

Miles Point III-150

AMENDED CONDITIONS 23 THRU 32

Growth Allocation Findings of Fact, Decision & Conditions by the Commissioners of St. Michaels

Upon consideration of the Application of Miles Point Properties, LLC, TND Development, Inc., and the Midland Companies, Inc. (collectively "Applicant") to amend Conditions 23-32 of the Growth Allocation Findings of Fact, Decision and Conditions of the Commissioners of St. Michaels adopted on the 22nd day of March 2006 (the "Growth Allocation Decision"), the Commissioners of St Michaels, pursuant to Section 340-28 of the Code of St. Michaels, resolve as follows:

FIRST: Applicant in its written application, which was submitted on the 14th day of March 2008, originally requested that Conditions 23-32 of the Growth Allocation Decision be deleted and replaced with a single condition. At the public hearing on the Application, which was held on the 3rd day of September, 2008, Applicant orally requested that portions of Conditions 23.1, 31.1 and 32 and Conditions 31.4, 31.5, 32.4 and 32.5 in their entirety be amended to replace the requirements of Chapter 281 of the Code of St. Michaels as enacted by Ordinance No. 348, but otherwise did not request any specific amending language. (*See* Ex. 26 of the Administrative Record of Decision.) Having considered the Application, all of the testimony provided at the public hearing, and all of the written submittals that have been included in the Administrative Record of Decision (the Exhibit List attached hereto describes the written submittals that comprise the written component of the Administrative Record of Decision) the Commissioners agree to amend Conditions 23-32 of the Growth Allocation Decision as set forth below:

23. Environmental - Stormwater Management System - Design:

The following Conditions shall apply to the stormwater management systems, practices, facilities, structures and devices that service the Subject Property (the "Stormwater Management System"):

- 23.1 The Stormwater Management System shall be consistent with what the Planning Commission and the Town Commissioners have been led by Applicant and their representatives to believe and expect from the commencement of the TND project. Applicant has represented and agreed to design, construct and implement an environmentally responsible stormwater management system utilizing practices, facilities, structures and devices to intercept stormwater at early stages, to avoid channeling, amassing and speeding large quantities of stormwater to central treatment ponds before it has the opportunity, through designed system features, to be locally retained for later slow release, to be exposed to filtration and sedimentation, to evaporate, and to infiltrate the ground and recharge the groundwater supply, thereby reducing the volume of stormwater to be centrally treated, and reducing the need for central treatment capacity. Applicant shall accomplish the foregoing objectives by adhering to and implementing the requirements of Chapter 281 of the Code of St. Michaels as enacted by Ordinance No. 348, which shall include giving consideration to the features and requirements of: (1) MDE's 2000 Maryland Stormwater Design Manual requirements as amended, revised or superseded; (2) USDA Natural Resources Conservation Service Maryland Conservation Practice Standard Pond Code 378; (3) Critical Area 10% Rule Guidance Manual; (4) the conditions in the Growth Allocation Decision as amended; (5) the Decision on Miles Point III – 150 Project Application for TND Overlay Zone; and (6) subsequent approvals issued by the Commissioners of St. Michaels pursuant to the Growth

Allocation Decision as herein amended, the Zoning Code of the Town of St. Michaels and Chapter 281 of the Code of St. Michaels as amended (*i.e.*, the “Stormwater Management Ordinance”).

