QUEEN ANNE'S CONSERVATION ASSOCIATION, INC., et al.,	*	IN THE
	*	CIRCUIT COURT
Plaintiffs,	*	FOR
v.	*	QUEEN ANNE'S COUNTY
QUEEN ANNE'S COUNTY COMMISSIONERS, et al.,	*	
	*	Case No. C-17-CV-24-000200
Defendants.	*	

* * * * * * * * * * * * * *

CHESTERHAVEN BEACH PARTNERSHIP, LLP'S MOTION TO ALTER OR AMEND CERTAIN ASPECTS OF DECEMBER 5, 2025 MEMORANDUM OPINION

Defendant Chesterhaven Beach Partnership, LLP ("**Chesterhaven**"), through its undersigned counsel and pursuant to Rule 2-534, hereby moves to alter or amend certain aspects of this Court's December 5, 2025 Memorandum Opinion (the "**Opinion**").

INTRODUCTION

Chesterhaven respectfully requests that the Opinion be altered or amended in three discrete ways:[1]

1. To omit the *dicta* on page 2 of the Opinion concerning the status of the grandfathered lots on Chesterhaven's property.
    - *The Court's statements are contrary to record evidence, are unnecessary to the Court's decision, and may cause confusion or prejudice in future proceedings.*
2. To address the meaning of the Court's comment on page 5 of the Opinion that the "Court finds all six arguments persuasive".

[1] While Chesterhaven contests the Opinion's stated conclusions and reserves its appellate rights to challenge the same, the purpose of the instant Motion is to clarify the certain aspects of the Opinion to avoid uncertainty and confusion going forward.

- *This statement leaves unclear for appellate and other purposes the actual basis for this Court's decision.*

3. To explain the Court's statement on page 9 of the Opinion that "[t]he Court finds [Chesterhaven's] argument to be flawed."

    - *This statement, made without explanation, leaves the Court's reasoning unclear for appellate and other purposes.*

Accordingly, the Opinion should be altered or amended as described in further detail below.

ARGUMENT

I. The Opinion Should Be Altered or Amended to Omit the *Dicta* Concerning the Status of the Grandfathered Lots on Chesterhaven's Property.

The first full paragraph on page 2 of the Opinion briefly addresses the 1992 application for conditional use and variance to develop Chesterhaven's property and the litigation that followed that application. This paragraph is inaccurate, contrary to record evidence, unnecessary to the Court's decision, and may cause confusion or result in unfair prejudice in future proceedings. Accordingly, this paragraph should be stricken from the Opinion.

As a threshold matter, the Opinion misdescribes the Queen Anne's County Board of Appeals' decision as having "rejected Chesterhaven's grandfathering argument," and suggests that the Board found, as a matter of fact, that the lots reflected on the Chesterhaven plat recorded in 1959 were not entitled to grandfathered treatment. Then, based upon that inaccurate description, the Opinion makes a conclusory statement: "So, the development of Chesterhaven's Property continued to be limited by the one unit per twenty-acre density restriction applicable in the RCA."

To the contrary, and as explained in the Drummond Memorandum (which the Opinion does not acknowledge),[2] the Board rejected on multiple grounds Chesterhaven's plan for a 186-unit apartment complex on its property. As to the grandfathered status of the lots, the Board merely found that Chesterhaven had not submitted sufficient evidence to prove grandfathering in the context of that request; the Board did not decide or determine whether the lots were grandfathered. Thus, the Opinion's passing reference to these decades-old proceedings is inaccurate and should be stricken.[3]

The Court's conclusory statement regarding the status of the grandfathered lots is also contrary to extensive record evidence submitted with Chesterhaven's Opposition, including:

- the October 24, 2023 Memorandum from the late Christopher F. Drummond, Esq. to the Commissioners providing his legal analysis and conclusion that there are 178/179 lots of record on the Chesterhaven Property (**Ex. A** to the Opposition);

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[2] Ex. A to Chesterhaven's Opposition to Plaintiffs' Motion for Summary Judgment (the "**Opposition**").

