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**ORDINANCE NO. 397**

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**3AN ORDINANCE TO AMEND THE CODE OF THE TOWN OF ST. MICHAELS;  
4CHAPTER 333 (WATERWAYS MANAGEMENT), §333-5 (DEFINITIONS AND  
5WORD USAGE) SUBSECTION B; §333-9 (ZONING INSPECTOR) SUBSECTIONS  
6A AND B; §333-10 (INFORMATION TO ACCOMPANY APPLICATIONS FOR  
7BUILDING PERMIT/ZONING CERTIFICATE) SUBSECTION C; §333-13  
8(PERMITS REQUIRED) SUBSECTION E; AND ADDING NEW §333-22  
9(AMENDMENTS) TO THE CODE OF THE TOWN OF ST. MICHAELS BY  
10DEFINING CERTAIN TERMS INCLUDING MAJOR AND MINOR WATERWAY  
11IMPROVEMENTS; ESTABLISHING CERTAIN STANDARDS FOR REVIEW OF AN  
12APPLICATION FOR A MINOR WATERWAY IMPROVEMENT; REQUIRING  
13STATE AND FEDERAL APPROVALS TO ACCOMPANY APPLICATIONS FOR  
14BUILDING PERMIT/ZONING CERTIFICATES AND CERTAIN SHORELINE  
15IMPROVEMENTS; REQUIRING CERTAIN ADDITIONAL DOCUMENTS TO BE  
16SUBMITTED BY A REGISTERED PROFESSIONAL ENGINEER WITH AN  
17APPLICATION FOR A SHORELINE IMPROVEMENT; ELIMINATING  
18SECONDARY REVIEW OF A SHORELINE IMPROVEMENT THAT IS  
19CONSIDERED TO BE A MINOR WATERWAY IMPROVEMENT; ESTABLISHING  
20CERTAIN PROCEDURES INCLUDING A PUBLIC HEARING PRIOR TO  
21AMENDING CHAPTER 333; AND GENERALLY RELATING TO REGULATION OF  
22THE HARBOR AND WATERWAYS OF THE TOWN OF ST. MICHAELS.**

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25 WHEREAS, the State of Maryland holds title to State tidal wetlands in a  
26proprietary capacity, in trust for the benefit of the people of Maryland; and

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28 WHEREAS, subject to reasonable regulations, the owners of land bounding on  
29navigable water are entitled to make certain improvements into the water in front of the  
30land to preserve access to the navigable water or protect the shore against erosion, and  
31after an improvement has been constructed, the improvement is thereafter considered the  
32property of the owner of land to which the improvement is attached; and

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34 WHEREAS, the Commissioners of St. Michaels (the “Commissioners”), a  
35municipal corporation, has been delegated certain police powers pursuant to the  
36Maryland Annotated Code, Article 23A and Article 66B to govern the placement of  
37improvements within its waters, and the right to control the use and development of  
38riparian property including the ability to zone and regulate submerged land; and

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40 WHEREAS, the Maryland General Assembly enacted the Chesapeake Bay  
41Critical Area Law in 1984 for the purpose of establishing a Resource Protection Program  
42for the Bay (the “Program”) and its tributaries by fostering more sensitive development  
43activity for certain shoreline areas so as to minimize damage to water quality and natural  
44habitats, and to implement the Program on a cooperative basis with local governments by  
45establishing and implementing local programs in a consistent and uniform manner subject  
46to State criteria and oversight; and

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48 WHEREAS, subsequent to passage of the State’s Critical Area Law, the  
49Commissioners enacted a Critical Area Zoning Ordinance in 1988 consistent with certain  
50criteria established by the Maryland General Assembly; and

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52 WHEREAS, the Commissioners find that the regulations governing activities on  
53State and private tidal wetlands and the issuance of permits and licenses for the dredging  
54or filling of State and private tidal wetlands and the construction, reconstruction, or repair  
55of structures on State and private tidal wetlands are sufficiently detailed, comprehensive  
56in scope and effectively administered by the State of Maryland; and