- 23.2 The Town may receive advice regarding approval of the design and installation of the Stormwater Management System from the CAC staff, MDE, and/or consultants, but the Town Commissioners will be the ultimate approving authority for the design and installation of the Stormwater Management System, which approvals shall not be in conflict with any higher legal authority. All costs of such involvement by the Town shall be born by the Applicant.
24. Environmental - Stormwater Management System - Ownership, Operation, Inspection & Maintenance:
- 24.1 The Subdivision Documents shall provide that all components of the Stormwater Management System, including, but not limited to, stormwater management ponds, bioretention ponds on open spaces, pipes and conduits to transport stormwater, and rights of way for open channel drainage swales, eventually shall be owned and maintained by an entity in which the owners of the lots in the Subject Property have an ownership interest running with the land, and have a duty to pay assessed fees for payment of operating expenses (hereafter the “Homeowners Association”). Initially, Owner/Applicant and/or its successors and assigns shall be responsible for the design, construction and installation, and maintenance and repair of the Stormwater Management System until such time as it is turned over to the Homeowners Association. Prior to final subdivision plat recordation, the subdivision documents shall provide a process, acceptable to the Town, for the fair and reasonable allocation of all costs necessary for the maintenance and upkeep of the Stormwater Management System in the common areas of the Project between and among all owners of common areas and/or all owners of individual lots within the Project, including, but not limited to Applicant or its successor in interest (for all recorded lots owned by Applicant) and private owners of individual lots. The intent of this condition includes, but is not limited to, ensuring that there is an equitable mechanism in place for the assessment and collection of all fees necessary for maintenance and upkeep of the Stormwater Management System after initial installation and completion of portions of the Stormwater Management System and before completion of the subdivision. Prior to final subdivision plat recordation, the Miles Point Book of Operating Principles shall be amended to incorporate the process contemplated herein that is approved by the Town.
- 24.2 The Homeowners Association shall be legally responsible, in perpetuity, to operate, regularly inspect and maintain, repair and replace, the Stormwater Management System so that it collects and treats stormwater on the Subject Property at least in accordance with all applicable laws and regulations, and shall regularly, and promptly upon written request from the Town, furnish all records to the Town relating to the operation, inspection, maintenance, repair and replacement of the Stormwater Management System. Further, said Homeowners Association shall have the right and duty to assess fees to the property owners of the Subject Property in the same proportion as they pay for regular assessments from the Homeowners Association to pay for the operation, inspection, maintenance, repair and replacement of the Stormwater Management System.
- 24.3 Even if not owned by the Homeowners Association, to achieve proper and uniform efficiency by the Stormwater Management System the Homeowners Association shall manage ancillary stormwater management facilities located in parking lots and impervious surfaces that are established or used in connection with private open spaces (*e.g.*, the tennis courts and swimming pool), multi-family dwellings, live-work units and the Inn.

- 24.4 The Homeowners Association shall perpetually manage and maintain street rights-of-way (including open channel drains and pervious surfaces designed to accept stormwater runoff), parking lot islands, and other landscaped common areas, and parking lot surfaces and other impervious surfaces such as the tennis courts and the pool area. The Homeowners Associations shall be responsible for maintaining such areas and facilities with approved plantings and natural vegetation and for the installation and maintenance of all infiltration and biofiltration practices, the previous paving materials, the perimeter drains and filters, and all other stormwater management practices, facilities, structures and devices that service such areas.
- 24.5 If the Homeowners Association fails to operate, regularly inspect and maintain, repair and replace the Stormwater Management System, then the Town shall, after giving thirty days written notice to the Homeowners Association, have the right, but not the duty, to perform, or contract with another entity to perform, all the operations, regular inspections and maintenance, repairs and replacements and all other duties of the Homeowners Association relating to the Stormwater Management System, and to assess all of the costs thereof incurred by the Town to the owners of all properties in the Proposed Project, in the same proportion as they are assessed for the regular operating budget by the Homeowners Association as provided in the Subdivision Documents, together with all administrative costs and the cost of collection. In the event that such assessments are not timely paid by the Homeowners Association, the Town shall have the right to lien the individual and privately owned lots and properties within the Proposed Project and to undertake direct collection efforts against individual property owners for such fees and all costs of collection, including the cost of Town employee time, collection agencies, attorneys fees, and court costs, together with interest at the maximum legal rate on all such costs incurred from the date they were incurred by the Town, including collection and litigation costs. The Subdivision Documents that are recorded in the land records for Talbot County and run with the land shall provide the Town with such rights and remedies.

