

MEMORANDUM OF UNDERSTANDING

RE: Breton Bay PUD Zoning Decision
Number Z-78-7A
Case Number: 78-126

WHEREAS, Henry T. Waring d/b/a Cherry Cove Land Development Company (Developer) has submitted applications for a Planned Unit Development (PUD) for the PDR 3.5 Zone consisting of a total of 285.1246 acres proposing development of a conference center and auxillary facilities in the PDR 3.5 zone with adjacent and complementary single family and condominium units, all pursuant to Article 38.06 of the St. Mary's County Zoning Ordinance; and,

WHEREAS, said application having been duly approved by the Board of County Commissioners of St. Mary's County by zoning amendment dated November 15, 1978, designated as Zoning Decision Resolution Number Z-78-7, Case Number 78-126; and,

WHEREAS, the said Zoning Amendment requires, among other things, provisions for:

- (a) Covenants, restrictions and conditions pertaining to the use, maintenance and operation of common open space;
- (b) A report or plan establishing the timing or scheduling for the provisions of public facilities; and,

WHEREAS, the Developer and County officials desire that development be coordinated to assure that the commitments of the parties will be fully and efficiently utilized through firm understanding among all participants in the project relating to the provision of public facilities; and,

WHEREAS, the parties desire the acres designated as public and common open space be preserved as such;

IT IS UNDERSTOOD by and between the Developer and Board of County Commissioners of St. Mary's County this 6th day of December, 1978, as follows:

1. The Development Plan as prepared by Warring Associates of Hyattsville, Maryland, dated April, 1978, as approved for the Breton Bay PUD, is hereby incorporated herein. It is understood that the drawings may be modified with the approval of appropriate county agencies from time to time in conjunction with the preparation of site plans, subdivision plats or engineering

drawings to be developed pursuant to the requirements of Article 5 of the St. Mary's County Zoning Ordinance.

2. Subject to the provisions of paragraph 3, herein, the Developer will finance and install necessary water and sewer facilities required to service the proposed PUD development, including a 160,000 gallon per day (GPD) sewage treatment facility with spray irrigation facilities to service 300 residential units and a 200-room conference center. Two pumping stations in residential neighborhoods are anticipated to be necessary to pump sewage to the sewage treatment facility. The Developer shall also provide water facilities that will be required to meet the service demands of the project in accordance with the development design guidelines specified by the Metropolitan Commission and appropriate State authorities. All facilities shall be constructed pursuant to required State and local permits which shall be obtained by the Developer at its cost and in accordance with the provisions of a Public Works Agreement to be entered into between Developer and the Metropolitan Commission authorizing construction of the sewer and water facilities. Construction of all facilities shall be in accordance with the staging of the project as set forth in the Development Plan and pursuant to the development schedule and sequence set forth in the Memorandum of Understanding and as additionally set forth in paragraph 8 hereof. The design and construction of water and sewer facilities shall be coordinated with and approved by the Metropolitan Commission. The Commission will promptly consider the Developer's submissions and its approvals, in accordance with the agreed upon staging of the project as set forth herein and in the attached development schedule and sequence, will not be unreasonably withheld. The facilities, when completed by the Developer and accepted by the Metropolitan Commission, shall be transferred, as provided in the said Public Works Agreement and in Section 113-11.C of the Code of Public Laws of St. Mary's County, by the execution of appropriate documents to the Metropolitan Commission which shall thereupon assume all responsibility for the cost of operation and maintenance of the facilities. The Metropolitan Commission, its successors or assigns shall not make any applications to any appropriate authorities to increase the amount of spray

discharge authorized by the existing permit without prior approval of the Developer, its successors or assigns.

3. (a) In the event the Metropolitan Commission determines to construct its regional treatment facility and the construction of such facility can be timed in accordance with the agreed upon developments, sequence and schedules contained herein, the Developer agrees to contribute a pro rata share of the cost of such facility to accommodate treatment of 160,000 gallons per day. In the event the Metropolitan Commission is unable to proceed with development or timely completion of the regional facility for any reason, including, but not limited to, the failure to obtain necessary Federal and State approvals, the Metropolitan Commission will not withhold its approval of the proposed sewage treatment facility located on the subject property and described in the development plan which shall be constructed in accordance with the provisions set forth in paragraph 2 hereof. In the event that the County, after approval or construction of the treatment facility set forth in the development plan, undertakes the construction of the regional facility and determines to transfer the sewerage generated by the development of the subject site to said regional treatment facility the Developer shall not be responsible for the contribution of any cost involved in the development required of the regional treatment facility nor the cost of any transfer facilities.

(b) The Metropolitan Commission will furnish the Developer on or before December 18, 1978, with a status report of its schedule for design, grant approval and construction of a regional sewerage treatment facility which could be used to service the proposed development and shall keep the Developer advised of the progress of same. The Developer shall have the right to proceed with construction of its treatment facility as set forth in paragraph 2 above at any time if it determines that the regional sewerage facility will not be completed in time to accommodate the proposed development.

(c) In the event the Metropolitan Commission elects to provide sewer service to the subject property utilizing the regional treatment facility, the Developer's cost or contribution shall not exceed the reasonable cost to the Developer of providing the sewer service referred to in paragraph 2 hereof, less any reasonable amounts of funds previously expended by the Developer

towards the design and construction of its own sewerage treatment facility, providing said sums were expended in accordance with the terms of this Memorandum of Understanding.

