restoration plan, starting with the March 2008 and backing out to identify the critical path leading to meeting the deadline

The group discussed the payment of restoration funds by the developer. It was explained by the developer and his representatives that no money would be provided unless/until all approvals for the development are received. He emphasized that this is firm. Zentgraf asked how the monies were going to be accounted for by DNR. Saunders stated that they could be treated as a donation and deposited in a dedicated account in the DNR Forest and Park Reserve Fund or that an escrow account could be set up and drawn down as needed.

I asked the City and the developer what the expectations were of the community regarding potential use of the property. I specifically asked if hunting was an option. The City said they had a city ordinance prohibiting hunting and the developer said he didn't expect that hunting would be accepted so close to the houses. I pursued the subject trying to ascertain if the City had a problem with DNR superseding city ordinance if wildlife population reduction was necessary for environmental or other reasons. (I had already queried John Moulis with DNR Wildlife and Heritage as to their interest in managing/allowing hunting on the property and he said that it wasn't desirable to WHS.) I said that the restoration would most likely create a series of wetlands and ponds and therefore may provide for passive recreation, i.e. birding, fishing, etc. Zentgraf tersely responded that he doesn't want ponds, wetlands, etc. near the houses because it creates a mosquito problem. I asked him what his interpretation of passive/low impact eco-tourism public access was, the terminology used in the land use agreement. He said hiking and biking trails, water access, etc. but he didn't want DNR to "just plant it in trees". He then left the meeting.

The last discussion item was the makeup of the "task force". Charlie Evans identified the membership, as of now, as the Chesapeake Bay Foundation, MDE, Ducks Unlimited, the City of Cambridge, Dorchester County, the agricultural, African-American and Native American communities; among others. I re-iterated my concern over "planning by committee" and suggested that the development of the restoration plan may be hampered by very divergent causes and agendas of the members.

FINDINGS AND RECOMMENDATIONS

Finding #1: Existing Conditions - The area investigated is bordered on the west by Egypt Rd. and extending approximately 2.5 miles in southerly direction and bordered on the east by the Little Blackwater River. The area is predominately agriculture (row crops). However there is a forested buffer along the river which generally varies in width from 100 to 200 feet. Most of the area in the forested buffer would likely be classified as jurisdictional wetland.

There are seven main ditches which transect the agricultural fields and convey flows to the river. These ditches also drain a significant watershed area west of the area in question. This drainage area is roughly 2 sq. miles. In addition there are many more leads (small ditches usually constructed every year or so to convey surface water off of the fields) also drain the agricultural fields on the site. Alterations to the historic hydrology of the site are very evident. Most of the ditches were created in what were once natural stream systems. These ditches were constructed to help drain the area along the west side of Egypt Road.

Soils at the site are characterized primarily as hydric (poorly drained) soil units (Othello, Elkton and Bibb soil series). Some of the higher areas contain non-hydric soils which are better drained (Mattapex and Mattapeake soil series). Most of the soils adjacent to the Little Blackwater River are characterized as Swamp.

Finding #2: The Little Blackwater River watershed is undergoing extremely rapid urbanization. Pervious vegetative cover is being lost with the attendant diminishment of stream quality and wildlife habitat. It is critical that forest and agricultural lands within the watershed be identified for protection.

Finding #3: The proposal to acquire and use the property as a type of "demonstration project" involving the restoration of ditched and drained agricultural lands to a natural low-lying coastal plain landscape consisting of natural streams with wetland and forested riparian habitat will have significant benefits to the State and the citizens of Maryland. The restoration activity can provide the following benefits:

- Provide a "restoration demonstration site" to educate a wide audience about the restoration of agricultural lands to a landscape that provides optimal water quality and habitat benefits.
- Provide an opportunity to utilize a variety of stream restoration techniques and to monitor the results in order to identify the most effective strategies for stream restoration activities on similar Eastern Shore sites characterized by hydric soils, low relief, and a high water table.
- Eliminate sediment and nutrient loads associated with the current agricultural operation.
- Establish forested buffers on 2.6 miles of tidal shoreline adjacent to Maple Dam Branch and the Little Blackwater River.
- Restore approximately two miles of channelized drainageways to create natural stream morphology, enhance stream substrate diversity, and improve and expand adjacent riparian habitat.
- Establish forested buffers on both sides of two miles of restored streams.
- Create habitat for the federally-listed endangered Delmarva Fox Squirrel.

Finding #4: The term "restoration" is poorly defined in the Land Use Agreement and the Agreement of Sale, creating uncertainty on methods, location, timing and party(ies) responsible for installation.

Finding #5: Development of the ecological portion of a restoration plan at the site will be contingent upon a number of factors and the collection of necessary information including:

- Topography of the site;

- Soil investigations;
- Hydraulic investigations; and
- Consultations with other partners and interested parties.

Plan development could be completed within a few months provided all of the above-mentioned information is collected and proper allocation of resources is provided. The Watershed Services Unit is not currently working on the development of a design plan for this project. Again, depending on the definition of "restoration" other elements of the plan such as recreational amenities may take more time to complete.

Finding #6: The property proposed for DNR acquisition has not been described to be used in a manner that would be inconsistent with the current Critical Area Resource Conservation Area designation. This designation permits resource utilization activities such as agriculture and forestry, passive recreation, and certain forms of low-intensity water access. These uses and minor development activities necessary to support these uses will not require the use of growth allocation. Although growth allocation will not be required, the Critical Area Commission will need to review and approve the master plan for restoration of the site in order to ensure consistency with the provisions of COMAR 27.02.05.

Finding #7: As discussed during the site visit, it appeared that there was general consensus that the proposed drainage easements on the property proposed to be acquired by the State are not desirable or necessary to accommodate the developer's need to use the restored streams to convey treated stormwater.

Finding #8: Although stormwater run-off will be treated and discharged to drainageways on the developer's property, these drainageways pass under Egypt Road through existing culverts. Stormwater will then be conveyed through the restored streams and created floodplains to the Little Blackwater River. Several recent severe storms in Dorchester County have resulted in flooding of the existing drainageways and ponded water in the fields. Approximately 70% of the property proposed to be acquired by the State is located within the 100-year floodplain of the Little Blackwater River. 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. The Little Blackwater River is significantly influenced by storm events, which can result in tidal waters flowing upstream and into the restored streams rather than in the opposite direction, which would be the norm. The complexity of this system will require special consideration during the design of the restoration plan.

Finding #9: The team is concerned with the time frames that have been imposed on this transaction, seemingly by the Seller. Based on comments and concerns raised by various DNR staff regarding both the process and the substance of this transaction, we are not persuaded that giving in to the Seller's demanded timeframe is justified. We have not seen sufficient evidence that the benefits of this acquisition are such that they justify acquiescing to Seller's deadline demands (e.g. Agreement to be signed by Friday, December 22, 2006). There is serious doubt as to whether there was adequate time being allowed for assessment (including time needed for post-site visit analysis) of the property by pertinent DNR staff.

We are also concerned that there will be insufficient time for DNR to fully and adequately review and comment on final - or near final - contract language. There are a number of contract terms that are still being negotiated or that are otherwise in limbo, and it is very important that DNR (i.e. executive and other staff) have sufficient time to fully review and approve the contract provisions. As we get closer to the signing deadline imposed by Seller, we fear that adequate review (by everyone who should conduct such review) will be compromised.