25. Environmental - Stormwater Management - Buffer:

Stormwater runoff from impervious surfaces within the Proposed Project shall be directed away from the shoreline buffer and toward the Stormwater Management System.

26. Environmental - Stormwater Management - Parking

26.1 Parking lots shall be designed and constructed as follows:

26.1.1. With stormwater treatment practices, such as bioretention and biofiltration, integrated into landscaping areas and traffic islands landscape islands; and

26.1.2. Reduce the amount of unfiltered stormwater draining from the paved areas of the parking lot by using such practices as perimeter drains with filters, biofiltration, and bioretention.

26.2. If the Town amends the Town laws relating to off-street parking requirements, such that the required number of parking spaces and/or the size of some parking spaces are reduced from the present requirements, resulting in reduced impervious surface area, and/or if the Town permits the use of porous paving material in parking lots, then, notwithstanding a development rights and responsibilities agreement, Applicant shall comply with such reduced requirements for all parking lots located on the Subject Property that have not received final design approvals from the Town before the effective date of such legislation.

27. Environmental - Stormwater Management - Sidewalks:

Where requirements for sidewalks are reduced, or permit use of porous pavers for sidewalks, any development rights and responsibilities agreement between Applicant and the Town notwithstanding, Applicant will comply with those standards.

28. Environmental - Stormwater Management - Ground Cover on Private Property:

A restrictive covenant shall be recorded among the land records of Talbot County, relating to the Subject Property and executed by all owners thereof and running with the land containing a provision that except for active gardens and "Privately Maintained Stormwater Management Practices" as that term is defined *infra* at 31, each residential property owner shall be required to maintain a vegetative ground cover on all pervious surfaces of his land that constitutes the Subject Property. The Plants listed under the "Ground Cover" section of the Landscape Standards, on page 21 of the Design Code, shall be sufficient for compliance with this Condition.

29. Environmental - Stormwater Management - Planting Plan:

29.1. Owner/Applicant shall delineate those site areas on the MPIII-150, not intended to be covered by imperious surfaces. For those areas not intended to be covered by impervious surfaces, Applicant shall indicate which surfaces are proposed to be established and maintained in vegetation; and which surfaces are proposed **not** to be established and maintained in vegetation. For those areas proposed not to be and established and maintained in vegetation, Applicant shall demonstrate to the satisfaction of the Planning Commission why such establishment and maintenance, in vegetation for such portions of the site are impracticable. Unless Applicant demonstrates to the satisfaction of the Planning Commission why such establishment and maintenance in vegetation for such portions of the site are impracticable, Applicant shall establish and maintain such portions of the site in vegetation. Applicant shall submit a planting plan to the Planning Commission for its approval. The types of planting and vegetation proposed shall be in accordance with the guidelines established as part of the Town of St. Michaels Critical Area Program.

29.2. Before implementation of the approved planting plan may begin, performance of the approved planting plan shall be bonded by the Owner to the satisfaction of the Town.

30. Environmental - Stormwater Management - Planting Plan:

The subdivision documents recorded among the Land Records of Talbot County, Maryland (the "Land Records") relating to the Subject Project shall include provisions satisfactory to the Town Attorney that require the planting and maintenance of all open spaces of the Subject Property, to assure that they shall perform their intended environmental functions, including the following:

30.1. Owner/Applicant shall submit, maintain and implement, in perpetuity, an approved plan to plant and maintain vegetation on the open spaces of the Subject Property (the "Planting Plan").

30.2. Before implementation of the Planting Plan shall begin, performance of the Planting Plan shall be bonded by the Owner/Applicant to the satisfaction of the Town.

