

RESOLUTION NO.: 2009 - 04

**RESOLUTION
OF THE COMMISSIONERS OF ST. MICHAELS
APPROVING A STORMWATER MANAGEMENT PLAN, INCLUDING A
QUANTITATIVE WAIVER, FOR THE PROJECT KNOWN AS HATTON'S GARDEN**

RECITALS

WHEREAS, on or about April 23, 2008, the Commissioners of the Town of St. Michaels (the "Commissioners") approved an award of Growth Allocation for 39.54 acres of limited development area to be applied to a portion of the property owned by Hatton's Garden LLC which is generally referred to as the Hatton's Garden Farm ("Hatton's Garden"), which award was reviewed and approved by the Chesapeake Bay Critical Area Commission (the "CAC") with seven conditions as set forth in the attached Exhibit A; and

WHEREAS, subsequent to the conditional approval of the Hatton's Gardens' Growth Allocation, the CAC approved a Buffer Management Plan for the Project; and

WHEREAS, on November 20, 2008, the Town Planning Commission granted conditional final subdivision approval for a 16 lot residential subdivision for the property known as Hatton's Garden, one condition of which is the approval of a stormwater management plan by the Commissioners; and

WHEREAS, on January 2, 2008, Hatton's Garden LLC submitted a request for approval of a stormwater management plan for the Hatton's Garden property, as well as a request for a quantitative stormwater management waiver, which application was deemed by the Town to be a complete submission; and

WHEREAS, a stormwater management plan is required by Town Code, §281-5 which states that "no person shall develop any land for residential, commercial, industrial, or institutional uses without having provided stormwater management practices that control and manage stormwater runoff from such development in accordance with an approved stormwater management plan;" and

WHEREAS, since Hatton's Garden involves the development of ten or more acres, it is considered a major project; and

WHEREAS, the Commissioners are charged with the review and approval of the Hatton's Garden stormwater management plan under Town Code, §281-13 as the Town Commissioners are the enforcement authority for major projects; and

WHEREAS, the Commissioners are required, prior to granting approval, to review the plan to determine compliance with the requirements of Town Code, Chapter 281; and

WHEREAS, the process for the Commissioners' review shall be the same as for applications for subdivisions and shall include a review by the Technical Advisory Committee, which did occur in connection with this application; and

WHEREAS, it has been more than 45 days since the complete application was received by the Commissioners; and

WHEREAS, on January 21, 2009 the Commissioners conducted a public hearing on this matter at which time it heard testimony from the Applicant, the Town Engineers and Town staff and entertained questions and comments from the public; and

WHEREAS, on February 11, 2009, the Commissioners deliberated regarding the subject application and quantitative waiver request, and determined that the application complies with all of the requirements of Town Code, Chapter 281 as is more fully set forth herein; and

WHEREAS, based upon its review of the Hatton's Garden stormwater management plan and the testimony and evidence submitted at the public hearing regarding the plan, the Commissioners find that the requirements of Town Code, Chapter 281 regarding the criteria for approval of a stormwater management plan, including the granting of a quantitative waiver, have been met; accordingly the Commissioners desire to approve the stormwater management plan.

SECTION 1.

NOW, THEREFORE, BE IT RESOLVED by the Commissioners of St. Michaels that the foregoing Recitals are incorporated, by this reference, into this Resolution as operative provisions hereof.

SECTION 2.

NOW, THEREFORE, BE IT RESOLVED by the Commissioners of St. Michaels that based upon the evidence and testimony presented in connection with this matter, the Commissioners make the following findings of fact and conclusions of law regarding the stormwater management plan submitted by Hatton's Garden LLC for the property known as Hatton's Garden:

1. In accordance with Town Code, § 281-15, the stormwater management plan was prepared and sealed by a professional engineer licensed in the State of Maryland.
2. Based upon the testimony of the Applicant's expert, Mr. Rick Van Emburgh, a licensed engineer with Lane Engineering, and as confirmed by the Town Engineer, the information contained on the stormwater management plan and the construction drawings meet the requirements of Town Code, §281-14. Furthermore, as required by §281-14, the plan was accompanied by a report that includes sufficient information to evaluate the environmental characteristics of the proposed development and other affected areas, the potential impacts of the proposed

development on water resources, and the effectiveness and acceptability of the stormwater management practices proposed for managing stormwater runoff.