[3] Moreover, even if it were appropriate to include as background a litigation history concerning Chesterhaven's property, the Opinion also would need to acknowledge the action styled *Chesapeake Wildlife Heritage, Inc, et al. vs Chesterhaven Beach Partnership, LLC, et al.*, Case No. 17-C-11-016500 (filed Sept. 12, 2011).

In that case, the plaintiffs (including two of the Plaintiffs in the instant case, as well as the Critical Area Commission, which, as in the instant case, intervened) challenged the Commissioners' September 13, 2011 grant of sewer allocation to 178 of Chesterhaven's lots. In particular, the plaintiffs sought a declaration that "the property did not have any vested rights in 186 lots which could have been preserved by the grandfathering provisions" and sought an injunction barring the Chesterhaven from filing any application with the County based upon there being 180 grandfathered lots.

Pertinent here, the plaintiffs in *Chesapeake Wildlife Heritage* argued that the 1992 Queen Anne's County Board of Appeals decision and subsequent affirmance (cited in the Opinion in this case) conclusively established that the lots were not entitled to grandfathered treatment. Notwithstanding, this Court (Sanders, J.) dismissed the plaintiffs' Complaint, finding that the issue of the grandfathered status of the lots only could be raised through administrative proceedings following the approval of a development plan that reflects the grandfathering of the lots—which had not happened then (and still is yet to occur). That dismissal was affirmed by the Appellate Court. *See* Ex. B to Chesterhaven's Opposition. Under the doctrine of collateral estoppel, Plaintiffs here are barred by the *Chesapeake Wildlife Heritage* decision from seeking a contrary declaration, and this Court has no jurisdiction to consider the issue until such time that a plan is approved and Plaintiffs have exhausted their administrative remedies to challenge such approval.

- the Appellate Court's February 7, 2013 Opinion in *Chesapeake Wildlife Heritage, Inc., et al. v. Chesterhaven Beach Partnership, LLP, et al.*, No. 0013, September Term, 2012[4] (**Ex. B** to the Opposition);
- the CAC's August 1, 2005 comment letter for File #04-05-06-0014, which acknowledges the existence of a recorded subdivision and lots on the Chesterhaven Property (**Ex. C** to the Opposition);
- the plats, declaration, and other materials submitted in conjunction with Chesterhaven's Comprehensive Rezoning Request 05 (**Ex. D** to the Opposition)[5]; and
- the Technical Committee's April 26, 2022 Memorandum stating that "[t]her are already 180 legal lots of record on this parcel" (**Ex. E** to the Opposition).

See Opp. at 2, n. 2. Thus, even if the legal status of the lots were at issue in this case, there would be, at least, a dispute of material fact that precludes the entry of summary judgment on that basis, making the conclusory statement on page 2 improper.

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[4] Notably, the Appellate Court's 2013 decision *followed* the litigation cited in the Opinion, yet is not even addressed in the December 5 Opinion.

[5] These include several documents recorded in the Court's Land Records, of which the Court may take judicial notice, including:

- The Plat for the Chesterhaven Beach subdivision recorded on May 27, 1959 (more than 26 years prior to the December 1, 1985 date referenced in Queen Anne's County Code § 14:1-22.D) at T.S.P. 1, Folio 59, which recordation was re-confirmed at Folio 48, Page 163.
- The Certificate of Exception issued July 2, 1962 by the Queen Anne's County Planning and Zoning Commission recorded at Liber 67, Page 139.
- The December 2010 Declaration of Administrative Subdivision consolidating 7 of the recorded Chesterhaven Beach lots into one lot, approved by the Queen Anne's County Department of Planning and Zoning and recorded at SM No.1497, Page 744.