Finding #10: The team was somewhat disturbed at the very negative attitude exhibited by the developer. While it can be understood that he was upset at the Critical Area Commission's decision, it would seem that he could try to meet DNR halfway given our potential purchase. We are extremely concerned at the potential for heightened animosity and disputes that will arise during the restoration plan development.

~~~~~

**Recommendation #1:** The team recommends acquisition of the 740 acre tract and its subsequent restoration to an "excellent" Green Infrastructure rating.

**Recommendations #2:** The team recommends that the property not move forward to contract signing and Board of Public Works until additional discussions occur to gain full understanding of responsibilities of the developer and of DNR including public use and access, construction and funding of restoration and that minimal engineering and modeling occur to better understand the hydrology and limitations to that restoration (and hence DNR's abilities to meet proposed GI goal).

**Recommendation #3:** The term "restoration" should be fully defined, understood and agreed to in all documents prior to signing.

**Recommendation #4:** The team discourages the use of formal agreements with the developer or the City of Cambridge for construction and maintenance of water conveyances, utilizing rights-of-entry or other less formal devices that limit the forfeiture of land interest. We recommend working out a mutually agreed upon guidelines and procedures for maintenance by the City, perhaps with a Memorandum of Understanding.

**Recommendation #5:** The team recommends that development of the restoration plan be solely DNR's responsibility, not a communal effort of the entire task force. Wording should be changed to indicate that DNR will prepare the restoration plan "with the input of..." or "in consultation with..." the other stated organizations.

**Recommendation #6:** It is strongly recommended that the stream restoration element of the State's restoration master plan for the Blackwater Property be designed and constructed prior to the start of significant grading on the developer's property.

**Recommendation #7:** If the restoration task force requires professional A/E and/or construction services through DNR E&C, beyond what can be provided by the task force, then the following timeframes should be achievable:

- \* A/E services procurement 3 months
- \* Project design (project design, 10 - 12 months  
studies, permit acquisition, etc.)
- \* Construction services procurement 4 months

(Note -State procurements in excess of \$200,000 must be approved by the BPW)

One possible alternative for production of the restoration plan in a timely manner, if professional design services are required, would be utilizing the Developers design consultant based upon a negotiated fee creditable to the \$1,000,000 to \$2,000,000 restoration allocation.

**Recommendation #8:** An improvised boat ramp facility and numerous duck blinds exist along the Little Blackwater River. The improvised boat ramp is in the general location where the developer had proposed a public park and non-motorized boat launch. During the site visit, it was discussed that a canoe and kayak

launch in this location is proposed if the State acquires the land. It is likely that a small parking area would be needed in this location. Parking facilities must be located outside the 100-foot Buffer.

**Recommendation #9:** It is recommended that a 300-foot forested buffer be planted adjacent to the Little Blackwater River and Maple Dam Branch and at least a 100-foot buffer be planted on both sides of all restored tributary streams. Because the streams all run generally west to east across the property, it is recommended that additional areas of forest should be planted to provide connections between these restored stream corridors. In planning the size and location of forested areas on the property, the creation of forest areas that are a minimum of 300 feet in width, comprised primarily of deciduous species, and at least 50 acres in size have the potential to provide habitat for Forest Interior Dwelling Bird Species (FIDS). This habitat is declining rapidly in the northeastern United States, and aggressive efforts to create and conserve large forested tracts are necessary to maintain the existing songbird population.

**Recommendation #10:** While habitat for Delmarva fox squirrel is not located within the portion of the property proposed for acquisition it would be desirable to provide a viable wildlife connection from this habitat to the State Property, and to restore all or portions of the State Property to provide habitat for this species.

**Recommendation #11:** It is recommended that the acquired property be assigned to the Forest Service with a Chesapeake Forest Lands designation. However, due to the complexity of future restoration and management activities and the potential for significant passive recreational use, it is recommended that DNR apply an integrated team management approach that would involve the Forest Service(lead), Maryland Park Service, Wildlife and Heritage Service and Watershed Services as a minimum, with consultation by other DNR stakeholders and possibly the USFWS. (It should be noted that the Forest Service only offered management of the area immediately adjacent to the Chesapeake Forest lands tract on the southwest side of the property, roughly 100 acres of agricultural field.)

The team and I appreciate the opportunity to work collaboratively to review and assist in decision-making with regards to this potential acquisition. The easy part is done, now comes the work. Please let me know if you have any questions.

cc: Ron Guns, DNR Deputy Secretary  
Kristin Saunders-Evans, DNR Assistant Secretary, Management Services/Land & Water Conservation  
Charles Evans, DNR Assistant Secretary, Developmental & Federal Relations

Interdisciplinary team members:

|                                                                 |                                      |
|-----------------------------------------------------------------|--------------------------------------|
| Kevin Smith, DNR Restoration Services                           | Tim Brower, DNR Program Open Space   |
| Roger Medoff, OAG legal counsel to DNR                          | Mary Owens, Critical Area Commission |
| John Moulis, DNR Wildlife and Heritage Service                  | Scott Daniels, DNR Forest Service    |
| Greg Schenk, DNR Wildlife and Heritage Service                  |                                      |
| Raj Williams, DNR Public Lands Policy and Planning              |                                      |
| Glen Therres, DNR WHS/Natural Heritage Program Lead             |                                      |
| Dave Decker, DNR Engineering and Construction                   |                                      |
| Gary Setzer, MDE Water Management Administration                |                                      |
| George Beston, MDE Water Management Administration              |                                      |
| Nelson Reichart, DGS Assistant Secretary, Office of Real Estate |                                      |

Attachments: Individual team members comments as received.

**Comments Received from DNR and MDE staff visiting the  
Blackwater site on December 13, 2006**

**MEMORANDUM**

**TO: Gene Piotrowski**

**VIA: Kenny Miller**

**FROM: Kevin M. Smith**

**SUBJ: Blackwater Site (Dorchester County) – Restoration Opportunities**

**DATE: December 14, 2006**

On Wednesday, December 13, 2006, I attended the site visit to the parcel of agricultural land adjacent to the Blackwater Development area on Egypt Road in Dorchester County. This site is being considered for purchase by the Department of Natural Resources. My responsibility was to assess the site for restoration and enhancement potential.

**Existing Conditions**

The area investigated is bordered on the west by Egypt Rd. and extending approximately 2.5 miles in southerly direction and bordered on the east by the Little Blackwater River. The area is predominately agriculture (row crops). However there is a forested buffer along the river which generally varies in width from 100 to 200 feet. Most of the area in the forested buffer would likely be classified as jurisdictional wetland.

There are seven main ditches which transect the agricultural fields and convey flows to the river. These ditches also drain a significant watershed area west of the area in question. This drainage area is roughly 2 sq. miles. In addition there are many more leads (small ditches usually constructed every year or so to convey surface water off of the fields) also drain the agricultural fields on the site. Alterations to the historic hydrology of the site are very evident. Most of the ditches were created in what were once natural stream systems. These ditches were constructed to help drain the area along the west side of Egypt Road.

Soils at the site are characterized primarily as hydric (poorly drained) soil units (Othello, Elkton and Bibb soil series). Some of the higher areas contain non-hydric soils which are better drained (Mattapex and Mattapeake soil series). Most of the soils adjacent to the Little Blackwater River are characterized as Swamp.

**Restoration and Enhancement Opportunities**

This area affords many opportunities to improve ecologic conditions for both water quality and habitat. Specifically, opportunities present include:

*Ditch Restoration* – Opportunities to restore the ditches to functioning stream systems (with an adjacent floodplain area) are exceptional. This would be done by restoring natural sinuosity and dimension. Altogether there are opportunities to restore over **2.5 miles** of stream system and approximately **50 acres** of adjacent floodplain (assuming a floodplain width of 100 feet).

*Wetland Restoration* – Since most of the area is delineated as hydric soils, it is likely that many of these areas could be restored to functioning wetland by restricting of flow through the use of ditch plugs, low-level berms and grading modifications. A quick estimate shows that approximately **60+ acres** could be restored to wetlands relatively easily.

*Riparian Forest Buffer Enhancement* – It would be my recommendation that the existing forest buffer adjacent to the Little Blackwater River be extended to a minimum of 300 feet. Again, a rough estimate shows that this would increase riparian forest buffer by approximately **30 acres**.

### **Coordination with Other DNR Programs**

Due to the size and varied nature of the site, it lends itself to the incorporation of other DNR programs and initiatives. For example, opportunities to improve forest and wildlife attributes at the site are substantial. In addition, there are significant opportunities to provide for public access to the site, recreational opportunities and water access to the Little Blackwater River.

### **Ecological Benefits**

The current conditions at the site provide for little water quality improvements. The ditches run directly to the River and surface water flows and stormwater flows have little opportunity to be intercepted and retained by forests or wetlands. Restoring these natural attributes to the site would be of great benefit to the Little Blackwater River. In addition, the fish and wildlife habitat can be greatly improved.

While this site does not currently provide a high level of ecological benefit, it does present the opportunity for improvement. Given the intensity of development occurring in the upper reaches of the Little Blackwater River, improving the ecological function of this site would be worthwhile endeavor. Studies have shown that even limited development in headwater areas can have deleterious effects on living resources in receiving waterways. With that understanding, it would be my opinion that a high priority should be placed on any ecologic improvements to the upper Little Blackwater River whether it is on this site or others.

### **Time Table**

Development of a restoration plan at the site will be contingent upon a number of factors and the collection of necessary information including:

- Topography of the site;
- Soil investigations;
- Hydraulic investigations; and
- Consultations with other partners and interested parties.

Plan development could be completed within a few months provided all of the above-mentioned information is collected and proper allocation of resources is provided, The Watershed Services Unit is not currently working on the development of a design plan for this project. The information provided in this memorandum is for the purposes of assessing restoration and enhancement potential if the property is acquired by the Department.

Thank you for the opportunity to provide comment and if you have any questions, please feel free to call me at ext. 8797.

**Final Note:** Please understand that the recommendations provided above are based on information collected from one field visit and information available via other resources (Merlin, soils maps, historical maps, personal communications, etc.). The estimates are approximate and more field data would be necessary before definitive estimates can be made.

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## MEMORANDUM

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**TO:** Gene Piotrowski, Director  
Public Lands Policy & Planning

**FROM:** Dave Decker, Regional Engineer

**CC:** Jordan Loran, Director  
Engineering & Construction

**DATE:** December 21, 2006

**SUBJ:** Blackwater Development

Based on a review of the "Agreement of Sale", the "Land Use Agreement" and the site visit, I have the following comments:

It is difficult to evaluate the engineering aspects of the proposed acquisition without specific information about the proposed development, such as proposed drainage areas, channel invert elevations, etc., and without the proposed land use, if acquired.

Regarding the proposed drainage courses, there are few physical limitations to alteration of the channels to accommodate the proposed design flows. However, do we have an obligation to do so? If necessary and all project participants agree, the channels can be widened, deepened, realigned, etc. to meet the developers and the restoration task forces goals.

The documents indicate that the proposed on-site SWM will address the 10-year frequency design storm. Therefore, flow rates for larger frequency storms, due to the

development, will not be controlled to pre-development rates. The channels will either be designed to carry these larger storms or the storm water will flow in the over bank areas. The developer's representative mentioned that the site outfalls (Egypt Road culverts?) will be designed to carry the 100-year storm. If so, depending on the drainage area, the proposed culverts may be significantly larger than the existing culverts, and therefore, the proposed inverts of the new culverts may have to be significantly lower than the inverts of the existing channels. In that event, the developer may need us to provide significantly deeper/wider channels incised for some length downstream. It is up to the resource managers, and permit agencies to determine if they can live with this.