3. The stormwater management plan does not involve the direction or redirection of some or all runoff from the site, a change in stormwater runoff volume, and/or a change in the nature of such runoff, such that easements from adjacent property owners are necessary.
4. The basic design criteria, methodologies, and construction specifications utilized are those of the Stormwater Design Manual, as modified without conflict by Chapter 281 as is required by § 281-12. "Specific design criteria."
5. Although not required, the Critical Area 10% Rule has been applied to this project, and is also a condition of Growth Allocation. See Hatton's Garden SWM Report.
6. A summary of the Applicant's proposed stormwater management plan is as follows:
Runoff from the proposed rooftops is disconnected by piping downspouts to on-lot rain gardens. If the rain event is large enough to cause the on-lot rain gardens to overflow, the runoff will enter the flat bottom roadside swales. Much of the runoff from the flat bottom swales is conveyed to the open space bioretention. If the rain event is large enough to cause the open space bioretention to overflow, the runoff will be conveyed via stormdrain to the Gateway Pond, which is an aesthetic pond and not built for stormwater management. Runoff overflowing the pond is piped via proposed stormdrain to a connection with the proposed State Highway pond and ultimately conveyed to a proposed overflow pool, designed as a level spreader to reduce erosion of the shoreline. In addition to treating stormwater runoff from the proposed lots and roads, tidal wetland marsh has been created, extensive afforestation has been completed, and all of the lots in the Tricefields community will be connected to the Talbot County public sewer system by forcemain, significantly reducing the nutrient load on San Domingo Creek. (See Hatton's Garden Stormwater Management Report, p. 3.)
7. The Commissioners note that stormwater management has both a quantity and quality component. As for quantity management, the quantity requirements have been satisfactorily addressed through calculations submitted for each component of the stormwater collection and conveyance system, and the request for a waiver. The required quality management requirements have been addressed by:
 - Disconnecting the rooftops and non rooftops on each lot,
 - Providing flat bottom roadside ditches to treat the stormwater runoff from the road
 - Open Space Bio-retention
 - Afforestation (17.28 acres)
 - Reconstruction of Tidal Wetlands (3.4 acres)

Additional environmental enhancements incorporated in this Project include the Pond for the State Highway Drainage Area, the Gateway Pond and the connection of 22 lots in the Tricefields subdivision to public sewer.

8. The various provisions of Town Code, § 281-11. "Stormwater management practices" have been addressed as follows:
 - a. Both nonstructural and structural stormwater management practices established in Chapter 281 have been used in developing the stormwater management plan, employing nonstructural practices to the maximum extent

- possible (rain gardens, swales) before resorting to structural practices (stormwater management pond).
- b. The stormwater management plan does not include stormwater management practices that are inconsistent with the objectives and provisions of Chapter 281 or with other stormwater policies adopted by the Town.
 - c. The plan relies upon up-to-date science and technology, but does not include technologically unproven or experimental practices.
 - d. The plan tailors its practices to the natural conditions of the site.
 - e. There was no evidence that the plan's projected construction costs per unit or its annual operating and maintenance costs per unit are unreasonably high given the levels of pollutant removal and quantitative control it intends to achieve.
 - f. As for nonstructural stormwater management practices, the Commissioners find that the following nonstructural stormwater management practices have been applied according to the Stormwater Design Manual:
 - i. Natural area conservation;
 - ii. Disconnection of rooftop runoff to rain gardens;
 - iii. Disconnection of non-rooftop runoff;
 - iv. Sheet flow to buffers;
 - v. Grass channels;
 - vi. Flat bottom swales; and
 - vii. Natural topography: incorporation in the plan, to the degree that they can accommodate the additional flow of water of such features of natural topography as wetlands, ponds, natural swales, and depressions as they exist prior to development.
 - g. A curve number (CN) credit was not applied to this Project.
 - h. The use of nonstructural stormwater management practices are in accordance with existing state or local laws, codes, ordinances, regulations, or policies.
 - i. As for structural stormwater management practices, the stormwater management pond, infiltration, filtering systems and open channel systems have been designed according to the Stormwater Design Manual. In accord with § 281-11A(1) and (2), these or any other structural practices have only been proposed after nonstructural practices were employed.
 - j. According to the Applicant and the Town Engineer, the performance criteria specified in the Stormwater Design Manual with regard to general feasibility, conveyance, pretreatment, treatment and geometry, environment and landscaping, and maintenance were considered when selecting stormwater management practices, as is required by the Town Code.
 - k. The stormwater management facilities although not enclosed, will be protected against intrusions by the public through the erection of signs of sufficient size and location to adequately warn the public that there shall be no trespassing, no swimming and no other public use of the stormwater management pond. Additionally, the Applicant is proposing safety features (i.e. shelves) in the pond that would help protect someone if they were to accidentally fall into the pond.