Additional documents demonstrate: (a) that the 1996 Queen Anne's County Water and Sewer Plan designated the Chesterhaven Property as S-1 and expressly provided that "186 lots that would require 46,500 gallons of sewage allocation;" and (b) the County Commissioners' 2010 grant of sewer allocation to Chesterhaven Beach Lots 1E and 8F in Chesterhaven and September 13, 2011 grant of sewer allocation for all remaining 178 lots (44,500 gallons), as well as Chesterhaven payment of a 10% refundable deposit of $124,600 toward a Public Works Agreement covering the subdivision.

Of course, Chesterhaven continues to maintain that the grandfathered status of the lots was not properly before this Court in this action, *see* Opp. at 15-16, a position that this Court appeared to endorse during the November 10 hearing:

> THE COURT: All right. Thank you. All right, Mr. Brown, you're going to start?
>
> MR. BROWN: Yes, thank you, Your Honor. Let me start with the Court's question and Mr. Hammock's comments in response on whether this grandfathering issue is before the Court. The answer is no. As Mr. Hammock just recognized, they're here challenging the action, the 2024 action of the commissioners. That's it. And so that's the only question before the Court today, is whether that action was lawful. ***The Court cannot and should not, frankly, touch the grandfathering issue because***
>
> THE COURT: ***I don't want to –***
>
> MR. BROWN: ***-- it'd be improper at this point.*** As Mr. Hammock stated in his reply, and again today, there's now a site plan application pending for the county. ***We may be back here someday, Your Honor, talking about that issue, but today is not that day***.
>
> THE COURT: ***Okay***.
>
> MR. BROWN: So I think that that's all I need to say on that. …

Nov. 10, 2025 Hrg. Tr. at 13:11 – 14:5 (emphasis added), excerpts of which are attached as **Exhibit A**.[6] This colloquy followed the Court's questioning of Plaintiffs' Counsel Mr. Hammock

[6] Given the Court's apparent agreement that the grandfathered status of the lots was not before it or necessary to its decision, Chesterhaven declined to offer further argument on this issue so as to avoid needlessly burdening the Court. However, Chesterhaven was prepared to address this argument in further detail and to ask the Court to take judicial notice of several additional documents within the Court's land records, all of which reference the recorded subdivision plat:

- June 19, 1974 deeds of the Chesterhaven property by then owner Leon Crane to Judith Conley, and by Conley back to Crane imposing covenants, easements and restrictions on the subdivision for purposes of development, recorded at Book 84, Pages 82 and 98.
- June 6, 1975 deeds of Lot 8, Block E to Charles and Bertha Flom, and of Lot 9, Block E, to Jeanette Shapiro, recorded at Book 94, pages 100 and 102.
- October 29, 1985 deed of the remaining lots in the subdivision from Leon Crane Estate to Chesterhaven Beach Partnership, recorded at Liber 242, Page 152.

regarding the whether the grandfathered status of the lots was necessary to the Court's resolution of the instant case. Mr. Hammock twice acknowledged that the question before the Court was the legality of the Commissioners' decision to "amend the comprehensive plan***, irrespective of whether or not there are grandfathered lots***." *Id*. at 11:22-24 (emphasis added). And again: "But irrespective of whether they're grandfathered lots or not, what the commissioners did and what we are challenging from 2024 is invalid for six different reasons." *Id*. at 12:11-14. Thus, there is no dispute that the grandfathered status of the lots was not properly before this Court and is not necessary to the Court's decision.

Finally, insofar as the Discussion section of the Opinion does not address or rely on the status of the lots—but, rather, turns on the Court's construction of (a) NR §§ 8-1802 and 8-1811, and (b) LU § 3-204—the conclusory statement is not necessary to the Court's decision and, therefore, is mere *dictum*. But given the propensity of judicial *dicta* to cause and perpetuate confusion, and given the risk that these *dicta* may prejudice Chesterhaven's rights in future administrative and/or judicial proceedings, it would be imprudent for such a statement to remain in the Opinion. *See generally Lanza v. State of N.Y.*, 370 U.S. 139, 148 (1962) ("These expressions of dicta are in a form which can only lead to misunderstanding and confusion in future cases.") (Warren, C.J., concurring); *Plank v. Cherneski*, 469 Md. 548, 594 (2020) (analyzing frequently repeated dicta and concluding that those statements were contrary to law).