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58 WHEREAS, the Commissioners find that the purposes, scope of review, and the  
59respective criteria used for evaluating tidal wetlands license or permit applications by the  
60Maryland Department of Environment and the U.S. Army Corps of Engineers, as well as  
61the applications for waterway improvements reviewed by the Town are often duplicative  
62or redundant particularly in regard to environmental considerations and in controlling the  
63minimization of the loss and despoliation of tidal wetlands; and

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65 WHEREAS, the Commissioners find that certain waterway improvements that  
66have been previously reviewed and approved by agencies of the State and Federal  
67governments, are regulated by applicable Critical Area laws and do not have a substantial  
68effect and impact upon navigation or other riparian properties; and, therefore may be  
69approved under Chapter 333 without extensive local review or the submission of detailed  
70plans prepared by a licensed engineer; and

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72 WHEREAS, it is the desire of the Commissioners to amend Chapter 333  
73(Waterways Management) of the Code of the Town of St. Michaels by making certain  
74textual changes therein regarding the Town’s harbor and waterways to incorporate into  
75local law the public policy of the State; and

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77 WHEREAS, for the reasons stated herein, the Commissioners deem it in the  
78interest of the public health, welfare and safety of the citizens of the Town, and for the  
79good government of the Town, to enact the following Ordinance.

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81SECTION 1. NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE  
82COMMISSIONERS OF ST. MICHAELS that Part II (General Legislation), Chapter 333  
83(Waterways Management), § 333-5. (Definitions and word usage) of the Code of the  
84Town of St. Michaels is hereby amended with new language shown in *italics* and  
85underlined and deleted language shown in **bold** and with a ~~strikethrough~~:

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87 § 333-5. Definitions and word usage.

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91 B. As used in this chapter, the following terms shall have the meanings indicated:

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MAJOR WATERWAY IMPROVEMENT – Any construction, work or repair, including, but not limited to, placing or maintaining any waterway improvement involving any one or more of the following:

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(1) Any work or repair done more than thirty inches from the shoreline, except for any repairs, including repair by replacement, of any existing:

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a. pier or dock provided that such repair or replacement is done in the exact same location as the existing pier or dock and that the existing pier or dock is not enlarged or modified in any way except to bring the same into compliance with the construction standards adopted pursuant to the provisions of this Code.

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b. bulkhead provided that such repair or replacement is done at or within eighteen inches waterward of the existing bulkhead and that the existing bulkhead is not enlarged or modified in any other way except to bring the same into compliance with the construction standards adopted pursuant to the provisions of this Code.

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(2) Any work done whereby the estimated value thereof exceeds \$5,000.00 as certified by a bona fide, third party, marine construction professional, professional engineer or other qualified contractor.

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(3) Any installation of mooring piles, except for mooring piles to be installed in the same location as a mooring piling that presently exists or previously existed within one year prior to making application under this chapter

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(4) Any fill of more than five cubic yards of material placed channelward of the mean high-water line.

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(5) Any dredging or excavation involving an alteration of the shoreline, including, without limitation, the digging of canals, harbors, lagoons, guts or digging for boat slips.

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MINOR WATERWAY IMPROVEMENT – Except as stated in this section, all other construction, work or repairs done to or in placing or maintaining a waterway improvement not included in the definition herein of “major waterway improvement.”

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138 SECTION 2. NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE  
139 COMMISSIONERS OF ST. MICHAELS that Chapter 333 (Waterways Management),  
140 Part II (General Legislation), § 333-9. (Zoning Inspector) of the Code of the Town of St.  
141 Michaels is hereby amended with new language shown in *italics* and underlined:

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143 § 333-9. Zoning Inspector.