Regarding the proposed site restoration, if the restoration task force is responsible for design of the proposed drainage channels, and all agree that the channel cross section must be altered to accommodate the needs of the development, then the restoration design and construction timeframe become critical with respect to the development timeframe. This is based on the developers desire to break ground by March 2008, as discussed at the meeting, and the understanding that the channel work would have to be performed as Phase 1 of the construction. If the restoration task force requires professional A/E and/or construction services through DNR E&C, beyond what can be provided by the task force, then the following timeframes are typical:

- A/E services procurement 3 months
- Project design (project design, studies, permit acquisition, etc.) 10 – 12 months
- Construction services procurement 4 months

\*State procurements in excess of \$200,000 must be approved by the BPW

One possible alternative for production of the restoration plan in a timely manner, if professional design services are required, would be utilizing the Developers design consultant based upon a negotiated fee creditable to the \$1,000,000 to \$2,000,000 restoration allocation.

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Gene:

My comments and concerns are mainly process oriented.

I am very concerned with the time frames that have been imposed on this transaction, seemingly by the Seller. Based on comments and concerns that I have heard raised by various DNR staff regarding both the process and the substance of this transaction, I am not persuaded that giving in to the Seller's demanded timeframe is justified. I have not seen/heard sufficient evidence that the benefits of this acquisition are such that they justify acquiescing to Seller's deadline demands (e.g. Agreement to be signed by Friday, December 22, 2006). You, yourself, expressed serious

doubt as to whether there was adequate time being allowed for assessment (including time needed for post- site visit analysis) of the property by pertinent DNR staff.

I am very concerned that there will be insufficient time for DNR to fully and adequately review and comment on final - or near final - contract language. There are a number of contract terms that are still being negotiated or that are otherwise in limbo, and it is very important that DNR (i.e. executive and other staff) have sufficient time to fully review and approve the contract provisions. As we get closer to the signing deadline imposed by Seller, I fear that adequate review (by everyone who should conduct such review) will be compromised.

I am also concerned that DNR may be at a point where it feels that a decision to reject this transaction is not an option. I hope this is not the case. If it is, DNR is placing itself in a perilous position. As DNR's counsel on this transaction, I feel strongly that DNR should remain in a position to continue to conduct a full, thorough internal assessment of this pending acquisition and to turn down the acquisition if such assessment leads to conclusions that support/warrant turning the acquisition down.

Roger

Roger H. Medoff  
Assistant Attorney General  
Maryland Department of Natural Resources  
580 Taylor Avenue, C-4  
Annapolis, Maryland 21401  
Tel: 410-260-8354  
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Email: rmedoff@dnr.state.md.us

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December 15, 2006

**Memo:**

**To:** Blackwater Review Group  
**From:** Tim Brower, POS  
**Subject:** Blackwater-Thomas Land Group, LLC Site Tour

I appreciate the opportunity to tour the Thomas Land Group, LLC property (Blackwater) on 12/13/06; the meeting was helpful in clarifying certain questions regarding proposed easement alignments/ uses; however given the complexity of this transaction a continue redrafting of the "Agreement of Sale" and accompanying "Land Use Agreement" documents, I remained deeply concern at the pace at which this

negotiation is moving without adequate and proper allowances for review. Moreover, these documents continue to be a "moving target" making them extremely difficult to substantively review and comment upon with any degree of certainty. I found it somewhat perplexing that while the site tour was scheduled to iron out the details of several proposed linear easements traversing the property; apparently while the group was in transit to a follow up meeting with the City of Cambridge/owners representatives the entire discussion of easements was revised in favor of a briefly discussed strategy on site that provides that the State maintain inverts at the properties boundaries. Those that did not attend the meeting at City Hall will likely be unaware of the hastily negotiated changes. I understand the history of this negotiation, but relay this as an example of how lose some of the details of the proposed contract are; again I would recommend adequate time to firm up the details and properly review contract documents. At a minimum consensus should be reached prior to signing a contract; currently scheduled for next week. I remained concerned that the current terms of the contract tend to favor the property owner/developer; and that we are making concessions that may be scrutinized, but at a minimum should be reflected in the contract price of the property as these conditions may make the property less marketable.

The Department conducted a resource assessment/GreenInfrastructure analysis. The premise is that this site would require certain restoration to be of sufficient ecological significance to acquire 741 acres of the parent track for water quality and resource conservation. However, its relative size and location to other State owned lands may present management concerns. If the concept is that this project is a priority to safeguard wildlife habitat, and protect water quality of the Little Blackwater and ultimately the Chesapeake Bay; then decisions to allow the owner/developer to retain expanded easements, allow increased stormwater quantity off the development site, and otherwise utilize large portions to be relayed the State for the purpose of storm water management, should be comprehensively examined. New discussions to allow the owner to stipulate that the State maintain a number of invert elevations on its proposed purchase property similarly have a negative effect on its potential use and value to the market.

The purchase of this property seems to be predicated on its ability to be restored to a standard of GreenInfrastructure rating of "Excellent." The States ability to restore the property is directly correlated to the \$2,000,000 in restoration funds promised by the developer. The current contract allows those funds to be distributed as the development proceeds. This represents a risk to the State. I would strongly recommend that the proposed \$2,000,000 in be escrowed at the front end of any land purchase by the State. The escrowed funds would be paid to the owner/developer as he contributes to the restoration of the site.

There is another provision in the contract that promises additional restoration maintenance funds tied to a 50% split of the sale proceeds in excess of \$250,000 per lot up to \$300,000; with the remaining 50% promised to a 501-C-3 community foundation. The first flag should be that in the current market, 1 acre lots located just outside of Cambridge do not sell for more than \$250,000. Second flag is that there is no incentive for the developer to sell a lot between \$250,000-\$300,000 when he receives no additional proceeds between \$250,000 and \$300,000. Instead this would make for a great marketing

tool to advertise at the higher rate but be willing to discount the lots to \$250,000 for a prospective buyer. I asked representatives for the developer if a market analysis had been conducted indicating price ranges above \$250,000 and was told no.

Notwithstanding that the property needs to be properly appraised; the current figure that the owner seems to be set upon is flawed as it is tied to an earlier POS acquisition for the Franzoni parcel which is less than half the size of this tract and does not contain the same characteristics. This proposed 741-acre site has considerable acreage containing hydric soils limiting certain development potential. The current zoning allows for one home in 20 acres. As a side bar, I was somewhat concerned about the owners demanding nature at the meeting at City Hall; there should be some recognition in any negotiation that the buyer has the option not to purchase. If the State is to own this parcel purchased at full value; the State should guard its rights to develop the property to reach its objectives, not as an exclusive amenity for the neighboring development.

#### RECOMMENDATION:

My recommendation given the rich agricultural nature of this landscape, much of which is generational and minority, is that the best use of this land to meet all conservation objectives is to find a way to curtail potential development that may have detrimental effects on the surrounding natural resources, and keep the landscape as it is; in agriculture. The Little Blackwater is currently buffered by wooded forest, expansion of this buffer could be considered. The properties configuration, relative size and location are not conducive for management as State lands; priorities for fee acquisition should be given to projects that more closely align with Department objectives for management, that would provide better opportunities for access by the general public.

I would approach the project from a couple of different perspectives. I would enlist the help of ESLC or other land trusts to find a conservation buyer. The State could purchase the tract as considered, encumber the property with a conservation easement extinguishing development and protecting the natural resource features; subsequently sell it to a conservation buyer for an attractive price as the property's value will be significantly lowered as a result of the easement. Ultimately making it available to a larger market of potential buyers who otherwise would not be in the position to acquire the land for agricultural purposes. By nature the conservation buyer would be an excellent land steward and may be in a better position to manage the land; possibly more so than the State.

Recently, the Department was asked to consider a partnership to conserve the adjacent 300-acre Lindor Farm at the southern boundary of the Blackwater tract. ESLC has been working with a conservation buyer that appears to be willing to purchase this property (currently listed at \$3,000,000) and consider donating a conservation easement

for tax purposes. My understanding is that this same individual has purchase several other tracts statewide for similar reasons. Perhaps offering to purchase a conservation easement on the Lindor Farm will put the individual in a better position to consider a purchase of the 741 acre Blackwater at an extremely attractive price as a result of the State's easement overlay. Enlist our local and national land trust partners to consider other prospective buyers. The State's purchase transaction would be documented upfront to meet with all Legislative land surplus requirements, documented at the Board of Public Works; much like the current land swap project to create the Harriet Tubman Center in Dorchester which has received Legislative endorsement.

A second option may be to work in partnership with ESLC or another national land trust to allow the land trust to purchase the land in accordance with 5-903(e) of the Natural Resources Article and the Department's guidelines for land acquisition by land trusts. The Department would reimburse the Land Trust for appropriate costs associated with the transaction subject to appraisals and approval by the Maryland State Board of Public Works. If the Land Trust is in a position to leverage funds to acquire the property, the Department could assure funding to purchase a conservation easement prior to its subsequent sale to a conservation buyer or as part of the land trust settlement to acquire the property. I believe Rob Etgen would be receptive to such a discussion given their early involvement in this project. This strategy would meet the natural resource conservation objectives of this project and allow for a continued agricultural use of this property which may ultimately be better received by the community as a whole.

I'm prepared to assist the Department in any way that you wish.

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**Maryland Department of the Environment  
Water Management Administration  
Wetlands and Waterways Program  
1800 Washington Boulevard, Suite 430  
Baltimore, Maryland 21230**

**MEMORANDUM**

December 18, 2006

TO: Gene Piotrowski, Director  
Public Lands Policy and Planning  
Maryland Department of Natural Resources

FROM: Gary T. Setzer, Program Administrator  
Wetlands and Waterways Program  
Maryland Department of the Environment

SUBJECT: Blackwater Resort Communities Site Visit

Thank you for the opportunity to participate in the Blackwater Resort Communities Site Visit on December 13, 2006. As requested, I would like to offer the following comments on the proposed Restoration Plan, the Sales Agreement and the Land Use Agreement.

#### **SITE VISIT**

1. As you will recall, discussions during the site visit focused on the agricultural ditches on the property. These ditches were determined to be waters of the United States by the U.S. Army Corps of Engineers (Corps) and waters of the State by the Maryland Department of the Environment (MDE), which means that any restoration activities would be regulated by the Corps under Section 404 of the federal Clean Water Act and by MDE under the Nontidal Wetlands Protection Act and the Waterway Construction Act.
2. The Agreement of Sale outlined very precise permanent and nonexclusive easements for maintenance access of the agricultural ditches. These ditches should not be considered simply as conveyance structures with the sole purpose of draining the agricultural fields. Instead, the Department should consider the ditches as natural waterways in need of restoration. This direction is consistent with the pre-application guidance provided to Blackwater Resort Communities (Developer) by State and federal resource agencies, as well as the Critical Area Commission.

During the pre-application process, the Developer's plan included the restoration of these waterways as an integral part of golf course construction. At that time, the Developer never indicated a need to have access to the waterways after restoration for maintenance. More importantly, the regulatory agencies would never have permitted the kind of maintenance contemplated by the proposed easements. I suggest that the easements be eliminated by from the agreement and replaced with a simple right of entry, which allows non-mechanical removal of debris that may accumulate in the channel and floodplain after restoration is completed.

3. George Beston, Mitigation Section Chief for MDE's Wetlands and Waterways Program, believes that it is necessary to define the proposed land use for the site

before it is possible to determine how the site will be restored. George wrote the following in a December 14<sup>th</sup> email to you:

“I think that DNR needs to describe in more detail what proposed use of this land will be. Will it have trails, be managed like a park, or a forest, or returned to a natural state through some planting and succession? Will that description or plan satisfy what the developer expects and requires before he is willing to sell?”

“Technical staff needs to review the developers topo survey to determine a couple of things - How far can the inverts of the pipes under Egypt Road be lowered and still provide positive drainage for the west side and the road? Due to the flatness of the west side, when those ditches were originally dug and then when they were extended westward, outlet elevations had to have been carefully determined by Dorchester Soil Conservation District. Any excavation for wetlands, stream bottoms, or ponds on the east side of the road will have to consider the groundwater levels. If groundwater is intersected, there will be areas that will stay full of water and provide very little storage for any excess rainfall or stormwater.”

4. On December 14th, the Little Blackwater Advisory Group met to discuss biological baseline data for the Little Blackwater Watershed. During that meeting, I mentioned Wednesday's site visit and asked whether anyone from the U.S. Fish and Wildlife Service (USFWS) would like to work on the Restoration Team. The USFWS representatives suggested that DNR contact Mr. Al Rizzo. Mr. Rizzo works for John Wolflin at the Annapolis Field Office.

### **AGREEMENT OF SALE**

1. As a condition of approval for Blackwater Resort Communities, the City of Cambridge and Dorchester County required the Developer to collect environmental baseline data. The Agreement of Sale should transfer all of the data, as well as the final protocols used to collect the data to the State of Maryland.
2. Replace easement language with a simple right of entry allowing non-mechanical removal of debris that may accumulate in the channel and floodplain after restoration is completed.

### **Specific Comments on the Agreement of Sale**

1. On page 1, in the 4th paragraph in line 1, change “Seller” to Sellers’.
2. In Section 6.2 a., change “January 2, 2007” to “January 3, 2007”. This change assumes that the referenced date is for the Board of Public Works meeting.
3. In Section 10.1 viii, in line 2 change “has” to “have”.

**LAND USE AGREEMENT**

**Specific Comments on the Agreement of Sale**

1. On page 2, in Section 2.2 on line 7, replace "Ban" with "Bay".
2. On page 2, in Section 2.3 on lines 3 and 5, add "and Maple Dam Branch" after Little Blackwater River.
3. On page 4 add a space between Section 2.6 and Section 2.7.
4. Since development of this parcel focused on water quality impacts to Maple Dam Branch, the Little Blackwater River and the Blackwater Wildlife Refuge, the State should ensure that the remaining development parcels are developed in any environmentally sensitive manner. To this end, in Section 3, add the following:

3.3 To the extent possible, development of Parcel 1 shall incorporate the environmentally sensitive design features found in Chapter 5 of MDE's 2000 Maryland Stormwater Design Manual.

5. As in Number 4 above, in Section 4, add the following:

4.3 To the extent possible, development of Parcel 2 shall incorporate the environmentally sensitive design features found in Chapter 5 of MDE's 2000 Maryland Stormwater Design Manual.

Again, thank you for the opportunity to participate in the site visit. Please do not hesitate to contact me if you have any questions or need additional information. I look forward to assisting you in the future on this important project.

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Gene, I just responded to Raj on Friday with some details concerning this property, what we are willing to do is if you want it added to Chesapeake Forest that is fine, we can add the acreage to the existing Sustainable Forest Management Plan, which to me simplifies the process since the existing plan has already been through an extensive review. Within this plan there are several management layers in place to handle sensitive areas and restoration needs. If this property is added we can also handle the reforestation of the adjoining agriculture fields. The caveat being that since it would be added to CFL management it would then have to be available for future harvesting as per the Sustainable plan.

Kip

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

**From:** Daniels, Scott  
**Sent:** Monday, December 18, 2006 7:19 AM  
**To:** Piotrowski, Gene  
**Cc:** Powers, Kip  
**Subject:** RE: Blackwater site visit followup

Sure! Why not?

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

**From:** Piotrowski, Gene  
**Sent:** Thursday, December 14, 2006 1:26 PM  
**To:** Daniels, Scott  
**Subject:** RE: Blackwater site visit followup

How about the entire 740 acres being managed by Forest Service as part of Chesapeake?



*Gene Piotrowski, Director  
Public Lands Policy & Planning  
(410) 260-8405 office  
(410) 260-8404 fax  
(410) 858-0514 cell*

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

**From:** Daniels, Scott  
**Sent:** Thursday, December 14, 2006 1:18 PM  
**To:** Piotrowski, Gene  
**Cc:** Powers, Kip  
**Subject:** RE: Blackwater site visit followup

Gene,

Some general comments:

The statement made during our site visit that Egypt Road is prone to flooding is **highly inaccurate!** I've never seen it in my 24 years in the county.

If the developer is willing to pay for any tree planted buffers along the "restored ditches/streams", make it part of the contract of sale. The acreage in these buffers could be sizeable!

The area adjacent to the Chesapeake Forest on the southwest side of the property, roughly 100 acres of ag field, may want to be incorporated into the Chesapeake tract and managed accordingly.

Scott

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***CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS***

*1804 West Street, Suite 100*

*Annapolis, Maryland 21401*

## **MEMORANDUM**

**To:** Gene Piotrowski  
**From:** Mary Owens  
**Date:** December 14, 2006  
**Subject:** Blackwater Property Acquisition

---

Thank you for providing information about the proposed acquisition by the State of Maryland of the Blackwater Property owned by Thomas Land Group, LLC. The site visit and meeting with other representatives of the Department of Natural Resources on December 13, 2006 was informative, and I believe that many important issues were covered. Based on the information presented and the comments and recommendations discussed, Commission staff believes that the proposal to use the property as a type of "demonstration project" involving the restoration of ditched and drained agricultural lands to a natural low-lying coastal plain landscape consisting of natural streams with wetland and forested riparian habitat will have significant benefits to the State and the citizens of Maryland. The restoration activity can provide the following benefits:

- Provide a "restoration demonstration site" to educate a wide audience about the restoration of agricultural lands to a landscape that provides optimal water quality and habitat benefits.
- Provide an opportunity to utilize a variety of stream restoration techniques and to monitor the results in order to identify the most effective strategies for stream restoration activities on similar Eastern Shore sites characterized by hydric soils, low relief, and a high water table.
- Eliminate sediment and nutrient loads associated with the current agricultural operation.
- Establish forested buffers on 2.6 miles of tidal shoreline adjacent to Maple Dam Branch and the Little Blackwater River.
- Restore approximately two miles of channelized drainageways to create natural stream morphology, enhance stream substrate diversity, and improve and expand adjacent riparian habitat.
- Establish forested buffers on both sides of two miles of restored streams.
- Create habitat for the federally-listed endangered Delmarva Fox Squirrel.

### **Commission Review and Growth Allocation**

Based on the discussion during the site visit, it is my understanding that the State does not propose to develop or use the Blackwater Property in a manner that would be inconsistent with the current Resource Conservation Area designation. This designation

permits resource utilization activities such as agriculture and forestry, passive recreation, and certain forms of low-intensity water access. These uses and minor development activities necessary to support these uses will not require the use of growth allocation.

The existing ditches currently convey stormwater from Egypt Road and from the property across Egypt Road that the developer will be retaining and developing. Stormwater associated with the development will be managed for quantity and quality on the developer's property and will be discharged to the existing watercourses on his property; however, this treated stormwater will ultimately be conveyed onto the Blackwater Property. The developer will be required to ensure that stormwater resulting from the proposed development is not discharged at a higher rate than that which currently exists. The developer has requested that the State coordinate the restoration of the watercourses with his stormwater design in order to maintain the appropriate elevation for positive drainage. This accommodation will not require the use of growth allocation.

Although growth allocation will not be required, the Critical Area Commission will need to review and approve the master plan for restoration of the site in order to ensure consistency with the provisions of COMAR 27.02.05.

#### **Stormwater Discharge**

Although stormwater run-off will be treated and discharged to drainageways on the developer's property, these drainageways pass under Egypt Road through existing culverts. Stormwater will then be conveyed through the restored streams and created floodplains to the Little Blackwater River. Several recent severe storms in Dorchester County have resulted in flooding of the existing drainageways and ponded water in the fields. Approximately 70% of the property proposed to be acquired by the State is located within the 100-year floodplain of the Little Blackwater River. 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. The Little Blackwater River is significantly influenced by storm events, which can result in tidal waters flowing upstream and into the restored streams rather than in the opposite direction, which would be the norm. The complexity of this system will require special consideration during the design of the restoration plan.

#### **Drainage Easements**

As discussed during the site visit, it appeared that there was general consensus that the proposed drainage easements on the property proposed to be acquired by the State are not desirable or necessary to accommodate the developer's need to use the restored streams to convey treated stormwater. All provisions in the Agreement of Sale and Land Use Agreement should be amended to remove references allowing the developer to maintain, construct, or improve pipes or drainageways on the property to be acquired by the State. It should be specified in the Agreement of Sale that the developer has agreed to manage stormwater quality and quantity associated with a 10-year storm (as opposed to the local requirement to manage for the 2-year storm) on his property, and that stormwater from the 10-year storm will not be discharged to the watercourses at a higher rate than that which currently exists.

There was also discussion that the City of Cambridge may have concerns about the elimination of the drainage easements because of the potential need to maintain the drainageways to eliminate the risk of flooding during a storm event. It was determined that once the drainageways are restored to a natural stream configuration, with ample surrounding wetlands and floodplain areas, major maintenance activities involving heavy equipment and significant land disturbance will not be necessary. The City will coordinate with the Department of Natural Resources to determine appropriate right-of-entry provisions to allow necessary activities in case of an emergency.

### **Coordination**

The Little Blackwater River and Maple Dam Branch are significant components of a larger ecosystem, the Blackwater National Wildlife Refuge. During the Commission's review of the growth allocation request, correspondence dated July 11, 2006 from Glenn Carowan, John Wolflin, and Steve Minkkien of the U.S. Fish and Wildlife Service (USFWS) indicated significant concerns by the Refuge, which 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. Although some of the USFWS concerns may have been ameliorated to some extent because of the proposed acquisition, they are currently engaged in a comprehensive study of the Little Blackwater River and should be included in discussions about the restoration plan.

During the Commission's review of the project, representatives of the Chesapeake Bay Foundation provided extensive comments and recommendations about the proposal. The Foundation also played an extremely significant role in influencing the public's perception of the project. It is my understanding that representatives of the Foundation have been involved in some of the Department's discussions about the acquisition. The Foundation is uniquely situated to provide public outreach and solicit public support of the Department's efforts; therefore, the continued involvement of the Foundation could be beneficial to the Department's restoration planning efforts.

### **100-foot Buffer**

The project borders Maple Dam Branch and the Little Blackwater River for approximately 2.6 miles or 14,000 linear feet. There are several watercourses on the property that drain into the Little Blackwater River. There are approximately 73 acres within the 100-foot Buffer from adjacent tidal waters, tidal wetlands, and tributary streams, excluding any modifications to the streams to restore stream sinuosity. If at all possible, the 100-foot Buffer adjacent to Maple Dam Branch and the Little Blackwater River should be expanded to 300-feet as this width has been determined to provide significantly enhanced water quality and habitat benefits.

### **Hydric Soils**

There are extensive areas of hydric soils on the project site, some of which are contiguous to the 100-foot Buffer of Maple Dam Branch, the Little Blackwater River, its adjacent nontidal wetlands, and the streams feeding the Little Blackwater River. The soils map indicates that roughly more than half of the Critical Area portion of the site is characterized by hydric soils. Generally hydric soils indicate wetland areas and areas where there is a seasonally high water table. The Commission heard testimony that extensive areas of the site are slow to infiltrate and prone to flooding. Hydric soils are generally conducive to the creation of ponds and wetlands.

### **Threatened and Endangered Species**

Specific comments from the Heritage Division of the Department of Natural Resources were received by the Commission on June 12, 2006, and Department staff has determined that because American lotus is no longer listed as a threatened or endangered species by the State of Maryland, no conservation actions are required for that species. They also commented that the developer is working with the U.S. Fish and Wildlife Service to resolve issues regarding conservation of Delmarva Fox Squirrel habitat. The habitat for this species is not located within the portion of the property proposed for acquisition; however, it would be desirable to provide a viable wildlife connection from this habitat to the State Property, and to restore all or portions of the State Property to provide habitat for this species.