30.3. Except for those designated open spaces that are conveyed to and accepted by the Town, the

recorded subdivision documents shall provide that the common areas shall be owned by the Homeowners Association. The Homeowners Association shall be legally responsible, in perpetuity, for establishing, planting and maintaining the healthy vegetated condition of the open spaces of the Subject Property as designated in the Town approving documents for growth allocation, TND zoning and subdivision of the Subject Property. Further, said Homeowners Association shall have the right and responsibility to assess and collect fees from the property owners (including Owner/Applicant or its successors and assigns to the extent that they own platted lots) in order to execute and maintain the planting plan for the open spaces on the Subject Property.

- 30.4. If the Homeowners Association fails to maintain the plants and vegetative cover of the open spaces in conformity with the approved planting plan, then the Town, after giving thirty (30) days written notice to the Homeowners Association, shall have the right, but not the duty, pursuant to the documents recorded in the Land Records of Talbot County and running with the land of the Subject Property, to maintain or contract with another entity to maintain such vegetated open spaces, and to assess the owners of all the properties, in the same proportion as they pay for regular assessments from the Homeowners Association, for the cost of such maintenance by the Town, together with all administrative costs and the cost of collection. In the event that such assessments are not timely paid, the Town shall have the right to lien the private property of the individual homeowners and lot owners in the Subject Property, and to undertake direct collection efforts against such individual property owners and lot owners for such fees and all costs of collection, including the cost of Town employee time, collection agencies, attorneys fees, and court costs, together with interest at the maximum legal rate on all such costs incurred from the date they were incurred by the Town, including collection and litigation costs.

31. Environmental - Stormwater Management - Privately Maintained Practices (“PMSMP”):

Applicant shall prepare subdivision documents that Applicant shall record among the Land Records of Talbot County, Maryland (the “Land Records”) relating to the Subject Project, which shall include provisions satisfactory to the Town Attorney that require and/or permit the following:

- 31.1. That the approved site plan for each dwelling in the development, which shall be submitted and approved before commencement of construction of the dwelling, shall include a landscape plan that contains one or a combination of the privately maintained stormwater management practices (e.g., rain gardens, roof gardens, cisterns, pocket bioretention ponds, rain barrels, pervious pavement, parking lot bioretention islands, pocket dry swales, and other non-structural stormwater management practices) that have been approved by the Commissioners of St. Michaels (collectively hereafter the “Privately Maintained Stormwater Management Practices” or “PMSMP”). The owner/occupant of such dwelling shall be required to maintain the PMSMPs depicted on the approved site plan as long as the dwelling and other impervious surfaces are maintained on the lot.
- 31.2. Town employees and contractors shall be permitted to come on private property for purpose of inspecting PMSMP.
- 31.3. Failure of Owner/Applicant or its successors and assigns to design, construct and install, have inspected and maintain a PMSMP until closing on a lot, and thereafter, failure of a lot owner to inspect, maintain, repair and replace as necessary PMSMP shall be a municipal infraction, and in addition to a fine within the limits of the Maryland laws on municipal infractions, any owner whose property is in violation of the covenant shall pay the cost of inspecting and restoring the

PMSMP on the approved site plan and all costs of enforcement. In addition, the Town shall have the right to place a lien on the related lot for such costs and/or initiate and prosecute a suit against the property owner for specific performance and/or an injunction to obey the restrictive covenants.

32. Comprehensive Stormwater Runoff Quality Program (“CSRQP”):

As a Condition to the grant of growth allocation, the Owner/Applicant and its successor Homeowners Association, in accordance with the Stormwater Management Ordinance, shall design, and perpetually implement a Comprehensive Stormwater Runoff Quality Program (the “CSRQP”) that covers the Subject Property. The CSRQP shall be a program to reduce the polluting elements of the stormwater in accordance with the requirements of the Stormwater Management Ordinance. The CSRQP shall include elements that address the sources of pollutants on the Subject Property and their elimination through the treatment of the stormwater before it leaves the Subject Property. Applicant has agreed, and has agreed to bind its successors and assigns, to adopt whatever stormwater management practices, facilities, structures and devices are required by the Town pursuant to its Stormwater Management Ordinance as amended and in force and effect at the time of final plat approval for a phase of the Subdivision so that, in the absence of a storm of unusual magnitude, stormwater does not generate suspended solids and rapidly flow through the stormwater management devices discharging into tributaries and waters of the State or adjoining properties other than as sheet flow during storm events. Subject to the approval by the Commissioners upon submittal by Applicant of amended stormwater management plans, Applicant shall adopt future practices that are developed and accepted for application in mixed use residential subdivisions by the Town and/or the State of Maryland.