144

145 A. Jurisdiction. The Zoning Inspector shall regulate dredging, filling, grading,  
146 modifying and altering of the bed, bottom and shoreline of the harbor, placement  
147 of moorings and floats in the harbor, and the construction, erection, installation  
148 and placement of shoreline improvements, structures and other barriers in the bed  
149 of the waterways and under, in, upon and over the waters of the waterways. The  
150 Zoning Inspector shall regulate the manner, materials and construction of all such  
151 dredging, filling, grading, modifying, altering, construction, erection, installation  
152 and placement in the waterways to the extent necessary to carry out the purposes  
153 of this chapter as set forth in § 333-3, and in doing so, shall take into account and  
154 consider those factors set forth in § 333-6A(2) of this chapter, except as stated in  
155 subsection B herein.

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157 B. Powers. In considering applications, the policy statements contained in  
158 § 333-2B of this chapter shall be considered true statements of fact which are part  
159 of the record in each case.

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163 (3) The Zoning Inspector may approve, or approve with conditions and/or  
164 restrictions as he or she deems necessary to protect the public interest, an  
165 application to permit the following activities within the developable waterway  
166 area: dredge, fill, grade, modify or alter the bed of a waterway; place any  
167 mooring buoy or float in a waterway; or construct, erect, install or place any  
168 structure or improvement in a waterway, except as stated in this subsection.  
169 only upon evidence and findings of fact, relating to the factors set forth in  
170 § 333-6A(2) of this chapter, that the waterway improvement being applied for  
171 is in the public interest and will not otherwise violate this chapter.

172

173 (4) The Zoning Inspector may approve, an application to permit an activity  
174 within the developable waterway area involving a minor waterway  
175 improvement upon evidence and findings of fact, relating to the factor set  
176 forth in § 333-6A(2)(c) of this chapter, that the minor waterway improvement  
177 being applied for meets the minimum required waterway setbacks and will not  
178 otherwise violate this chapter.

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180 (5) Notwithstanding Paragraph 4 above, the Zoning Inspector, based upon  
181 any additional factor or factors set forth in § 333-6A(2) of this chapter, may  
182 determine that an application for a minor waterway improvement, though  
183 falling within that definition, will have such significant effect or impact upon

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184 the waterways or adjacent properties that it should be reviewed in the same  
185 manner in which an application for a major waterway improvement is  
186 reviewed pursuant to this chapter.

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189 SECTION 3. NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE  
190 COMMISSIONERS OF ST. MICHAELS that Chapter 333 (Waterways Management),  
191 Part II (General Legislation), § 333-10. (Information to accompany applications for  
192 building permit/zoning certificate) of the Code of the Town of St. Michaels is hereby  
193 amended with new language shown in *italics* and underlined and deleted language shown  
194 in **bold** and with a ~~striketrough~~:

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196 § 333-10. Information to accompany applications for building permit/zoning  
197 certificate.

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201 C. Additional information. As a prerequisite to approval under this chapter, the  
202 application shall include a copy of an approved tidal wetlands license or permit  
203 issued by the Maryland Department of the Environment and the Army Corps of  
204 Engineers, or documents evidencing the project's exemption from such permits  
205 and licenses. Other information which may be supplied by the applicant at his  
206 discretion, or which shall be furnished by the applicant upon request of the  
207 Zoning Inspector, may include supporting evidence as to how and on what basis  
208 environmental requirements have been or will be met with regard to, by way of  
209 example, the following:

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211 \* \* \*

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213 SECTION 4. NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE  
214 COMMISSIONERS OF ST. MICHAELS that Chapter 333 (Waterways Management),  
215 Part II (General Legislation), § 333-13 (Permits required) of the Code of the Town of St.  
216 Michaels is hereby amended with new language shown in *italics* and underlined and  
217 deleted language shown in **bold** and with a ~~striketrough~~:

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219 § 333-13 Permits required.

