

November 6, 2008

Mitigation Plan and Buffer Management Plan

Dana J. Sinderman
Windward Investment LLC
Chesapeake Reach

Application Tracking # 200762184
WMA #07 NT 2079

Project Nontidal wetland crossing on Chesapeake Avenue St. Michaels

Phase 1 Mitigation Plan Narrative

Wetland Types:

Emergent – 3,321 square feet of NTW within the portions of Chesapeake Avenue is dominated by herbaceous emergent vegetation including, soft stem bulrush *Scirpus validus*, Soft Rush *Juncus effuses*, Smartweeds *Polygonum spp.* and cat tails, *Typha spp.* The area also contained seedlings of red maple *Acer rubum*, sweetgum *Liquidambar styraciflua* and box elder *Acer negundo*. The NTW is generally confined to the existing road bed and the ruts and depressions created by continuous tracking and dumping during the wet season. The outer limits of the NTW are defined by the mowed and maintained fescue grass. This extended lawn area has been mowing and maintained in grass for 40 years or more.

Forest – 2,851 square feet located on Lot "I". This NTW is comprised of a slightly depressed area within the Loblolly pine stand. The NTW is dominated by red maple *Acer rubum*, sweet gum *Liquidambar styraciflua*, and Winterberry *Ilex verticillata*. The area holds water at the surface level during the wet season as evidenced by the lack of ground cover vegetation either shrubs or herbaceous plants and the presence of blackened leaves where due to standing water.

Current Functions:

These wetland areas function primarily for storm water absorption, erosion control; and water quality improvement. The size and location of the NTWs limits their function to serve as habitat for birds or mammals.

Required Mitigation:

Emergent Nontidal Wetland 1:1 – 3,321 square feet

Forested Nontidal Wetland 2:1 – 2,851 X 2 = 5,702 square feet

Proposed on site Mitigation – 17,494 square feet

The proposed mitigation area will provide for an increase of 11,322 square feet of wetland on the site. This is 8,471 square feet greater than required.

The new wetlands established on the site will replace in area and function the NTWs removed for this project. The location of the new wetlands will result in a

larger overall area for infiltration, erosion control and water quality enhancement. The larger area should also provide greater potential habitat for various invertebrate, reptiles and mammals. Furthermore the new wetland areas will be protected, maintained and managed to continue to provide these functions.

Mitigation Site Selection:

The mitigation site is on the property, adjoining existing wetlands, within 100 feet of the stream and will increase the size of the buffer between the tidal wetlands. The soils within the mitigation area are mapped as My – mixed alluvial and there is the potential for native wetland plants to colonize and vegetate the site once the area is planted and the mowing discontinued.

The selected site has been mowed and maintained in the past as an open meadow area. The area was part of the original platted subdivision containing lots 15 through 19. These lots have been combined under the revised proposal to form the balance of lot "H". The Stormwater Management pond and the forest preservation area are also to be part of this area. The 17,494 square foot area lays within the FEMA Flood Plain "A" and is at the general elevation of the 2 foot contour. The grass sods will be removed to provide an adequate planting bed and encourage natural wetland vegetation. The grading and plantings proposed will meet the MDE mitigation standards.

Protection Mechanisms:

The mitigation site and storm water management easement areas are to be protected through specific deed restrictions and covenants providing for protection, usage and for the funding of the required maintenance of the mitigation areas. Protection measures will be reviewed and approved by MDE before the implementation of the Phase II Plan. See: "Declaration of Stormwater Management System and Mitigation Area Maintenance Covenants".

Buffer Management:

The mitigation Easement Areas for Chesapeake Reach encompasses the entire Buffer area for the project. It is intended that the establishment, protection and future maintenance of the easement area serves the purpose of the Buffer Management Plan as required by the Town of St. Michaels' Critical Areas regulations.

Schedule:

November 2008
December 2008
2009

Submit Phase I Mitigation Plan to MDE
Submit Phase II Planting Plan to MDE
To be arranged for the planting and grading.