32.1. The CSRQP shall include:

32.1.1 The Stormwater Management System and all its related elements as required by Conditions 23, 24, 25, 26, and 27;

32.1.2. The vegetative ground cover on private property as required by Condition 28;

32.1.3. The Stormwater Management Planting Plan as required by Conditions 29 and 30;

32.1.4. The Privately Maintained Stormwater Management Practices (“PMSMP”) as required by Condition 31;

32.1.5. The limitation of the use, on both private and public property, of building materials not specified in the Design Code that leach pollutants into the stormwater on the Subject Property; and

32.1.6. The limitation of the use, on both private and public property, of pesticides, herbicides, fertilizers and other chemicals used in vegetation planting and maintenance on the Subject Property, which shall be set forth and specified in the Subdivision Documents prepared for the Homeowners Association.

32.2. Owner/Applicant and its successor Homeowners Association shall ensure that the requirements of this CSRQP, which are binding on all Owners within the Proposed Project, shall be described in the Subdivision Documents to the satisfaction of the Town attorney.

32.3. The Town may receive advice regarding approval of the CSRQP design and implementation of the CSRQP from consultants of its choosing, but the Town Commissioners will be the ultimate approving authority for the CSRQP design and implementation of the CSRQP, which approvals shall not be unreasonably withheld and shall not be in conflict with any higher legal authority. All costs of such involvement by the Town shall be born by Applicant.

SECOND: The Town Clerk/Manager shall promptly transmit by e-mail and U.S. mail to Applicant's representatives, George Valanos, T.J. Pecorak and Richard A. DeTar, this Resolution and Amended Conditions 23-32.

THIRD: Final adoption of Amended Conditions 23-32 shall be stayed for 30 days from the date on which the Town Clerk/Manager e-mails this Resolution and Amended Conditions 23-32 to Applicant's representatives while the Town waits to see whether Applicant exercises its rights under § 340-28G(5)(c) of the Code of St. Michaels to reject the proposed amendments.

FOURTH: If Applicant does not reject Amended Conditions 23-32 within 30 days as required under § 340-28G(5)(c) or affirmatively and in writing accepts Amended Conditions 23-32, the Town Clerk/Manager shall promptly notify the Critical Area Commission and provide it with a copy of this Resolution and Amended Conditions 23-32. The Town Clerk/Manager also shall inquire whether the Critical Area Commission wishes to review the written portion of the Administrative Record of Decision, and if it does, shall transmit a copy thereof to the Critical Area Commission. The Town Clerk/Manager shall determine the nature of any approval required from the Critical Area Commission of Amended Conditions 23-32 and shall advise the Commissioners of the position of the Critical Area Commission relative to Amended Conditions 23-32.

FIFTH: Upon approval by Applicant and the Critical Area Commission, the Town Clerk/Manager shall have an ordinance prepared to effect final approval of the growth allocation amendment application by the Commissioners in accordance with § 340-28G(7) of the Code of St. Michaels.

The Commissioners of St. Michaels, on the 25th day of March 2009, adopt this Resolution and Amended Conditions 23-32 by the following yea and/or nay vote:

Brady	-	<u>yea</u>
Clark	-	<u>yea</u>
Dinkel	-	<u>yea</u>
Hunt	-	<u>yea</u>
Snyder	-	<u>yea – by written absentee ballot</u>

COMMISSIONERS OF ST MICHAELS


Cheryl S. Thomas, Town Clerk/Manager

BY: 
Joanne R. Clark, President