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223 E. Shoreline improvements. No person shall cause or permit a shoreline  
224 improvement to be placed, constructed, repaired, altered, removed or replaced, or  
225 cause or permit any filling to occur, without first obtaining approval from the  
226 Zoning Inspector, and a valid permit having been issued by the Zoning Inspector  
227 therefore. An application for the placement, construction, repair, alteration,  
228 removal or replacement of a shoreline improvement or for grading, dredging or  
229 filling of a waterway shall comply with the following requirements:

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231 (1) An applicant shall design a project to first avoid, and then minimize,  
 232 the loss or despoliation of tidal wetlands. If the Zoning Inspector  
 233 determines that the loss of tidal wetlands is unavoidable and may be  
 234 licensed or permitted, the permit or license shall require mitigation in  
 235 accordance with the Code of Maryland Regulations (COMAR) Title 26  
 236 (Department of the Environment), Subtitle 24 (Tidal Wetlands), Chapter  
 237 05 (Mitigation), as amended from time to time, pursuant to the Maryland  
 238 Annotated Code, Environment Article, Title 16 (Wetlands and Riparian  
 239 Rights), as amended from time to time. As a prerequisite to approval  
 240 under this chapter, the application shall include a copy of an approved  
 241 tidal wetlands license or permit issued by the Maryland Department of the  
 242 Environment and the Army Corps of Engineers, or documents evidencing  
 243 the project's exemption from such permits and licenses.

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 245 (2) An applicant for a major waterway improvement shall submit to the  
 246 Town the following documents prepared by a registered professional  
 247 engineer:

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 249 (a) A sketch plan prepared by a professional engineer of the  
 250 proposed project, drawn to scale, showing the location of the  
 251 shoreline of a waterway relating to the subject property, the  
 252 property lines along the shoreline of the subject property, all  
 253 existing waterway improvements relating to the subject property  
 254 and the immediately adjacent properties, the limits of the  
 255 developable waterway area, and the waterway improvements that  
 256 are to be a part of the project;

257 \* \* \*

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 260 (d) A written explanation of how the project is designed to comply  
 261 with existing state and local law including the Town's Critical  
 262 Area Overlay District regulations regarding shore erosion  
 263 protection works, and any applicable water dependant facilities as  
 264 found in Chapter 340, Section 27.11 et seq. of this Code.

265  
 266 (e) Any photographs, exhibits or other information required by  
 267 Chapter 340, Section 27.13.G. of this Code.

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 271 (4) Upon a preliminary approval of an application for a major waterway  
 272 improvement or upon submittal of an application for a minor waterway  
 273 improvement, the applicant shall furnish to the Zoning Inspector, to be  
 274 attached to his/her written decision, the following documents prepared by  
 275 a registered professional engineer:

277 (a) A set of drawings to scale of the project as tentatively  
278 approved, showing the location of the shoreline of a waterway  
279 relating to the subject property, the property lines along the  
280 shoreline of the subject property, all existing waterway  
281 improvements relating to the subject property and the immediately  
282 adjacent properties, the limits of the developable waterway area,  
283 and the waterway improvements that are to be a part of the project;

284 \* \* \*

286  
287 (d) A written explanation of how the project is designed to comply  
288 with existing state and local law including the Town's Critical  
289 Area Overlay District regulations regarding shore erosion  
290 protection works, and any applicable water dependant facilities as  
291 found in Chapter 340, Section 27.11 et seq. of this Code.

292  
293 (e) Any photographs, exhibits or other information required by  
294 Chapter 340, Section 27.13.G. of this Code.

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298SECTION 5. NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE  
299COMMISSIONERS OF ST. MICHAELS that Chapter 333 (Waterways Management),  
300Part II (General Legislation), of the Code of the Town of St. Michaels is hereby revised  
301and amended to include a new § 333-22 (Amendments) with new language shown in  
302italics and underlined and deleted language shown in **bold** and with a ~~strikethrough~~:

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304 § 333-22 Amendments.