1. The minimum qualitative treatment requirements and the minimum quantity control requirements established in Town Code, §281-10 and the Stormwater Design Manual have been met.
 - m. The hydrologic and topographic conditions have been adequately addressed by the Applicant.
 - n. The stormwater management and development plans are consistent with flood management plans as approved by the Maryland Department of the Environment in accordance with the Flood Hazard Management Act of 1976, as it may be amended from time to time.
9. The Hatton's Garden stormwater management plan meets all of the criteria for stormwater management plan approval set for in Town Code, Chapter 281.

SECTION 3.

AND, BE IT FURTHER RESOLVED by the Commissioners of St. Michaels, that:

1. The Commissioners find that pursuant to Town Code, §281-7 quantitative stormwater management waivers can only be granted to projects which are within areas where watershed management plans have not been developed, and points of study that discharge directly into tidally influenced receiving waters, provided that the applicant demonstrates that the existing conveyance and receiving channels are stable and will remain stable under the proposed development conditions. A channel is considered stable when the design flows can be conveyed and received without excessive aggradation (sedimentation) or degradation (erosion) of the channel and when there is good vegetative cover of the channel banks. (See Town Code, § 281-7.)
2. The Commissioners further find that the Town Code requires that waivers be granted on a case-by-case basis, considering the cumulative effects of the Town's waiver policy; and reasonably ensuring that the development will not adversely impact stream quality.
3. The Commissioners find that according to the testimony and evidence presented regarding this particular development proposal, this project is located in an area where watershed management plans have not been developed.
4. Furthermore, the Commissioners find that the point of discharge for the project is directly into the San Domingo Creek, which is "tidally influenced receiving waters." (See the Hatton's Garden Stormwater Management Report, page 3, Item 4.)
5. The Applicant submitted drawings which show the stormwater collection system ending approximately at the wetland boundary of the Creek with a rip rap outlet protection and a level spreader to dissipate energy from the flow of the water. Based upon the evidence and testimony presented, the Commissioners conclude that the design flows for Hatton's Garden can be conveyed and received without excessive sedimentation or erosion of the channel. Accordingly, the Commissioners find that the Applicant has demonstrated that the existing conveyance and receiving channels are stable and will remain stable under the proposed development conditions.

6. Furthermore, the Commissioners note that a waiver for quantitative stormwater management does not imply that the quantity of stormwater collected and or conveyed by a project has not been considered. The developer has provided specific calculations (as were required) to ensure water will not overflow each component. Calculations of this nature are required by the Town's ordinance as well as by the 2000 Stormwater Manual.
7. Given all of the quantitative and qualitative stormwater management facilities provided as part of this development, such as the disconnection of roof top and non-rooftop run-off through the use of rain gardens, the provision of ditches/swales and a stormwater management pond, the Commissioners find that the development will not adversely impact stream quality.
8. This waiver is the first waiver that has been requested of the Town.
9. For all of the above reasons the Commissioners hereby find that the Applicant's request for a quantitative stormwater management waiver for Hatton's Garden meets all of the criteria for approval.

SECTION 4.

AND, BE IT FURTHER RESOLVED by the Commissioners of St. Michaels that the Hatton's Garden stormwater management plan and quantity waiver, as submitted in connection with this matter, are hereby granted for all of the reasons articulated hereinabove, subject to the following conditions:

1. The Applicant shall comply with all prior Town and Critical Area Commission approvals, including but not limited to Growth Allocation, Buffer Management Plan and subdivision approvals.
2. The Applicant shall comply with and all applicable Town, State and Federal laws, regulations and orders, including but not limited to those pertaining to permitting, bonding and requisite agreements.
3. The Applicant shall comply with the requirements and terms of any and all permits issued for the Hattons Garden project as of the date of this Resolution.
4. The Applicant shall erect signs of sufficient size and location to adequately warn the public that there shall be no trespassing, no swimming and no other public use of the stormwater management pond.

SECTION 5.

AND, BE IT FURTHER RESOLVED that this Resolution shall take effect upon the date of its adoption.

THIS RESOLUTION NO. 2009-04 HAVING BEEN PASSED by the following yea and nay vote of the Commissioners of St. Michaels on the 25th day of February, 2009, at 6:30 o'clock

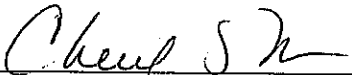
p.m. in the meeting room of the St. Michaels Free Library, 106 Fremont Street, St. Michaels, Maryland.