The Department's correspondence noted that there are no other known threatened or endangered species on or in the vicinity of this property; however, the property has not been surveyed recently. During the Commission's review of the project, comments were received from property owners with knowledge of the area that there may be other threatened and endangered species or species in need of conservation in the tidal and nontidal wetlands on the site. Additional survey work may be warranted to determine if any of these species exist, so that the restoration activities could be designed appropriately.

Preliminary data collected by the U.S. Fish and Wildlife Service indicate the Little Blackwater River is in good shape for fish diversity. American eels, which are proposed for listing as an endangered species, are using the River along with other species. The water quality and habitat needs of this species should be considered in the restoration plan.

### **Reforestation**

The Critical Area portion of the property has minimal forest cover, most of which is located adjacent to the Little Blackwater River. The largest tract of forest is located at the south end of the property, outside the Critical Area. Scattered large trees exist around the Connolly residence (located near the center of the property near the proposed conference center) and driveway and there is a second planted lane extending from Egypt Road to the area proposed for the canoe and kayak launch. It is recommended that a 300-foot forested buffer be planted adjacent to the Little Blackwater River and Maple Dam Branch

and at least a 100-foot buffer be planted on both sides of all restored tributary streams. Because the streams all run generally west to east across the property, it is recommended that additional areas of forest should be planted to provide connections between these restored stream corridors. In planning the size and location of forested areas on the property, the creation of forest areas that are a minimum of 300 feet in width, comprised primarily of deciduous species, and at least 50 acres in size have the potential to provide habitat for Forest Interior Dwelling Bird Species (FIDS). This habitat is declining rapidly in the northeastern United States, and aggressive efforts to create and conserve large forested tracts are necessary to maintain the existing songbird population.

**Shoreline Access and Water-Dependent Facilities**

An improvised boat ramp facility and numerous duck blinds exist along the Little Blackwater River. The improvised boat ramp is in the general location where the developer had proposed a public park and non-motorized boat launch. During the site visit, it was discussed that a canoe and kayak launch in this location is proposed if the State acquires the land. It is likely that a small parking area would be needed in this location. Parking facilities must be located outside the 100-foot Buffer.

**Timing of Restoration Activities**

There was some discussion during the meeting with the developer and the City about the timing of the restoration activities and the start of construction activity. Massive site grading that is likely to be a necessary part of the developer's project can result in unstable soil conditions, erosion, and sedimentation. It is strongly recommended that the stream restoration element of the State's restoration master plan for the Blackwater Property be designed and constructed prior to the start of significant grading on the developer's property.

Thank you for the opportunity to participate in the State's analysis of the Blackwater Property and to provide comments on the acquisition and restoration plan. If you have any questions about these comments, please feel free to call me at (410) 260-3480.

\*\*\*\*\*  
\*\*\*\*\*

**ADDITIONAL COMMENT FROM Mary Owens, Critical Area Commission:**

Gene and George,

I agree with your concerns about the lowering of the inverts to accommodate the developers' needs. I think it is quite likely that groundwater could be intercepted very close to the surface.

LeeAnne Chandler has had several conversations with Jim Newcomb about the property, and he told her that NRCS was not involved in the planning and design of the ditches that are out there now. He also suggested that the ditches may not be providing the optimum situation for drainage from an agricultural perspective.

Just a little more to think about.

Mary

\*\*\*\*\*  
\*\*\*\*\*

**Comments from Raj Williams, DNR PLP&P:**

Gene:

The only justification, from a land use planning perspective, for the Department to purchase the 730 acres of Blackwater site is that it borders Chesapeake Forest tract #4237 that has a total acreage of 413 acres. Other than this the parcel appears to be "left over" land from the larger 1000 acre parcel that will contain the proposed Blackwater Resorts development and which has Critical Area and other wetland limitations that should protect the "left over" site in the long run if current rules are enforced. Further, the site would better serve the needs of the adjacent development and the City of Cambridge if it is acquired and developed by the City or County in an environmentally sensitive manner to provide water access and other limited recreational improvements. These are my two cents worth of comments. Thanks for the opportunity to provide these.

- Raj

\*\*\*\*\*  
\*\*\*\*\*

**Comments from Nelson Reichart, DGS , Sally Lowe, DGS and Roger Medoff, OAG/DNR:**

I haven't voiced many opinions on this transaction but, I think that DNR is doing itself a disservice by not having a responsible party to maintain the ditches across its land. By not, it may well force DNR to use its operating funds to maintain the quality and quantity of drainage water from the property of others to the Blackwater River. Also, remember that once the retained property is developed, there will be no developer to look to for future compliance. There will only be 327 individual home owners.

>>> Sally Lowe 12/14/2006 9:40 am >>>

You can make a right of entry situation work, however, it is something they request if they need it, and for temporary limited purposes; but puts no affirmative long term or permanent obligation on them, or their successors, to in anyway maintain or upkeep the areas or bear the cost of maintaining/upkeep. You will be accepting that as the State's burden if you do not do the easements. Personally, it makes no difference to me, but for the record I'm flagging that you should keep that in mind that a right of entry does not give the State the same protections and benefits. As far as an MOU with the developer, it would be my opinion that it is an inappropriate method, but I'm assuming it would be done at a point that it wouldn't involve me so that would be your choice.

>>> "Medoff, Roger" <[RMedoff@dnr.state.md.us](mailto:RMedoff@dnr.state.md.us)> 12/14/2006 8:56 am >>>

Sally -

I'll call you after 10:00 to discuss. The concept is that access for maintenance (by Seller and his successor - the City) will likely be needed but will be accomplished via a right of entry and/or an MOU regarding such, rather than by permanent easements.

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](mailto:rmedoff@dnr.state.md.us)

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

From: Sally Lowe [<mailto:Sally.Lowe@dgs.state.md.us>]  
Sent: Thursday, December 14, 2006 8:41 AM  
To: Evans, Charlie; Price, Chip; Piotrowski, Gene; Saunders, Kristin M;  
Guns, Ron; Medoff, Roger  
Cc: Jerry Krebs; Nelson Reichart; Brower, Tim  
Subject: Blackwater

Good morning. I got several voice mails about omitting the drainage easements from the deal. I just want to put in writing a reminder to all of you that if you don't have easements then the developer has neither the right nor the obligation to take care of the drainage areas, so that maintenance responsibilities as needed, if any, will be DNR's responsibility and cost. I'm assuming that it has been determined that (i) the developer will not be required to come in and do any adjustments, or modifications, etc... to the existing drainage areas with reference to his development, in other words that he is not worried about a future requirement that would necessitate a need to come on to our land for any purposes regarding drainage, and (ii) that the DNR sees no need in requiring him or his successor to in anyway to maintain those areas in any particular condition, and that DNR is satisfied in taking care of those matters as needed and any cost related thereto. If someone would send me written confirmation of this, that would be great. Thanks. Sally

Sally A. Lowe  
Office of the Attorney General  
Department of General Services  
300 W. Preston Street, Rm 608  
Baltimore, Maryland 21012  
410-767-1825  
410-333-7654 (fax)  
[slowe@dgs.state.md.us](mailto:slowe@dgs.state.md.us)

\*\*\*\*\*  
\*\*\*\*\*

**Comments from George Beston, MDE:**

Hi Gene:

On this site, what does "restoration" mean?

I think that DNR needs to describe in more detail what proposed use of this land will be. Will it have trails, be managed like a park, or a forest, or returned to a natural state through some planting and succession? Will that description or plan satisfy what the developer expects and requires before he is willing to sell?

Technical staff needs to review the developers topo survey to determine a couple of things- How far can the inverts of the pipes under Egypt Road be lowered and still provide positive drainage for the west side and the road? Due to the flatness of the west side, when those ditches were originally dug and then when they were extended westward, outlet elevations had to have been carefully determined by Dorchester Soil Conservation District. Any excavation for wetlands, stream bottoms, or ponds on the east side of the road will have to consider the groundwater levels. If groundwater is intersected, there will be areas that will stay full of water and provide very little storage for any excess rainfall or stormwater.

>>> "Piotrowski, Gene" <GPIOTROWSKI@dnr.state.md.us> 12/14/06 8:53 AM  
>>>

I appreciate your participation in the site visit yesterday. I've taken some notes of discussion points made during the field portion with staff and also the sit down with the City and the developer. However, as we discussed, I need your analysis of issues, concerns and recommendations so that I can consolidate and report to the Secretary by COB Friday 12/15. Consider what the land designation and management assignment, restoration opportunities and obstacles, issues with process, timing, funding and community expectations. Review the Agreement of Sale and the Land Use Agreement provided previously and make any suggestions for changes, deletions, etc. Please provide your analysis to me asap but no later than 10 am on Friday. Let me know if you have any questions. Thanks.

*Vitale - approve request subject to conditions set forth (attached) Prettyman see u/c*

**Critical Area Commission**

**STAFF REPORT  
October 5, 2005**

**APPLICANT:** City of Cambridge

**PROPOSAL:** Blackwater Crossing Growth Allocation

**JURISDICTION:** City of Cambridge

**COMMISSION ACTION:** Vote

**COMMISSION PANEL:** Cathy Vitale, Chair, Kevin Anderson, Meg Andrews, Allison Ladd, and Jim McLean

**PANEL RECOMMENDATION:** Pending Public Hearing and Panel Discussion

**STAFF:** Mary Owens

**APPLICABLE LAW/  
REGULATIONS:** COMAR 27.01.02.06 Location and Extent of Future Intensely Developed and Limited Development Areas

**DISCUSSION:**

On January 6, 2005, the City Commissioners of Cambridge approved the use of 25.74 acres of growth allocation and adopted relevant findings. This use of growth allocation will change the Critical Area designation of Parcel 6002 on Tax Map 307 from Resource Conservation Area (RCA) to Intensely Developed Area (IDA). The property is located within the municipal boundaries of the City of Cambridge, and the City had sufficient growth allocation acreage to accommodate this project.

**Project Description**

The Blackwater Crossing Project is located in the southern portion of the City of Cambridge at the intersection of Maple Dam Road and Southside Avenue and across Maple Dam Road from Cambridge South Dorchester High School. The project site totals 131.51 acres with 25.74 acres within the Critical Area. The Critical Area designation is Resource Conservation Area (RCA), and the use of growth allocation is proposed to change the designation to Intensely Developed Area (IDA). The entire acreage of the Critical Area portion of the site will be changed from RCA to IDA.

The project is proposed to be developed in four phases and includes 139,400 square feet of commercial space, 442 townhouse units, 330 condominiums/apartments/townhouse flats, and 21 single-family residential units. The project also includes a community center and active recreation area. The Critical Area portion of the property includes part of the commercial space, 147 condominium units, and approximately 11 townhouse units.

The Cambridge City Commissioners addressed the growth allocation guidelines in their review of the project. Although the proposed growth allocation will be located in the RCA, and not adjacent to existing LDA or IDA, the City Commissioners believe the intent of this guideline has been met because the property is located across Maple Dam Road from South Dorchester High School. Although the property was designated RCA, the High School property is developed with the school buildings, athletic fields, and parking areas. The Commissioners also determined that the growth allocation will not adversely affect the defined land uses of the RCA and will minimize impacts to any Habitat Protection Areas (HPA). The only HPA on the site is the 100-foot Buffer, and the Commissioners believe that the proposed enhancement of the headwaters of the Little Blackwater River will not adversely affect the Buffer and will provide habitat and water quality benefits.

### 100-foot Buffer

The headwaters of the Little Blackwater River, which flows into the Blackwater River, are located on this site. These two rivers and their adjacent tidal and nontidal wetlands comprise a significant portion of the Blackwater National Wildlife Refuge. The refuge includes over 27,000 acres of marsh and upland permanently protected by the federal government in order to provide the necessary habitat for healthy and sustainable populations of a variety of fish and wildlife species. Another goal of the refuge is to assure that the best examples of unique wildlands are identified, managed, and protected in order to maintain their unique natural character.

The Critical Area Criteria state that new IDAs and LDAs should be located in order to minimize their impacts to Habitat Protection Areas and in an area and manner that optimizes benefits to water quality. The 100-foot Buffer is a designated Habitat Protection Area and appropriate protection measures will be necessary to ensure that this area is protected and appropriately maintained. There are some hydric soils on the property in the Critical Area, but these are generally located within the 100-foot Buffer, so no expansion of the Buffer for contiguous sensitive areas is proposed.