**ARTICLE TWO
CONSTRUCTION OF STORMWATER MANAGEMENT SYSTEM**

Developer shall construct the Stormwater Management System in accordance with the Plat and as required by the Town of St. Michaels to provide stormwater management in accordance with applicable Town standards in effect on the date of approval of the Plat.

**ARTICLE THREE
CONSTRUCTION OF MITIGATION AREA**

Developer shall create and plant the Mitigation Area according to the planting plan and buffer management plan as shown on the Plat and as required by the Town of St. Michaels and the Maryland Critical Area Commission.

**ARTICLE FOUR
OWNERSHIP OF STORMWATER MANAGEMENT SYSTEM AND THE
MITIGATION AREA**

The portion of the Stormwater Management System which is located on Lot H shall be and remain a part of Lot H as more particularly shown and depicted on the Plat and shall be owned in fee simple by said owner, subject to the rights and obligations herein. The Mitigation Area which is located on Lot H shall be and remain a part of Lot H as more particularly shown and depicted on the Plat and shall be owned in fee simple by said owner subject to the rights and obligations herein.

**ARTICLE FIVE
ACCESS TO STORMWATER MANAGEMENT SYSTEM AND MITIGATION AREA**

Lot H shall be sold, transferred and conveyed subject to a right-of-access over said lot for the limited purpose of allowing the owners of the Benefited Parcels, their agents, assigns and/or employees and to the Town Engineer, to conduct any and all necessary inspections, repairs, maintenance or reconstruction to the Stormwater Management System and the Mitigation Area at reasonable times and upon reasonable notice to the owners of said Lot H. The owners of the Benefited Parcels (other than Lot H) shall not have a right of access over Lot H for any other purpose.

**ARTICLE SIX
MAINTENANCE OF THE STORMWATER MANAGEMENT SYSTEM**

1. The Stormwater Management System shall hereafter be maintained in good order and repair by causing, as the need should arise:

A. Removal of silt from all permanent structures which trap silt or sediment in order to keep the material from building up in grass waterways and thus reducing capacity ;

B. Regular inspection of the components of the Stormwater Management System to assure proper maintenance and care;

C. All pipes, swales and retention facilities shall be kept free of any debris or other obstruction, including ice or snow;

D. Any other necessary repairs or replacement of materials required to keep the Stormwater Management System free of defects which materially interfere with its intended function as a means of controlling stormwater.

ARTICLE SEVEN MAINTENANCE OF THE MITIGATION AREA

1. The Mitigation Area shall be maintained in good order and repair by causing, as the need should arise:

A. Any replanting necessary to ensure that Mitigation Area is fully vegetated.

B. Any other necessary actions required to keep the Mitigation Area free of invasive species or other detrimental forces which threaten the integrity of the vegetation.

ARTICLE EIGHT PAYMENT OF THE EXPENSES FOR THE STORMWATER MANAGEMENT SYSTEM AND MITIGATION AREA

1. The expenses incurred from time to time in connection with the maintenance and repair of the Stormwater Management System and Mitigation Area as aforesaid shall be divided into the following shares for each of the identified Benefited Parcels and shall result in such expenses being shared by the respective owners of the Benefited Parcels in the following proportions:

Owner of Lot A	--	one-ninth (1/9)
Owner of Lot B	--	one-ninth (1/9)
Owner of Lot C	--	one-ninth (1/9)
Owner of Lot D	--	one-ninth (1/9)
Owner of Lot E	--	one-ninth (1/9)
Owner of Lot F	--	one-ninth (1/9)
Owner of Lot G	--	one-ninth (1/9)
Owner of Lot H	--	one-ninth (1/9)
Owner of Lot I	--	one-ninth (1/9)