Brady	<u>yea</u>
Clark	<u>yea</u>
Dinkel	<u>abstain</u>
Hunt	<u>yea</u>
Snyder	<u>yea</u>

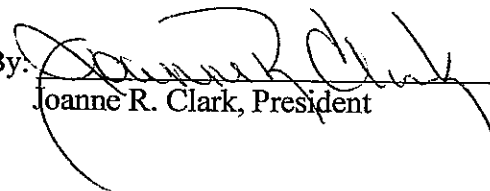
I HEREBY CERTIFY that Resolution No. 2009-04 was passed by a yea and nay vote of the Commissioners of St. Michaels on the 25th day of February, 2009.

ATTEST:

THE COMMISSIONERS OF ST. MICHAELS



Cheril S. Thomas, Town Clerk\Manager

By:  (Seal)

Joanne R. Clark, President

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. Michal
Chair

Ren Screy
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

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

August 15, 2008

Cheril Thomas
Town Manager
Town of St. Michaels
300 Mill Street
P.O. Box 206
St. Michaels, MD 21663

Re: Hatton's Gardens Annexation and Growth Allocation.

Dear Ms. Thomas:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced annexation and growth allocation request. On August 6, 2008, the Critical Area Commission approved the Town's annexation of a 94.78-acre parcel of land from Talbot County (Tax Map 32, Parcel 7) and a map change to reflect the change in the designation of 39.56 acres of this parcel from Resource Conservation Area (RCA) to Limited Development Area (LDA). The Commission's approval included the following conditions:

1. In lieu of a 300-foot setback, the variable width Buffer, as generally shown on "Concept Plan for Growth Allocation, sheet V-2.0," will provide at least 100 feet of forested vegetation between the most landward extent of State tidal wetlands and/or private tidal wetlands, and the building envelope for each lot. In no event shall the Buffer be less than shown on "Concept Plan for Growth Allocation, sheet V-2.0."
2. The extent of State and private tidal wetlands onsite shall be field verified by the Maryland Department of the Environment (MDE).
3. Prior to the issuance of any permits or final approvals by the Town, a detailed Buffer Management Plan at an appropriate scale shall be prepared and submitted to the full Commission for review and approval. The Buffer Management Plan shall include, but is not limited to: the variable width Buffer; the extent of State tidal wetlands, private tidal wetlands, and nontidal wetlands; the Mean High Water Line and the limits of State and Private tidal wetlands and nontidal wetlands at the time of the application for a Tidal Wetlands License in 2005; access to piers; appropriate protections for waterfowl staging and concentration areas as determined and approved by the Maryland Department of

TTY for the Deaf

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Natural Resources (DNR); all existing or proposed trails or portions of trails located within the Buffer; removal of exotic or invasive species; and a landscaping plan showing all removal of existing vegetation and proposed supplemental planting as required to establish the Buffer. In addition, the Buffer Management Plan shall include provisions for maintenance, survival, monitoring, and replanting for five years, and provisions for the collection of a bond by the Town in an adequate amount to ensure effective implementation for the full five-year period.

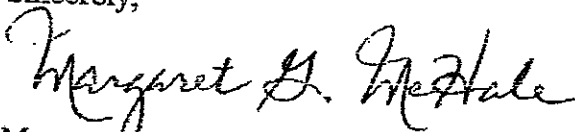
4. The requirement submitting a detailed Buffer Management Plan to the full Commission for review and approval prior to the issuance of any permits or final approvals by the Town, as found in Condition 3, does not apply to issuance of the grading permits to construct the Gateway Pond, State Highway Administration stormwater management facility, or St. Michaels Nature Trail.
5. The following section shall be removed from the Deed of Open Space, Buffer and Forest Conservation Easement, Article IV, Buffer Area Easement:

Enforcement By the Critical Area Commission Pertaining to the "Buffer Areas." The Critical Area Commission or its agents have, concurrent with the Town, a right of access to all Buffer Areas for the purpose of assessing compliance with and enforcing the restrictions and obligations contained herein and in the Buffer Management Plan.

6. Reference to each covenant running with the land shall be specifically noted by separate paragraph in each deed.
7. The construction methodology for the shared piers shall be developed in cooperation with Commission staff and, to the extent possible, implement end-on-end construction to minimize the limits of construction and impacts to the marsh.

Thank you for your help, hard work, and cooperation with the Critical Area Commission throughout the review of this growth allocation request. If you have any questions, feel free to contact me at (410) 260-3460.

Sincerely,



Margaret G. McHale
Chair

cc: Mary Kay Verdery, Talbot County Office of Planning and Zoning