This project involves intense development and includes approximately 800 new residences. It is likely that all open space areas on the property will be heavily used. It is not clear if the 100-foot Buffer is included as part of the City's park and open space acreage requirements for the project; however, it is stated in the "Report of Environmental Site Assessment, Blackwater Crossing" that the Buffer is to be used and developed as a public park. In general, the Commission has not been supportive of proposals to use the 100-foot Buffer to meet active recreation space requirements because this use is generally not compatible with the habitat and water quality functions of the Buffer. The applicant is currently developing a Buffer Management Plan that will be available at the Panel meeting. The Plan will provide additional information about the public use aspect of the Buffer as well as information regarding how the 100-foot Buffer is proposed to be established and maintained. Additional information regarding the long-term management and maintenance will also be provided.

### Other Habitat Protection Areas

Comments from the Heritage Division of the Department of Natural Resources (DNR) have been provided to the Critical Area Commission. The Department of Natural Resources letter states that the Little Blackwater River is designated as a Wetland of Special State Concern. In general, the required 100-foot stream Buffer is considered adequate protection for these areas. The applicant has been coordinating with the Department of the Environment regarding the restoration and protection of this area.

The letter from DNR also stated that the forested portions of the site are potential habitat for the Delmarva Fox Squirrel and Forest Interior Dwelling Bird Species (FIDS). These forested areas are located on the eastern portion of the property, outside of the Critical Area; therefore the applicant will work directly with DNR and the U.S. Fish and Wildlife Service regarding appropriate conservation measures. Only limited clearing is proposed in this area.

### Reforestation

The Critical Area portion of the property is essentially an open field; however, there are some scattered large trees along the Little Blackwater, around the existing residence, and around the existing family cemetery plot. It is not clear from the plans if any clearing is proposed. The award of growth allocation will change the Critical Area designation of the property to IDA, and this classification does not include specific afforestation or reforestation standards. Applicants are required to address local provisions that relate to the enhancement of forest and woodland resources in the IDA. Recommendations include establishing permeable areas in vegetation, and designing and implementing projects to minimize destruction of forest and woodland vegetation. The applicant is proposing to satisfy these requirements by extensive landscaping on the site and the implementation of a Buffer Management Plan along the Little Blackwater River.

### Stormwater Management

The applicant has performed the 10% pollutant removal requirement calculations and determined that the removal requirement is 12.99 pounds of phosphorus. Four stormwater treatment practices, wet ponds, are proposed to be located within the Critical Area portion of the site and will treat run-off from approximately 72% of the Critical Area portion of the site. This will result in 8.82 pounds of pollutant removal. Treated stormwater will be discharged into the stream at four locations. The outfalls will be 18" to 24" pipes discharging on rip-rap pads. All stormwater facilities will be designed in accordance with the standards in the 2000 Maryland Stormwater Design Manual prepared by MDE. The remaining 4.17 pounds of pollutant removal will be satisfied through a stormwater offset involving the restoration of 1,500 linear feet of the stream (headwaters of the Little Blackwater River). Approximately half of the restoration area is located outside the Critical Area. The Commission's *Critical Area 10% Rule Guidance Manual* includes restoration of channelized streams as an acceptable innovative offset option. The enhancements include bank and riparian buffer planting, bank stabilization, discharge management, and flow control and deflection.

meeting  
C stream  
restoration  
activity

**Riparian Access and Shore Erosion Control**

The project does not include any water or shoreline areas that are suitable for riparian access; therefore no piers or boating facilities are proposed. No shore erosion control measures are proposed.

As outlined above, the project includes a stream restoration component. The applicant is also required to establish the 100-foot stream Buffer in natural vegetation. A Stream Restoration Concept Plan was recently submitted to the Commission that included a Buffer Management Plan; however, a full review of the submittal is not complete. The project does include a walkway, portions of which are within the 100-foot Buffer that parallels the bank of the Little Blackwater River. The information provided does not indicate the width of the walkway or the proposed construction materials. The current walkway design includes three pedestrian bridges that cross the Little Blackwater River, two of which are located within the Critical Area. Historically, the Commission has not supported walkways that parallel the shoreline and are located entirely within the Buffer, particularly when a site is large enough to accommodate portions of the walkway outside the Buffer.

Not a public park  
But has public access

**Sewage Treatment**

The project will be served by public water and sewer. The City of Cambridge has determined that there exists adequate capacity at the existing plant to provide service to the project.

Conditions:  
To clarify  
stream restoration  
Coordinate w/ MOE  
Include posting

**BLACKWATER CROSSING GROWTH ALLOCATION**  
**DRAFT CONDITIONS**  
**October 5, 2005**

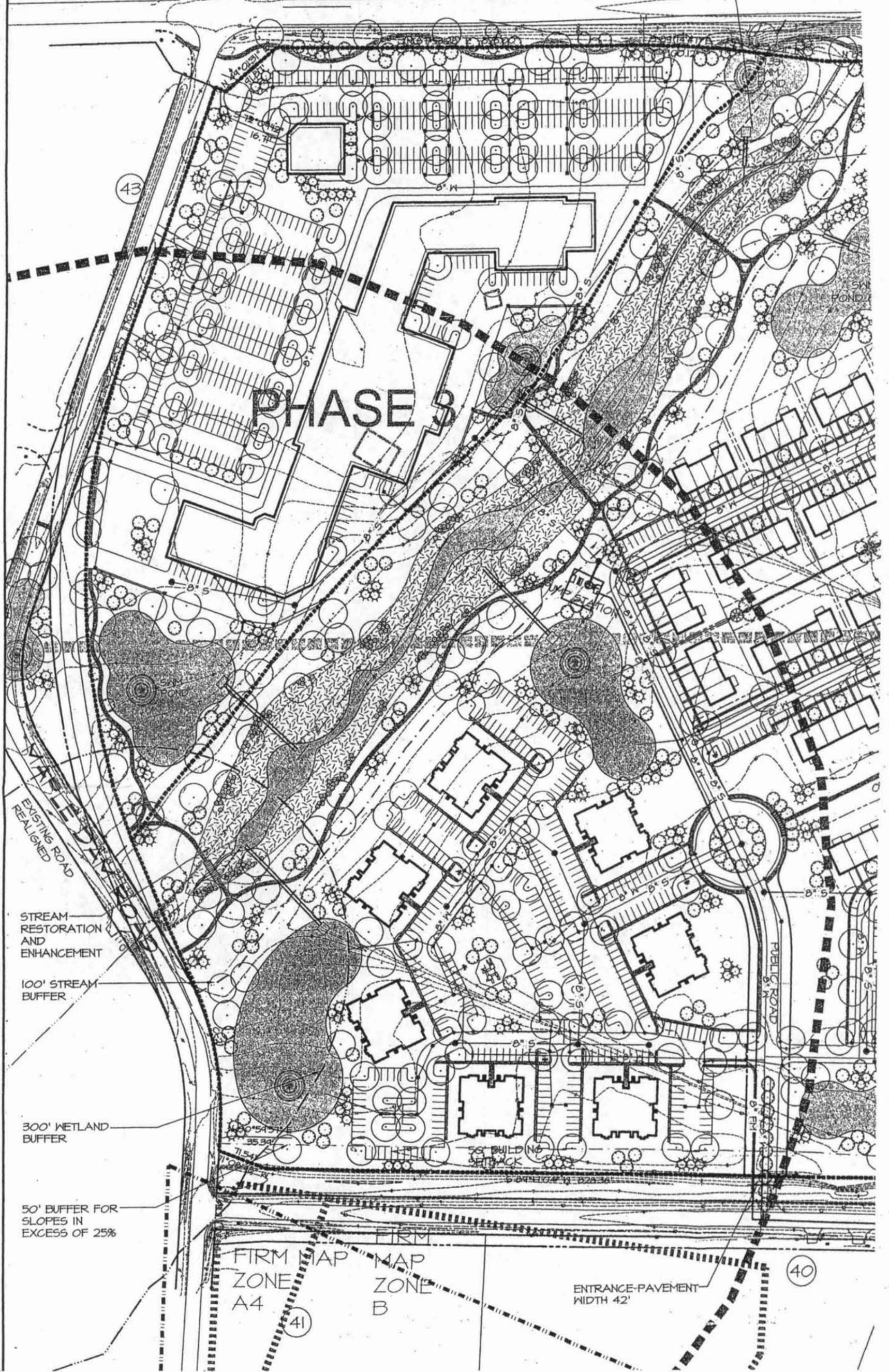
1. The developer will enhance the existing stream on the project site in accordance with recommendations from the Maryland Department of the Environment, the U. S. Army Corps of Engineers, and the Critical Area Commission. A detailed stream restoration plan will be submitted to the Commission staff, and if necessary to the full Commission, for final review and approval, and the applicant will obtain all required State and federal authorizations and permits

The restoration activity will include planting and other management measures necessary to provide forest vegetation that assures the water quality and wildlife habitat functions of the 100-foot Buffer on each side of the stream. The restoration may include the replacement or removal of existing culverts or other obstructions and alteration of the existing channel to restore it to as natural a condition as possible. Careful hydrologic and hydraulic modeling, as well as careful design, will be required to ensure that a stable, non-erosive system is created, and this work shall be performed by qualified professionals with experience in stream restoration.

Disturbance to existing natural vegetation and the alteration of existing grades and topography shall be the minimum necessary to accomplish the goals of the stream restoration activity. The 100-foot Buffer shall not be graded and disturbed in order to accommodate changes in elevation associated with the placement of fill necessary to accommodate the proposed development project. Proposed stormwater outfalls discharging to the stream shall be included in the stream restoration and shall be located, configured, and designed to minimize adverse impacts to the stream and the 100-foot stream Buffer.

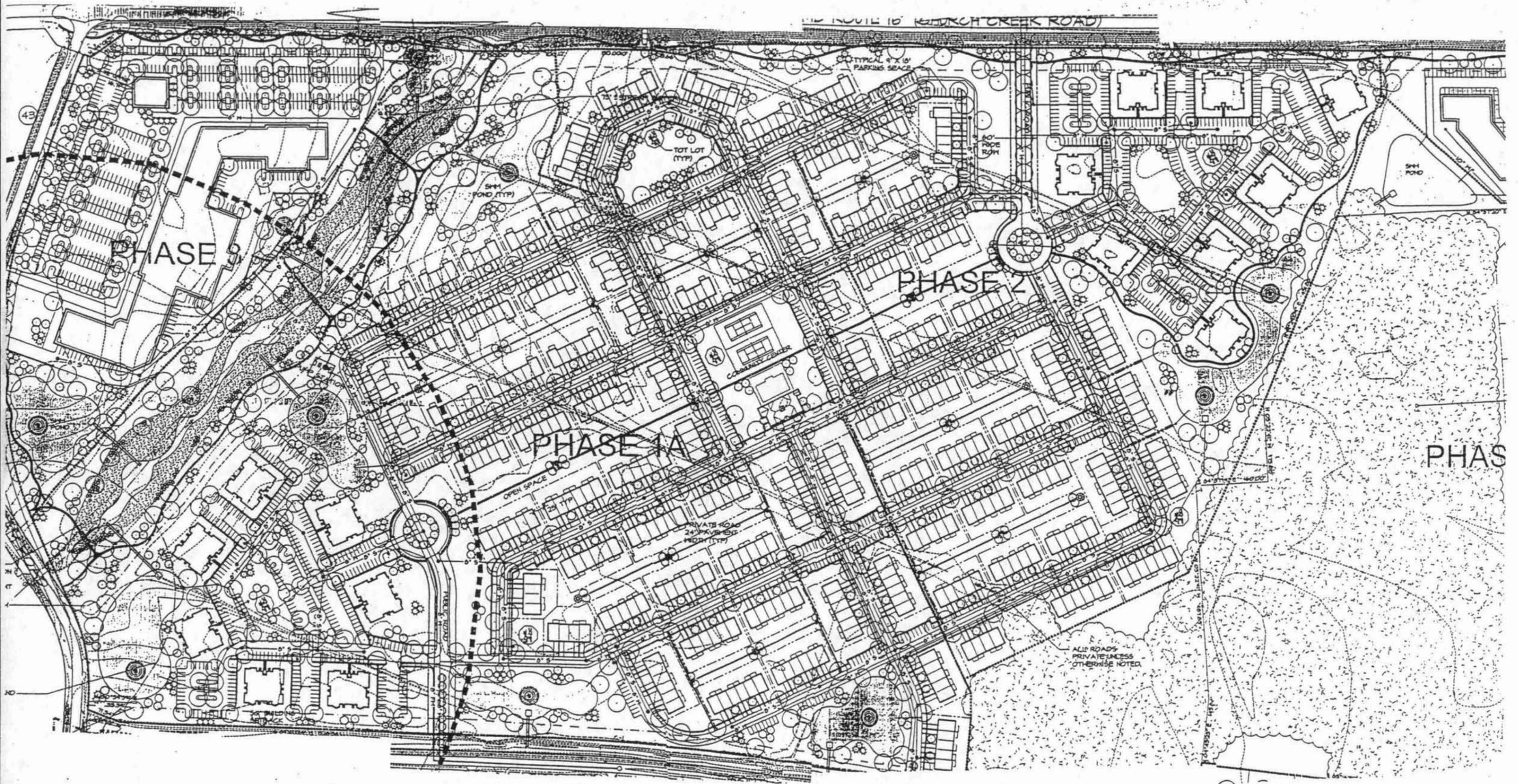
Access across the restored stream and within the Buffer shall be the minimum necessary to provide reasonable access through the area. There shall be ~~only one~~<sup>two</sup> pedestrian crossings<sup>s</sup> over the stream within the Critical Area portion of the project, and all pathways shall be no more than 10 feet wide.

2. A detailed Stormwater Management Plan will be submitted to the Commission staff, and if necessary to the full Commission, for final review and approval. The current Plan includes the restoration of a channelized stream as an innovative offset option necessary to satisfy the 10% pollutant removal requirements. Commission staff shall seek comments on this proposal, and the Plan as a whole, from the Maryland Department of the Environment.



# BLACKWATER CROSSING GROWTH ALLOCATION

# BLACKWATER CROSSING GROWTH ALLOCATION



Circuit Court for Dorchester County, Maryland

City or County

### CIVIL-NON-DOMESTIC CASE INFORMATION REPORT

**Directions:**

**Plaintiff:** This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111(a). A copy must be included for each defendant to be served.

**Defendant:** You must file an Information Report as required by Rule 2-323(h).

**THIS INFORMATION REPORT CANNOT BE ACCEPTED AS AN ANSWER OR RESPONSE.**

FORM FILED BY:  PLAINTIFF  DEFENDANT CASE NUMBER: \_\_\_\_\_ (Clerk to insert)

CASE NAME: Egypt Road LLC <sup>Plaintiff</sup> v Department of Natural Resources <sup>Defendant</sup>

JURY DEMAND:  Yes  No Anticipated length of trial: \_\_\_\_\_ hours or 1 days

RELATED CASE PENDING?  Yes  No If yes, Case #(s), if known: \_\_\_\_\_

Special Requirements?  Interpreter/communication impairment Which language \_\_\_\_\_  
(Attach Form 1-332 if Accommodation or Interpreter Needed) Which dialect \_\_\_\_\_

ADA accommodation: \_\_\_\_\_

| NATURE OF ACTION<br>(CHECK ONE BOX)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                    | DAMAGES/RELIEF                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>TORTS</b><br><input type="checkbox"/> Motor Tort<br><input type="checkbox"/> Premises Liability<br><input type="checkbox"/> Assault & Battery<br><input type="checkbox"/> Product Liability<br><input type="checkbox"/> Professional Malpractice<br><input type="checkbox"/> Wrongful Death<br><input type="checkbox"/> Business & Commercial<br><input type="checkbox"/> Libel & Slander<br><input type="checkbox"/> False Arrest/Imprisonment<br><input type="checkbox"/> Nuisance<br><input type="checkbox"/> Toxic Torts<br><input type="checkbox"/> Fraud<br><input type="checkbox"/> Malicious Prosecution<br><input type="checkbox"/> Lead Paint<br><input type="checkbox"/> Asbestos<br><input type="checkbox"/> Other _____ | <b>LABOR</b><br><input type="checkbox"/> Workers' Comp.<br><input type="checkbox"/> Wrongful Discharge<br><input type="checkbox"/> EEO<br><input type="checkbox"/> Other _____                     | <b>A. TORTS</b><br><b>Actual Damages</b><br><input type="checkbox"/> Under \$7,500 <input type="checkbox"/> Medical Bills<br><input type="checkbox"/> \$7,500 - \$50,000 \$ _____<br><input type="checkbox"/> \$50,000 - \$100,000 <input type="checkbox"/> Property Damages<br><input type="checkbox"/> Over \$100,000 \$ _____<br><input type="checkbox"/> Wage Loss<br>\$ _____ |                                                                                                                                                                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>CONTRACTS</b><br><input type="checkbox"/> Insurance<br><input type="checkbox"/> Confessed Judgment<br><input type="checkbox"/> Other _____                                                      | <b>B. CONTRACTS</b><br><input type="checkbox"/> Under \$10,000<br><input type="checkbox"/> \$10,000 - \$20,000<br><input type="checkbox"/> Over \$20,000                                                                                                                                                                                                                           | <b>C. NONMONETARY</b><br><input checked="" type="checkbox"/> Declaratory Judgment<br><input type="checkbox"/> Injunction<br><input type="checkbox"/> Other _____ |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>REAL PROPERTY</b><br><input type="checkbox"/> Judicial Sale<br><input type="checkbox"/> Condemnation<br><input type="checkbox"/> Landlord Tenant<br><input type="checkbox"/> Other _____        |                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>OTHER</b><br><input type="checkbox"/> Civil Rights<br><input type="checkbox"/> Environmental<br><input type="checkbox"/> ADA<br><input checked="" type="checkbox"/> Other Administrative Review |                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                  |

**ALTERNATIVE DISPUTE RESOLUTION INFORMATION**

Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)

|                |                                                                     |                          |                                                                     |
|----------------|---------------------------------------------------------------------|--------------------------|---------------------------------------------------------------------|
| A. Mediation   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | C. Settlement Conference | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| B. Arbitration | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | D. Neutral Evaluation    | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

**TRACK REQUEST**

With the exception of Baltimore County and Baltimore City, please fill in the estimated LENGTH OF TRIAL. THIS CASE WILL THEN BE TRACKED ACCORDINGLY.

|                                                         |                                                         |
|---------------------------------------------------------|---------------------------------------------------------|
| <input type="checkbox"/> ½ day of trial or less         | <input type="checkbox"/> 3 days of trial time           |
| <input checked="" type="checkbox"/> 1 day of trial time | <input type="checkbox"/> More than 3 days of trial time |
| <input type="checkbox"/> 2 days of trial time           |                                                         |

PLEASE SEE PAGE TWO OF THIS FORM FOR INSTRUCTIONS PERTAINING TO THE BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM AND ADDITIONAL INSTRUCTIONS IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY.

Date 11/3/06 Signature William W. N. [Signature]

## BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

For all jurisdictions, if Business and Technology track designation under Md. Rule 16-205 is requested, attach a duplicate copy of complaint and check one of the tracks below.



### Expedited

Trial within 7 months of Defendant's response



### Standard

Trial - 18 months of Defendant's response

EMERGENCY RELIEF REQUESTED \_\_\_\_\_

Signature

Date

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY PLEASE FILL OUT THE APPROPRIATE BOX BELOW.

### CIRCUIT COURT FOR BALTIMORE CITY (check only one)

- Expedited Trial 60 to 120 days from notice. Non-jury matters.
- Standard-Short Trial seven months from Defendant's response. Includes torts with actual damages up to \$7,500; contract claims up to \$20,000; condemnations; injunctions and declaratory judgments.