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306 A. In addition to the requirements of Section 15 of the Town Charter, this  
307 chapter may be amended after at least one public hearing by the Town  
308 Commissioners on the matter. The Town Commissioners shall publish notice of  
309 the time and place of a public hearing, together with a summary of the proposed  
310 legislation in at least one newspaper of general circulation in the Town once  
311 each week for two (2) successive weeks. The Town Commissioners shall publish  
312 the first notice of the hearing at least fourteen (14) days before the hearing.

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314 B. The Town Commissioners may, by majority vote, and in their sole discretion,  
315 refer the proposed legislation to the Planning Commission or other board,  
316 commission or panel for review and recommendation. The referral to the  
317 Planning Commission shall be in accordance with Section 340-90.C of this Code.

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320SECTION 6. AND BE IT FURTHER ORDAINED AND ENACTED, that this  
321Ordinance shall take effect twenty (20) days from the date of its enactment, having been

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322read at two (2) meetings of The Commissioners of St. Michaels and having been passed  
323by a yea and nay vote of The Commissioners of St. Michaels.

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326HAVING BEEN INTRODUCED, read for the first time, and ordered posted for public  
327review at a Public Meeting of The Commissioners of St. Michaels held on the \_\_\_\_\_ day  
328of \_\_\_\_\_, 2009, at \_\_\_\_\_ o'clock \_\_\_\_m., in the meeting room at the Edgar  
329M. Bosley, Jr. Municipal Building, (Town Office), 300 Mill Street, St. Michaels, Maryland.

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332I HEREBY CERTIFY THAT A COPY OF THE ORDINANCE AS INTRODUCED WAS  
333POSTED for public review in the lobby of the Town Office from \_\_\_\_\_ o'clock  
334\_\_\_\_m. on the \_\_\_\_\_ day of \_\_\_\_\_, 2009 to \_\_\_\_\_ o'clock \_\_\_\_m. on  
335the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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\_\_\_\_\_(SEAL)  
CHERIL S. THOMAS  
Town Clerk\Manager

342HAVING BEEN READ for the second time and passed by a yea and nay vote of The  
343Commissioners of St. Michaels at a Public Meeting of The Commissioners of St. Michaels  
344held on this \_\_\_\_\_ day of \_\_\_\_\_, 2009, at \_\_\_\_\_ o'clock \_\_\_\_m., in the meeting  
345room at the Town Office, St. Michaels, Maryland.

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347 Brady - \_\_\_\_\_

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349 Clark - \_\_\_\_\_

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351 Hunt - \_\_\_\_\_

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353 Snyder - \_\_\_\_\_

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355 Walish - \_\_\_\_\_

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357

358I HEREBY CERTIFY that the above Ordinance No. \_\_\_\_\_ was passed by a yea and nay vote  
359of The Commissioners of St. Michaels on the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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361

362ATTEST: THE COMMISSIONERS OF ST. MICHAELS

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365 \_\_\_\_\_ (Seal)

By:

366Cheril S. Thomas, Town Clerk\Manager

\_\_\_\_\_  
Joanne R. Clark, President

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370I HEREBY CERTIFY that an exact copy of this Ordinance, as adopted, was posted for  
371public review from the \_\_\_\_ day of \_\_\_\_\_, 2009, at 8:30 o'clock a.m. to the  
372\_\_\_\_ day of \_\_\_\_\_, 2009, at \_\_\_\_ o'clock \_\_.m., in the lobby of the Town  
373Office in St. Michaels, Maryland, and that a summary of the aforesaid Ordinance No.  
374\_\_\_\_, the date of its passage, its effective date and the fact that the entire text of the  
375Ordinance may be read in the lobby of the Town Office, St. Michaels, Maryland, for at least  
376twenty (20) days following the passage, has been published at least once each week for two  
377(2) consecutive weeks following the passage of said Ordinance in a newspaper having  
378general circulation in the Town of St. Michaels.

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381Date: \_\_\_\_\_, 2009

\_\_\_\_\_(Seal)  
Cheril S. Thomas, Town Clerk\Manager

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