2. The owners of the Benefited Parcels shall pay their proportionate shares of expenses incurred in the maintenance and repair of the Stormwater Management System and upkeep of the Mitigation Area pursuant to this Declaration within thirty (30) days after the date of the

completion of such maintenance and repairs. Any expenditure by any of the owners of the Benefited Parcels in excess of their proportionate share shall be recoverable in an action at law against any owner that has not paid their proportionate share, it being understood that the liability of the owners of the Benefited Parcels hereunder shall be personal only and shall not result in a lien on any of the Benefited Parcels except upon entry of a judgment properly recorded in the Circuit Court for Talbot County, Maryland. The proportionate share of such an owner who is in default under this provision shall bear interest at the rate of twelve percent (12%) per annum, and further, such defaulting owner shall pay all costs in connection with the collection of his or her proportionate share, including reasonable attorneys' fees and court costs.

3. In the event that the owners of the Benefited Parcels fail to maintain the Stormwater Management System in good condition acceptable to the Town of St. Michaels (the "Town"), the Town may give the owners of the Benefited Parcels thirty (30) days to cure any alleged maintenance failure and if the owners of the Benefited Parcels fail to take necessary corrective measures as directed by the Town within thirty (30) days, the Town may enter upon the Benefited Parcels and take whatever actions necessary to correct deficiencies identified in an inspection report and charge the costs of such repairs to the owners of the Benefited Parcels, their successors and assigns. It is expressly understood and agreed that the Town is under no obligation to routinely maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Town said responsibilities for all maintenance and repair of said facilities rests on the owners of the Benefited Parcels.

4. Notwithstanding the foregoing, the cost of repairing any extraordinary damages to the Stormwater Management System or Mitigation Area caused by the owner of a Benefited Parcel, or their agents, invitees or employees in furtherance of repairs or improvements to that owner's property shall be borne solely by that property owner.

5. All rights, powers, authorities and decisions (including, without limitation, the determination as to need for and extent of the maintenance and repairs of the Stormwater Management System and Mitigation Area) created or exercised under the terms of this Declaration shall be exercised by a simple majority vote of the owners of the Benefited Parcels, each such owner to be entitled to one vote for each share of expenses he or she is required to bear hereunder, PROVIDED, HOWEVER, that matters involving substantial changes to the Stormwater Management System, such as upgrading, the Stormwater Management System shall require the unanimous consent of all owners of the Benefited Parcels.

ARTICLE NINE MISCELLANEOUS PROVISIONS

6. The provisions of this Declaration may be terminated by the mutual written agreement to terminate, signed by all of the then owners of the Benefited Parcels, and recorded among the Land Records of Talbot County, Maryland.

7. The provisions hereof shall run with and bind the owners of the Benefited Parcels and the Stormwater Management Area and Mitigation Area and shall inure to the benefit of, and may be enforced by, any owner of any of the Benefited Parcels.

8. Every person or other entity who now or hereafter owns or acquires any right, title or interest in or to any of the Benefited Parcels is and shall be conclusively deemed to have consented and agreed to every restriction and covenant contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired an interest in such Benefited Parcel.

9. Invalidation of any one of the provisions of this Declaration by judgment, decree or order shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

IN WITNESS WHEREOF, Developer has signed and sealed this Declaration the day and year first written above.

WITNESS:

_____ (SEAL)

WITNESS:

_____ (SEAL)

STATE OF MARYLAND, COUNTY OF _____, to wit:

I HEREBY CERTIFY that on this _____ day of June, 2008 before me, a Notary Public in and for the State and County aforesaid, personally appeared _____ and acknowledged that he executed the foregoing Declaration for the purposes therein contained and further acknowledged said instrument to be his act.

AS WITNESS my hand and notarial seal.

Notary Public

My Commission Expires:

CERTIFICATION

I hereby certify that I am an attorney admitted to practice before the Court of Appeals of Maryland and that the foregoing Declaration was prepared by me or under my supervision.

Sarah M. Everhart

Parker\Real Estate\Sindermann\Purchase of Chesapeake Ave Property\Declaration and Stormwater Management Area Maintenance Covenants and Restrictions\WCP\bp