Accordingly, Chesterhaven requests that this portion of the Opinion be stricken. Alternatively, if the Court concludes (contrary to its indications during the November 10 hearing

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- March 14, 1991 deeds from Mr. and Mrs. Flom and Ms. Shapiro Lot 8 and 9 of Block E to Chesterhaven Beach Partnership, recorded at Liber 366, Pages 689 and 692.
- August 13, 2008 Chesterhaven Beach, LLP deed of Block F, Lots 18-23 to Howard Brown, recorded at Liber 1807, Folio 101.

These land records are further evidence that would defeat summary judgment on this issue.

that the grandfathering issue was not properly before it), that a finding of fact with respect to the grandfathered status of the lots established by the May 1959 plat is necessary to a decision on Plaintiffs' Motion, the Court should withdraw the Opinion in its entirety and conduct a further hearing to consider facts and arguments on that point.

II. The Opinion Should Be Altered or Amended to Clarify the Basis (or Bases) for the Court's Opinion.

The preamble to the Opinion's Discussion states: "Plaintiff argues six equally dispositive statutory violations that warrant summary judgment in favor of the Plaintiffs. Court finds all six arguments persuasive but highlights two in particular for which the Court will grant the Motion for summary judgment." (Opinion at 5).

These statements generate questions regarding the basis or bases for the Court's decision on the Motion for Summary Judgment. Specifically, is the Court's decision based on "all six arguments," or is the Court's decision based solely on the two arguments discussed in the Opinion? To the extent that Chesterhaven and/or the County may appeal the Court's judgment, it is critical that the Parties be apprised of the actual bases for the Court's decision, lest the Parties (and the Appellate Court) spend months litigating an appeal, only for the matter potentially to be remanded for consideration of issues not addressed in the first instance.

Moreover, this Court lacks jurisdiction to decide the fifth and sixth purported "statutory violations" alleged by Plaintiffs during the November 10 hearing. That is, unless and until the County has approved the development of a specific number of lots on Chesterhaven's property, there is nothing for Plaintiffs to challenge. And, of course, if they wish to challenge such approval, Plaintiffs first must exhaust their administrative remedies before this Court acquires jurisdiction to consider their arguments. This is the very holding of *Chesapeake Wildlife Heritage, Inc., supra.* This jurisdictional bar thus precludes Plaintiffs from arguing—and this Court from adjudicating—

at this juncture: (1) whether Chesterhaven's lots are grandfathered under § 14:1-22D of the Queen Anne's County Critical Area Ordinance (the fifth purported "violation"); and (2) whether growth allocation was required under COMAR 27.01.02.05 (the sixth purported "violation"). As Chesterhaven explained in its Opposition, Plaintiffs' arguments on these points are both premature and based on a misreading of the Commissioners' action, which did not approve any development on Chesterhaven's property, but merely imposed a limitation on the future development of the property. *See* Opp. at 15 ("[W]hat the Commissioners actually did was to impose a condition on any future development that might eventually occur on the Property…"). In sum, because this Court lacks jurisdiction to adjudicate Plaintiffs' fifth and sixth purported violations, it is improper for the Opinion to opine on such matters.

Accordingly, the statements in the preamble to the Discussion are either legally improper or gratuitous and should be excised from the Opinion.