- Standard-Medium Trial 12 months from Defendant's response. Includes torts with actual damages over \$7,500 and under \$50,000, and contract claims over \$20,000.
- Standard-Complex Trial 18 months from Defendant's response. Includes complex cases requiring prolonged discovery with actual damages in excess of \$50,000.
- Lead Paint Fill in: Birthdate of youngest plaintiff \_\_\_\_\_.
- Asbestos Events and deadlines set by individual judge.
- Protracted Cases Complex cases designated by the Administrative Judge.

### CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

To assist the Court in determining the appropriate Track for this case, check one of the boxes below. This information is not an admission and may not be used for any purpose other than Track Assignment.

- Liability is conceded.
- Liability is not conceded, but is not seriously in dispute.
- Liability is seriously in dispute.

### CIRCUIT COURT FOR BALTIMORE COUNTY

- Expedited (Trial Date-90 days) Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus.
- Standard (Trial Date-240 days) Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud and Misrepresentation, Intentional Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases.
- Extended Standard (Trial Date-345 days) Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury Cases (medical expenses and wage loss of \$100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency.
- Complex (Trial Date-450 days) Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product Liabilities, Other Complex Cases.

IN THE CIRCUIT COURT FOR DORCHESTER COUNTY, MARYLAND

COMPLAINT/PETITION OF \*  
EGYPT ROAD, LLC \*  
2015 Pig Neck Road \*  
Cambridge MD 21613 \*

and \*

THE THOMAS LAND GROUP, LLC \*  
2015 Pig Neck Road \*  
Cambridge MD 21613 \*

FOR JUDICIAL REVIEW OF THE \*  
DECISION OF THE DEPARTMENT OF \*  
NATURAL RESOURCES, CRITICAL AREA \*  
COMMISSION FOR THE CHESAPEAKE \*  
AND ATLANTIC COASTAL BAYS \*  
1804 West Street, Suite 100 \*  
Annapolis, Maryland 21401 \*

Civil Case No. C-06-14613

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 \*

Serve On: Marianne D. Mason \*  
Assistant Attorney General \*  
Critical Area Commission for the \*  
Chesapeake and Atlantic Coastal \*  
Bays \*  
580 Taylor Avenue, C-4 \*  
Annapolis MD 21401 \*

\* \* \* \* \*

**COMPLAINT FOR ADMINISTRATIVE MANDAMUS**  
**OR IN THE ALTERNATIVE FOR DECLARATORY JUDGMENT**

Egypt Road, LLC and The Thomas Land Group, LLC (collectively "Egypt Road"), by and through their attorneys, William W. McAllister, Jr., Richard A. DeTar, Demetrios G. Kaouris and Miles & Stockbridge P.C., hereby file this Complaint for Administrative Mandamus or in the Alternative for Declaratory Judgment against The Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "Critical Area Commission"). In support hereof, Egypt Road states as follows:

**The Parties**

1. Egypt Road, LLC is a limited liability company organized under the laws of the State of Maryland with its principal place of business in Cambridge, Maryland. *disuff know*
2. The Thomas Land Group, LLC is a limited liability company organized under the laws of the State of Maryland with its principal place of business in Cambridge, Maryland. *11*
3. The Critical Area Commission is a state agency established pursuant to Section 8-1803 of the Natural Resources Article of the Maryland Code.<sup>1</sup> *deny state agency - answer is in writ.*

**Jurisdiction and Venue**

4. This Court has subject matter jurisdiction over this case pursuant to Maryland Rule 7-401 *et seq.* and Sections 3-403 and 3-406 of the Courts and Judicial Proceedings Article of the Maryland Code. *deny 7401 concl law N/R*
5. This Court has personal jurisdiction over the Critical Area Commission pursuant to Section 6-102 of the Courts and Judicial Proceedings Article of the Maryland Code because the Critical Area Commission is organized under the laws of the State of Maryland. *concl law N/R*
6. Venue is appropriate in Dorchester County because the real property that is the subject of this case is located in Dorchester County. *concl law N/R*

<sup>1</sup> Sections 8-1801 through 8-1817 of the Natural Resources Article of the Maryland Code shall be referred to herein as the Critical Area Law.

The Facts

7. Egypt Road is the owner of 1,080 acres of real property depicted as Parcels 2 and 13 on Tax Map 52 and Parcel 2 on Tax Map 41 of the Tax Maps for Dorchester County, Maryland (the "Property").

*isaff know*

*we have a copy of a letter dated 7/11/05 to the county asking for growth allocation*

8. In July 2005, Egypt Road filed an application with Dorchester County (the "County") requesting that the County provide the City of Cambridge with up to 315.6 acres of growth allocation for Egypt Road to develop a resort hotel, golf course, conference center and residential community on the Property (the "Project").

*✓ w/ Res. Resolution might be this. I remember, I don't know.*

*The Co. Council met and considered findings. I don't know if they actually voted.*

9. After several public hearings, the Dorchester County Council (the "County Council") on December 20, 2006 voted to approve Egypt Road's application and awarded to the City of Cambridge 313.12 acres of growth allocation for the Project. On February 21, 2006, the County Council passed a resolution and a finding of fact supporting its decision to award growth allocation to the City of Cambridge in connection with the Project.

*✓ w/ Res wrong date*

*yes*

10. Egypt Road also applied to the City of Cambridge for growth allocation for the Project. The purpose of the growth allocation request was to reclassify the 313.12 acres of the Property from a critical area designation of Resource Conservation Area (RCA) to a designation of Intensely Developed Area (IDA).

*✓ w/ Res yes*

*→ yes*

11. On March 13, 2006, the City of Cambridge Commissioners awarded Egypt Road 313.12 acres of growth allocation to the Property for the purpose of reclassifying the critical area designation of the Property from RCA to IDA. On March 27, 2006, the City of Cambridge Commissioners adopted Resolution No. 06-003 that included findings of fact to support their decision.

*✓ w/ Res*

*Yes*

*The date is correct: 3/27/06*

*don't want to admit that for support decision*

12. In accordance with Section 8-1809 of the Natural Resources Article of the Maryland Code, Section 205 of the City of Cambridge Zoning Ordinance, and Section 155-38.N of the Dorchester County Zoning Ordinance, the Dorchester Council's and the City of Cambridge Commissioners' award of growth allocation to the Property and the reclassification of the critical area designation of the Property from RCA to IDA was forwarded to the Critical Area Commission for its review and approval.

✓  
w7  
Ren

Yes -  
forwarded  
by the  
city 5/4/06.  
The package included  
the County's resolution  
awarding  
growth  
allocation.

13. The Critical Area Commission held a public hearing on the County Council's and City of Cambridge Commissioners' growth allocation award at Maple Dam Elementary School in Cambridge, Maryland on July 20, 2006.

request to amend  
their programs  
Admin  
a panel  
of CAC  
held hrs

14. The Critical Area Commission thereafter met on several occasions to discuss the County Council's and City of Cambridge Commissioners' award of growth allocation for the Property and the reclassification of the Property from RCA to IDA.

State  
Panel  
met to  
discuss  
proposed prog  
Trend to Dorc  
Combs  
prog  
Panel

15. The Critical Area Commission prepared a panel report, a copy of which is attached hereto as Exhibit 1, setting forth the reasons why it was not approving the award of growth allocation for the Property and the change in the critical area classification of the Property from RCA to IDA.

Panel report speaks for self. no - ~~per~~ ~~recom~~

16. On or about October 4, 2006, the Critical Area Commission voted to decline to approve the County Council's and the City of Cambridge Commissioners' award of growth allocation to the Property and the reclassification of the critical area designation of the Property from RCA to IDA.

? NO -

**Count I**  
**(Administrative Mandamus Pursuant to Md. Rules 7-401, et seq.)**

17. Paragraphs 1 through 16 are incorporated herein by reference as if set forth in full herein.

Incorp.  
Answers

18. Pursuant to Maryland Rule 7-401 and this Court's inherent power to review quasi-judicial actions of administrative agencies, this Court is authorized to review the October 4, 2006 decision of the Critical Area Commission.

st/law  
deney

19. This action for administrative mandamus is authorized by Maryland Rule 7-401 because the action of the Critical Area Commission was quasi-judicial in nature and no appeal from the Critical Area Commission's decision to this Court is expressly authorized by law.

file  
motion  
to  
dismiss

20. Egypt Road is requesting judicial review of the October 4, 2006 decision of the Critical Area Commission declining to approve the award of 313.12 acres of growth allocation for the Property and the change of the critical area designation of the Property from RCA to IDA.

21. Egypt Road was a party to the proceedings before the Critical Area Commission.

WHEREFORE, Egypt Road respectfully requests that this Honorable Court reverse the decision of the Critical Area Commission, uphold the County Council's and the City of Cambridge's award of 313.12 acres of growth allocation for the Property and the change of the critical area designation of the Property from RCA to IDA, and award such other and further relief this Court deems to be appropriate.

**Count II – In the Alternative**  
**(Declaratory Judgment)**

22. Paragraphs 1-21 are incorporated by reference as if set forth in full herein.

incorporate  
response

23. In the event administrative mandamus pursuant to Maryland Rule 7-401 *et. seq.* is not available to review the decision of the Critical Area Commission, Egypt Road is filing this Count II for Declaratory Judgment against the Critical Area Commission and, *inter alia*, requesting that the Court grant relief by way of mandamus.

stmt of  
relief  
N/R

24. The Critical Area Commission acted in an arbitrary, capricious and otherwise illegal manner in connection with its refusal to approve the County Council's and the City of

deney

Cambridge's award of growth allocation to the Property and the change in the critical area designation of the Property from RCA to IDA.

25. The Critical Area Commission's decision is affected by an error of law and/or is otherwise arbitrary and capricious because the Critical Area Commission refused to approve the award of growth allocation, in part, because the Property is not adjacent to property designated IDA or Limited Development Area ("LDA"). The Critical Area Commission is not authorized to refuse to approve a growth allocation request that does not meet this guideline.

*deleg  
to  
extent  
not a  
stmt of  
law  
(N/R)*

26. The Critical Area Commission failed to consider overwhelming evidence in the record that the real property located to the north of and adjacent to the Property (although not designated IDA or LDA) is a school site with large structures and intensive uses and the County's determination that locating growth allocation in the City of Cambridge to be served by existing public infrastructure was more appropriate than adjacent to "pockets" of IDA in relatively undeveloped areas of the County. Accordingly, the Critical Area Commission's decision was not supported by evidence in the record, and is arbitrary and capricious.

*deleg  
to  
extent  
not  
stmt of  
law  
(N/R)*

27. The Critical Area Commission's decision is contrary to law because it applied the guidelines set forth in Section 8-1808.1(c)(1) of the Natural Resources Article of the Maryland Code. Section 8-1808.1 of the Natural Resources Article of the Maryland Code does not authorize the Critical Area Commission to apply the guidelines. The application of the guidelines is left to the discretion of the local jurisdiction, in this case the County Council and the City of Cambridge Commissioners. The Critical Area Commission exceeded its authority and/or jurisdiction in applying the guidelines and refusing to approve the award of growth allocation by the County Council and the City of Cambridge Commissioners.

*deleg  
to  
extent  
not  
stmt  
of law  
(N/R)*

28. The Critical Area Commission failed to consider the overwhelming evidence in the record before the County Council and the City of Cambridge Commissioners establishing that the guidelines and criteria set forth in the Critical Area Law were applied by the County Council and the City of Cambridge Commissioners in a manner consistent with the purposes, policies and goals of the Critical Area Law and criteria adopted by the Commission. Consequently, the Critical Area Commission acted in an arbitrary and capricious manner.

Strut of  
law  
(N/R)-  
facts  
deny

29. The Critical Area Commission erred as a matter of law because it failed to make findings of fact based upon evidence in the administrative record.

Strut of  
law  
N/R-  
facts deny

30. The Critical Area Commission exceeded its authority and otherwise made an error of law because it refused to approve the County Council's and the City of Cambridge Commissioners' award of growth allocation on the ground that certain information or documents are not contained within the administrative record. The information or documents determined by the Critical Area Commission to be necessary for it to approve the growth allocation award include, but are not limited to: final stormwater plans, a Buffer Management Plan and unspecified "scientific information" that the Little Blackwater River system will not be impacted by the proposed project. There is no statutory authority in the Critical Area law or regulations requiring that such information or documents be included in the record.

Strut of  
law  
(N/R)  
facts  
deny  
Panel  
Report  
speaks  
for  
itself.

31. The Critical Area Commission's decision is arbitrary and capricious because it engaged in unsupported speculation including, but not limited to, concluding that, "the proposed project may promote development on surrounding lands." The fact that lands adjacent to the Property may be developed in the future is not a basis to deny the award of growth allocation and the change in the critical area designation of the Property from RCA to IDA.

Strut law  
(NR)  
Panel Report  
speaks  
self  
facts  
deny

32. The Critical Area Commission made an error of law or otherwise exceeded its authority and jurisdiction because it refused to approve the award of growth allocation and the change in the critical area designation of the Property based in part on its view, which was contrary to those of the City and County, that the award of growth allocation was not consistent with the City of Cambridge and Dorchester County Comprehensive Plans. The Critical Area Commission has no authority under the Critical Area Law to review consistency with the Comprehensive Plans of Dorchester County or the City of Cambridge.

Concl  
law  
(NIR)  
Panel  
Resit  
opener  
& itself  
facts  
deny

