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**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

August 16, 2023

The Honorable James J. Moran, President
Queen Anne's County Board of Commissioners
107 N. Liberty Street
Centreville, Maryland 21617

Re: Comprehensive Rezoning Request Chesterhaven Beach Partnership, LLP
Tax Map 57, Parcel 25

Dear President Moran and members of the Board:

I write regarding the above-referenced request by Chesterhaven Beach Partnership LLP (Chesterhaven) to have Comprehensive Rezoning Request (CRR) CRR 05 from May, 2022 reconsidered. The Board of County Commissioners materials provide that "CRR 05 seeks to add the subject parcel to the Chester Growth Area and rezone to Chester Master Planned Development (CMPD) when comprehensive rezoning is addressed." Currently, the subject parcel is zoned NC-15, is not within the Chester Growth Area, and is located partially within the Resource Conservation Area (RCA) of the Critical Area.

Per Natural Resources Article 8-1808(c)(1)(iii), the county's local zoning regulations in effect within the Critical Area are part of its Critical Area program. As detailed below, the lots are not grandfathered under Critical Area law. As such, growth allocation would be required to realize the density proposed by the applicant. Similarly, rezoning this parcel from NC-15 to CMPD is inconsistent with the Critical Area RCA designation and would also require growth allocation.

The Lots are Not Grandfathered Under Critical Area Regulations.

The Critical Area Commission has consistently held that the Chesterhaven lots are not grandfathered under Critical Area regulations because they were not subdivided into recorded, legally buildable lots, where the subdivision received final approval prior to June 1, 1984. (See COMAR 27.01.02.07B(2).) This issue was fully resolved through litigation concluding in 1995.

To very briefly summarize the relevant litigation, in 1992, the Queen Anne's County Board of Appeals found that Chesterhaven failed to meet the grandfathering provisions under Critical Area regulations. Specifically, the Board stated that the lots depicted on the May 26, 1959 plat did not satisfy any of the "exceptions or 'grandfathering' provisions" under the Critical Area regulations, including that the lots were not legally buildable because they had not received final approval prior

to the date of the Critical Area program approval. The Queen Anne's County Circuit Court and, subsequently, the Appellate Court of Maryland, affirmed the decision of the Board of Appeals.

No changes have occurred in the Critical Area law or regulations, or any subsequent litigation to disturb the 1995 conclusion that the lots are not grandfathered under Critical Area law.

The Requested Rezoning is Inconsistent with the RCA.

Among other requirements, under Natural Resources Article 8-1809(h)(2) a local jurisdiction may approve a zoning map amendment only where the change is wholly consistent with the Critical Area land classification. The CMPD zone is not consistent with the RCA classification as the bulk regulations for the CMPD district allows a residential density of at least 6 dwelling units per acre and up to 8 dwelling units per acre if transfer of development rights are used. Additionally, new commercial uses would be permitted. Density within the RCA is limited to one dwelling per 20 acres, and new commercial, institutional and industrial uses are prohibited. Therefore, the proposed rezoning may not be approved within areas of the RCA.

Growth Allocation is Required.

Given these facts, to realize the requested density the applicant would need to seek growth allocation to change the designation from RCA to either Limited Development Area (LDA), or Intensely Developed Area (IDA) consistent with Natural Resources Article 8-1808.1 and COMAR 27.01.02.06 through .06-4. The Critical Area Commission is available to meet with Queen Anne's County staff and the applicant to review the process for growth allocation.

Thank you for your attention to these important issues. Please do not hesitate to contact my office at 410-260-3460 with any questions or to discuss this matter in further detail.

Sincerely,



Erik Fisher, Chair

cc: Emily Vainieri, Esq.
Katherine Charbonneau
Amy Moredock
Joseph Stevens, Esq.