III. The Opinion Should Be Altered or Amended to Explain Why the Court Found Chesterhaven's Argument "to be flawed".

The Court's discussion of the legality of the Commissioners' planning decision summarizes Chesterhaven's argument as follows: "Defendants argue the Comprehensive Plan that the Commissioners adopted on May 24, 2022, included the express condition that the Commissioners discussed and debated on May 10, 2022, when the Commissioners reconsidered Chesterhaven's Request they resolved the condition that they already "baked into" the duly adopted plan. ***The Court finds this argument to be flawed***." (Opinion at 9). This summation is followed by the conclusory statement that "[t]here is no dispute of material fact that the Commissioners illegally reconsidered their decision." (*Id.*). While the Opinion then proceeds to describe in general terms a "150-day period" in the "statutory rules," nowhere does the Opinion explain why it found Chesterhaven's argument "to be flawed." Indeed, the Opinion neither addresses: (a) why

Chesterhaven's argument that the condition was "baked into the plan" is contrary to law; or (b) why the initial decision *to exclude* Chesterhaven's property from the growth area *was lawful*, but the concomitant decision *to include* conditions on the treatment of the property *was unlawful*. As Chesterhaven argued: "The two actions cannot be decoupled."

Accordingly, Chesterhaven respectfully requests that the Court either amend the Opinion to address this argument on the merits or, alternatively, to strike the conclusory statement that "[t]he Court finds this argument to be flawed."

CONCLUSION

WHEREFORE, Defendant Chesterhaven Beach Partnership, LLP respectfully requests that the December 5, 2025 Memorandum Opinion be altered or amended as described herein.

A proposed order is attached.

Respectfully submitted,

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Counsel for Respondent
Chesterhaven Beach Partnership, LLP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 11, 2025, a copy of the foregoing was served on all Counsel of Record via this Court's MDEC electronic filing system.

/s/ Michael B. Brown
Michael B. Brown

EXHIBIT A

IN THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY

STATE OF MARYLAND

QUEEN ANNE'S CONVERSATION ASSOCIATION, INC., ET AL.

Plaintiff,

v.

QUEEN ANNE'S COUNTY COMMISIONERS ET AL.,

Defendant.

Civil Docket

No. C-17-CV-24-000200

OFFICIAL TRANSCRIPT OF PROCEEDINGS

MOTION HEARING

VOLUME 1 OF 1

Centreville, Maryland

November 10, 2025

BEFORE:

LYNN KNIGHT, JUDGE

APPEARANCES:

For the Plaintiff:

JESSE B. HAMMOCK, ESQUIRE

For the Defendant:

MICHAEL BROWN, ESQUIRE

For Critical Are Commission:

EMILY VAINIERI, ESQUIRE

For Chesapeake Bay Foundation:

SHERONDA ROSE, ESQUIRE

For County Commissioners of Queen Anne's County:

PATRICK THOMPSON, ESQUIRE

Chester Haven Beach Partnership:

ROBERT BRENNEN, ESQUIRE

Chester Haven Beach:

JOSEPH STEVENS, ESQUIRE

Transcribed from electronic recording by:

Dorothy Gravelle

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WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	VD
For the Plaintiff:					
None					
For the Defendant:					
None					

EXHIBITS	IDENTIFICATION	EVIDENCE
For the Plaintiff:		
None		
For the Defendant:		
None		

regard to growth allocation. They simply can't do it.

And that's COMAR 27.01.02.05, as cited in our brief. Any one of those six reasons, Your Honor, is alone reason enough to invalidate what the commissioners did. I have a couple of comments regarding the arguments that they made in opposition in what I think is a countermotion, but if Your Honor has any questions on the first six, I'm happy to answer.

THE COURT: I do have a question. Everybody references these grandfathered lots --

MR. HAMMOCK: Uh-huh.

THE COURT: -- whether they are, whether they aren't. Sometimes they say it's okay, sometimes we say it's not okay. So I didn't find anything in the record about whether or not we have a grandfathered right to take the action that was happening.

MR. HAMMOCK: So the underlying decision that the Board of Appeals made and then the Circuit Court made and the appellate court approved is that there was insufficient evidence of grandfathering lots. There are no grandfathered lots. That's res judicata. That has been dealt with. With regard to what was approved in 2024, the commissioners do not have the author -- what they did was amend the comprehensive plan, irrespective of whether or not there are grandfathered lots.