33. The Critical Area Commission acted in an arbitrary and capricious manner and abused its discretion because it relied upon its own critical area mapping error as a basis to refuse to approve the award of growth allocation and the change in the critical area designation of the Property.

Start or  
Concl Law  
(NIR)  
Panel Resit  
opener  
& itself  
facts  
deny

34. The Critical Area Commission erred as a matter of law because it applied an incorrect standard in its review of the decision of the Dorchester County Council and the City of Cambridge Commissioners. The Critical Area Commission undertook a *de novo* review, which is not authorized under the Critical Area Law.

Start  
law  
NIR  
facts  
deny

35. The Critical Area Commission's application of the Critical Area Law is unconstitutional. The Critical Area Commission concluded that all development on the Property must take place more than 300-feet from the Little Blackwater River. This results in an area of 111 acres of the Property being unavailable for development. Consequently, the Critical Area Commission's decision constitutes regulatory taking of a portion of the Property in violation of the United States Constitution and the Maryland Declaration of Rights.

Start  
or  
Concl  
law  
NIR  
facts  
deny

36. The CAC acted arbitrarily and capriciously because it has previously approved several amendments of the critical area designation of property from RCA to IDA or LDA when

? ✓ of  
Review  
Admit  
Other?  
Order  
?

X

such property was not located adjacent to property designated IDA or LDA. In a county such as Dorchester County, it is a challenge to use growth allocation in areas adjacent to existing LCA and/or IDA. The Critical Area Commission's inconsistent application of the adjacency guideline is arbitrary and capricious.

reflects  
denies  
State Law  
NIR

37. As a result of the Critical Area Commission's errors of law, failure to consider evidence in the record and otherwise arbitrary and capricious conduct, [it declined to approve the award of growth for the Property and the change in the critical area designation of the Property from RCA to IDA.]

State Law  
NIR  
submit  
prior CAC  
denied  
Citys/Cops  
Application  
Refused  
to amend  
Program

38. There is a justiciable controversy between Egypt Road and the Critical Area Commission with respect to its decision to refuse to approve the City of Cambridge Commissioners' award of growth allocation to the Property and the change in the critical area designation of the Property from RCA to IDA. It is Egypt Road's contention that the Property is entitled to growth allocation and the critical area designation of the Property should be to IDA.

?  
State of  
Relief  
or Law -  
NIR

39. A determination by this Court will end the controversy between the parties as to whether the Critical Area Commission improperly refused to approve the County Council's and City of Cambridge Commissioners' award of growth allocation to the Property and the change of the critical area designation of the Property from RCA to IDA.

?

WHEREFORE, Egypt Road respectfully requests that the Court grant the following relief:

State of  
Relief  
no  
Response  
Required

A. Declare that the Critical Area Commission's failure to approve the amendment to the City of Cambridge's Critical Area Protection Program and the award of growth allocation to Egypt Road changing the critical area designation of the property from RCA to IDA was arbitrary and capricious and otherwise illegal.

B. Declare that the Critical Area Commission does not have the authority to deny a growth allocation request because the property receiving growth allocation is not adjacent to property designated LDA or IDA.

Some  
↓

C. Declare that the Critical Area Commission does not have the authority to apply the guidelines set forth in Section 8-1808.1 of the Natural Resources Article of the Maryland Code and that the application of the guidelines is left to the discretion of a local jurisdiction.

↓

D. Declare that the Critical Area Commission does not have the authority to require documents and information be contained in the administrative record that are not required to be included in such record by the Critical Area Law.

↓

E. Declare that the Critical Area Commission, in considering whether to approve an award of growth allocation by a local jurisdiction, has no authority to examine consistency with the Comprehensive Plan of a local jurisdiction.

↓

F. Declare that the Critical Area Commission has no authority to refuse to approve a growth allocation request on the ground that there was an error in the map of the critical area of property when the Critical Area Commission approved the map.

↓

G. Declare that the Critical Area Commission is not authorized to undertake a *de novo* review of the decision of a local jurisdiction's decision awarding growth allocation and reclassifying property from RCA to IDA.

↓

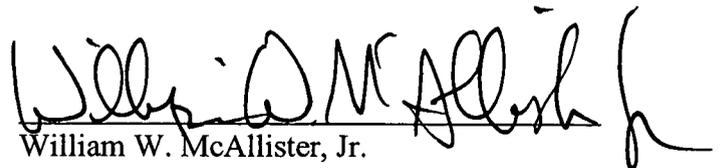
H. Declare that the Critical Area Commission's imposition of a 300 foot set back from the Little Blackwater River constituted an unconstitutional taking of property in violation of the United States Constitution and the Maryland Declaration of Rights.

I. Declare that the County Council's and the City of Cambridge's award of growth allocation for the Property and the change of the critical area designation of the Property from RCA to IDA is deemed approved by the Critical Area Commission.

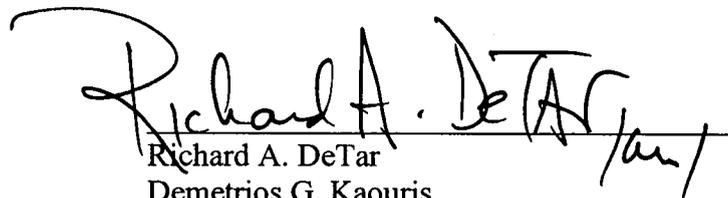
J. Order the Critical Area Commission to approve the award of growth allocation for the Property and the change in the critical area designation of the Property from RCA to IDA.

K. Award such other and further relief this Court concludes is appropriate in this case.

Respectfully submitted,



William W. McAllister, Jr.  
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Cambridge, Maryland 21613  
410-228-4545



Richard A. DeTar  
Demetrios G. Kaouris  
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Easton, Maryland 21601  
410-822-5280

## *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.*

|                                          |               |                |
|------------------------------------------|---------------|----------------|
| Post-It™ brand fax transmittal memo 7671 |               | # of pages ▶ 3 |
| To Joe & Roger                           | From Marianne |                |
| Co.                                      | Co.           |                |
| Dept.                                    | Phone #       |                |
| Fax #                                    | Fax #         |                |

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

Petitioners

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

\* \* \* \* \*

\* FOR  
 \* DORCHESTER COUNTY  
 \* MARYLAND  
 \*  
 \* Case No. C-06-014104  
 \*

**JOINT MEMORANDUM RE: STATUS OF ACTION**

Egypt Road, LLC and The Thomas Land Group, LLC (collectively "Egypt Road"), by and through their undersigned attorneys, hereby file this Joint Memorandum Re: Status of Action and in support hereof state as follows:

1. The above-referenced case involves the Dorchester County Council's award of 313.12 acres of growth allocation to the City of Cambridge to be used in connection with the development of a golf course, hotel and residential community by Egypt Road on approximately 1,080 acres of real property located within the City of Cambridge (the "Property").

2. On or about October 4, 2006, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the "CAC") refused to approve the City of Cambridge's award of 313.12 acres of growth allocation to Egypt Road for the purpose of developing the Property as a golf course, hotel and residential community.

3. On October 19, 2006, this Honorable Court held a hearing in this case after which it entered a stay in this matter.

4. On November 3, 2006, Egypt Road filed a Complaint against the CAC challenging the CAC's refusal to approve the award of growth allocation by Dorchester County and the City of 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, the details of which were to be negotiated by the parties 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.

6. The parties to the MOU 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.

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 be stayed 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.

9. The parties propose the filing of status updates with this Court on or before January 15, 2007 and April 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.

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 November 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

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.

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Demetrios G. Kaouris

MILES & STOCKBRIDGE P.C.

William W. McAllister, Jr.  
410-228-4545  
wmcallister@milesstockbridge.com

November 3, 2006

**VIA HAND DELIVERY**

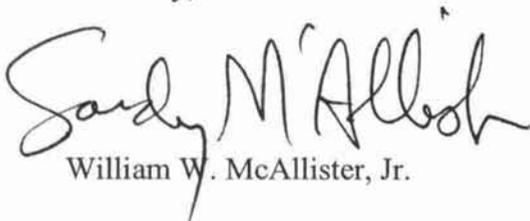
Michael Baker, Clerk  
Circuit Court for Dorchester County  
206 High Street  
Cambridge, MD 21613

Re: Egypt Road, LLC, et al. v. Department of Natural Resources, Critical Area Commission  
for the Chesapeake and Atlantic Coastal Bays

Dear Mr. Baker:

Enclosed please find a Complaint/Petition for Judicial Review of the October 4, 2006 decision of the Department of Natural Resources, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays. Also enclosed please find a copy of the Petition/Complaint for service upon the Critical Area Commission in accordance with Maryland Rule 7-202(d).

Sincerely,

  
William W. McAllister, Jr.

WWM/cem

Encl.

cc: Marianne D. Mason, Assistant Attorney General for the Critical Area Commission  
Charles D. MacLeod, Esquire, Counsel for Dorchester County  
Robert S. Collison, Esquire, Counsel for the City of Cambridge  
Thomas A. Deming, Esquire, Counsel for the Chesapeake Bay Foundation

*Response  
Due  
12/7/06*

**RECEIVED**

NOV 09 2006

CRITICAL AREA COMMISSION

# MILES & STOCKBRIDGE P.C.

William W. McAllister, Jr.  
410-228-4545  
wmcallister@milesstockbridge.com

November 3, 2006

**VIA HAND DELIVERY**

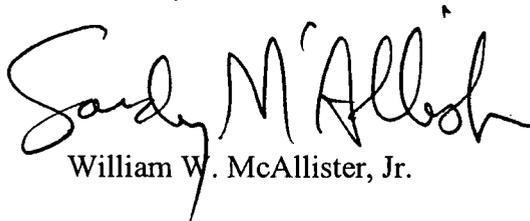
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Sincerely,



William W. McAllister, Jr.

WWM/cem

Encl.

cc: Marianne D. Mason, Assistant Attorney General for the Critical Area Commission  
Charles D. MacLeod, Esquire, Counsel for Dorchester County  
Robert S. Collison, Esquire, Counsel for the City of Cambridge  
Thomas A. Deming, Esquire, Counsel for the Chesapeake Bay Foundation

**RECEIVED**

NOV 09 2006

CRITICAL AREA COMMISSION

**Dise, Marianne E.**

---

**From:** Jon Mueller ext. 2162 [jmueller@savethebay.cbf.org]  
**Sent:** Friday, October 27, 2006 10:13 AM  
**To:** Dise, Marianne E.; Serey, Ren  
**Subject:** FW: 10/26 Star Democrat

Thought you might find this of interest. Jon

<http://www.stardem.com/article.asp?article=21123&paper=1&cat=1>

## **Judicial review of Blackwater suspended** ***Judge Sause wants to see what further developments unfold***

By JENNIFER FU  
Staff Writer  
October 26, 2006

**CAMBRIDGE** — The developers of Blackwater Resort Communities and the Dorchester County Council received a minor setback in Circuit Court when Judge John W. Sause Jr. suspended a judicial review of the county's decision to approve growth allocation for the 1,080-acre housing project.

Sause said in a hearing last Thursday that he did not want to rule on the county's decision until further developments on the project unfold. The developer is expected to appeal the state's overriding decision that blocked construction along the Little Blackwater River.

"My opinion is meaningless as to what has already occurred," Sause said.

Dorchester County and Cambridge had approved growth allocation to construct commercial buildings on 313 acres of protected land along the Little Blackwater River. But developer Duane Zentgraf received opposition to the project when the state's Critical Area Commission denied the growth allocation. The commission voted Oct. 4 to block plans for a retail center and golf course, but Zentgraf could still build a golf course if it is moved at least 300 feet away from the river.

Zentgraf is expected to file a court appeal of the CAC's decision by early November to try and build a riverfront golf course.

The local governments approved construction on the 313 acres despite protests from environmental groups and residents. In March, the Chesapeake Bay Foundation and three landowners filed for a judicial hearing to examine the local governments' decision. The CBF and landowners petitioned to review approvals made by the Dorchester County Council, Cambridge City Council and appeals boards for both the county and city.

The petition argues that the county incorrectly awarded growth allocation and that the development plan did not meet certain requirements. The developers, Egypt Road LLC and Thomas Land Group, joined the local governments in court to disagree with the petitioners.

But the CAC's Oct. 4 vote rendered those local approvals useless. Sause's decision on Thursday was a minor setback for the county and developers who want to put the case behind them, and it delayed a decision on the Chesapeake Bay Foundation's appeal.

10/27/2006

Thomas Deming, attorney for the foundation and three landowners, said the cases against the local governments will not move forward until after the developer makes his appeal to the CAC and any issues with the state commission is resolved.

"We're talking about something that'll take place months down the road, so for the time being, the project's stopped dead in its tracks," Deming said.

However, attorneys for the developers said Sause's decision will not further delay the project because an appeal to the CAC still has to be made, and the cases with the local governments must be resolved anyway.

"It's always nice to win now rather than later," said attorney Richard "Rad" DeTar, who represented the developers at Thursday's hearing.

Though the judge's decision was not what the developers wanted to hear. DeTar said the judge made a sound decision, but he would have preferred the judge to pursue the case involving the local governments at the same time as developments on the CAC's decision are unfolding. That way, the case would have been resolved sooner.

"Many, if not most large projects have multiple approvals that are needed before you actually commence the project," DeTar said to the judge Thursday. "The project can't go forward if these cases aren't resolved," he said.

William "Sandy" McAllister, an attorney for the developers, watched Thursday's hearing and said afterward, "The county deserves to know that it not only utilized the proper process but that it appropriately applied its growth allocation criteria to the evidence submitted by the developer, and that is a decision completely independent, in our view, to the decision by the Critical Area Commission," he said. "If you're the county, you obviously want to know if you've done it right," he said.

McAllister added, "I'm absolutely confident the county did everything right."

The case with the local governments and Zentgraf's appeal to the CAC may not be resolved for another three to five months, DeTar said. In the case involving the local governments, the judge would have to decide whether the county and city lawfully awarded growth allocation.