4. (a) The Developer shall construct at its own expense and in accordance with County standards the portions of Breton View Drive required to serve the proposed development and a road servicing the single family development in proposed Neighborhood 3 as set forth on Sheets 3 and 5 of 10 of the drawings submitted as part of the Development Plan. Construction of the road will be undertaken in general conformity with the staging of the development of the project as set forth in the Development Plan as such plan may be modified from time to time. Upon completion of the road, the Developer will dedicate completed sections of the roads to the County in such manner as the County accepts such dedications and the County shall assume full responsibility for the maintenance of the roads as County roads.

(b) The impact of the development on the abutting County road is to be examined and the Developer's contribution assessed during site plan/sub-division review in the normal manner. The parties understand that, in no event, shall the total contribution from the Developer for improvements to Society Hill Road, other roads and public facilities (excluding water, sewerage and the pertinent construction requirements of Article 6.9 of the St. Mary's County Road Ordinance No. 76-7) consisting of the existing economic impact fee and the additional assessments contemplated by paragraph 4 of the Zoning Amendment exceed \$400.00 per unit.

(c) The Developer shall comply with all bonding requirements which requirements shall be those in effect at the time of site plan approval.

5. Prior to site plan approval the Developer shall prepare for recordation among the Land Records of St. Mary's County a covenant applicable to the portion of the property within the proposed PD-3.5 designated for the golf course preserving that land as permanent open space. The Developer and his successors will be required to use the certain designated areas in the golf course for spray irrigation purposes as the final stage of effluent disposal under the NPDES permit. The Developer and Metropolitan Commission, on

or before the date facilities are transferred to the Commission, shall enter into an agreement coordinating the utilization of such areas for the respective purposes.

6. Prior to approval of final subdivision plats the Developer shall establish covenants other than that referred to in paragraph 5 above to run with the land for the preservation and maintenance of open space, both private and common, in the areas proposed for residential development. In areas proposed for condominium ownership, preservation and maintenance shall be included as a part of the condominium scheme.

7. The Developer shall establish a condominium regime pursuant to the Horizontal Property Act, Title II, of the Maryland Real Property Code, for the attached, single family unit portion of the PDR 3.5 development by preparing a condominium Master Deed, Declaration and By-Laws which shall set forth the rights, duties and liabilities of condominium unit owners relating to individual units and common elements. Common elements will include, but not be limited to, driveways, pedestrian areas, recreation areas, areas designated as active and passive open space and such public utilities in which the condominium may have an interest. The agreement shall further provide that each condominium unit be assessed for common expenses in proportion to respective percentage interest held by each unit owner. The Declaration and/or Covenants shall contain an appropriate description of the property comprising the common elements, shall establish the authority of the condominium association to charge members reasonable dues and assess reasonable pro rata assessments for capital improvements and provide for architectural control. In addition the covenants will provide for the preservation of open space as set forth on any development plans or site plans which may be approved by the Board of County Commissioners of St. Mary's County for the subject property or properties which may be added in the future to the condominium regime.

8. The Developer and the Board of County Commissioners agree that the timing and scheduling of the development of private and public facilities are essential to the successful implementation of the subject application. Accordingly, there is attached hereto as Exhibit A, a schedule of development,

as modified by the Zoning Amendment in the form of a bar graph, to which the parties agree to abide. It is understood by the parties that unforeseen events may have an adverse effect on the completion date of any individual project. It is the intention of the parties to establish an order and sequence of development which will guide the overall development of the project. The County will not withhold building permits relating to this application until all public facilities have been completed and accepted, but agrees that public and private development must proceed concurrently. The County may, however, withhold the issuance of use and occupancy permits pending completion and acceptance of public water and sewerage facilities necessary to serve the completed structures for which building permits were obtained.

9. The County, upon completion by the Developer of its Site Plan or any other development plan or plat shall hold a pre-submission conference for each such plan or plat submitted which shall be attended by the Developer and appropriate department heads of all departments with authority and responsibilities for review or recommendations for the site plan or plat submitted. The purpose of the Conference shall be to establish a firm schedule for the processing of the plan or plat to the issuance of the appropriate permit. The Conference shall be coordinated by the Office of Land Use and Development (LUD). It is the aim and the desire of the parties that all reviews by members of the Technical Evaluation Committee (TEC) or others assigned to review or recommend with regard to such plan or plat, be completed within 60 days from the date of referral of the plan or plat by LUD. In the event any Department head determines that any such review cannot be accomplished within the Department within 60 days, the department head shall recommend that the plan or plat be referred to an independent engineer for the appropriate review, the cost of which shall be borne by the Developer. If upon undertaking review, a department head determines after 30 days from the date of referral that the department cannot complete its review within the prescribed time, the department head shall advise LUD and appropriate alternative arrangements shall be made to meet, as nearly as possible, the 60 day deadline. In addition to TEC reviews, target dates shall be established at the Conference for Planning Commission review, receipt of responses or approvals from Agency referrals, Planning Commission decisions, recording of plats and issuance of permits. LUD shall be responsi-

ble for coordinating the entire review process in behalf of the County.

10. This Memorandum of Understanding contains the entire Agreement of the parties and may not be changed, modified, amended, or altered except with the consent of all parties hereto.

Dated this 6th day of December, 1978.

H.P. Waring
Henry T. Waring
D.B.A. Cherry Cove Development Co.

BOARD OF COUNTY COMMISSIONERS OF
ST. MARY'S COUNTY, MARYLAND

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Joseph C. Bell, II
County Attorney

APPROVED BY ST. MARY'S COUNTY
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