The decision that was challenged, the 2024 decision,

was to include Chester Haven's property in the growth area. In 2022, they adopted a comprehensive plan that excluded -- it never mentioned, by the way, Chester Haven's property, but it excluded -- it did not include them in the growth area. In 2024, they amended the comprehensive plan. So irrespective of whether or not the lots are grandfathered and I would say I think it might have been the 1990s cases, actually the early 90s.

THE COURT: '92?

MR. HAMMOCK: '92. Thank you, that addressed the grandfathering issue. But irrespective of whether they're grandfathered lots or not, what the commissioners did and what we are challenging from 2024 is invalid for six different reasons.

THE COURT: Okay. All right. Thank you.

MR. HAMMOCK: The first argument that I want to address, Your Honor, that they posed in their response in opposition and countermotion --

THE COURT: Do you want to wait until they argue?

MR. HAMMOCK: Sure.

THE COURT: Because there might be something that comes up that you might need to address.

MR. HAMMOCK: Absolutely, Your Honor. Thank you.

THE COURT: All right. Are we going to hear any argument more on this side or is Mr. Hammock speaking --

MS. VAINIERI: I think at this point, I'm just going to adopt and incorporate Mr. Hammock's arguments and certainly if there are any additional questions on the Critical Area Commission pieces of this, which are the notice and the growth allocation, I'd be happy to answer that.

THE COURT: Okay.

MS. VAINIERI: Thank you.

MS. ROSE: Your Honor, just confirming that my client, Chesapeake Bay Foundation, concurs with the arguments laid out by Mr. Hammock. No additional argument from me.

THE COURT: All right. Thank you. All right, Mr. Brown, you're going to start?

MR. BROWN: Yes, thank you, Your Honor. Let me start with the Court's question and Mr. Hammock's comments in response on whether this grandfathering issue is before the Court. The answer is no. As Mr. Hammock just recognized, they're here challenging the action, the 2024 action of the commissioners. That's it. And so that's the only question before the Court today, is whether that action was lawful. The Court cannot and should not, frankly, touch the grandfathering issue because --

THE COURT: I don't want to --

MR. BROWN: -- it'd be improper at this point. As Mr. Hammock stated in his reply, and again today, there's now a site plan application pending for the county. We may be back

here someday, Your Honor, talking about that issue, but today is not that day.

THE COURT: Okay.

MR. BROWN: So I think that that's all I need to say on that. Mr. Hammock presented a different characterization today of the same issues that have been in play, the same issues in their motion, I think trying to make more hurdles for us to somehow as the respondent, that we need to jump over. I just don't think that's where we are today. The challengers are, of course, the petitioners. It's their burden and so I appreciate the strong rhetoric, the strong argument from my colleague here, but just to place us, what we're talking about is the legality of that decision.

The first broad issue, and I think this is Mr. Hammock's point four really, targets point four and that's the notice issue.

THE COURT: Notice. Uh-huh.

MR. BROWN: Whether notice was required to be given to the Critical Area Commission. The answer is no, because this was not an application for a project approval. It's really that simple, based on the statutory definition in 8.18.02.27(i), project approval, 8.27(i). A project approval means the approval of development, other than development by the State or local government. And then it goes on to tell us exactly what is intended. The statute tells us exactly what a

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* * * * * * * * * * * * * *

[PROPOSED] ORDER

Now pending before this Court is Defendant Chesterhaven Beach Partnership, LLP's Motion to Alter or Amend Certain Aspects of December 5, 2025 Memorandum Opinion. This Court having considered the Motion, any response thereto, and good cause being shown therefore, it is this _____ day of _____, 20 ___, hereby ORDERED that:

1. Defendant's Motion is GRANTED;
2. A revised Memorandum Opinion shall be issued.

_____
The Honorable Lynn Knight
Circuit Judge