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December 1, 2021

BY EMAIL DELIVERY: lee.currey@maryland.gov

D. Lee Currey, Director
Water and Science Administration
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21230

RE: Revocation of Approval of Talbot County Resolution 281

Dear Director Curry:

My name is Dan Watson, and I live in Talbot County. Believing the adoption of Resolution 281 As Amended ("R281") was flawed by problems of process and substance, I have been endeavoring since last spring to have the Talbot County Council rescind Resolution 281 without prejudice so that matter can be properly reviewed and issues resolved before the project it authorizes is reconsidered. As you know, R281 amended Talbot County's Comprehensive Water and Sewer Plan ("CWSP") to accommodate the Lakeside project in Trappe, MD¹.

In recent months I have spent quite a lot of time and effort digging into those documents and materials available to me (including many obtained through PIA requests), and recently the pieces of the puzzle have fallen into place. I believe you will find the picture disturbing, as I do.

I write to you as an individual² to respectfully request that the Maryland Department of Environment ("MDE") exercise its independent authority to revoke its November 4, 2020 approval of R281; that on the Secretary's authority it issue a stop-work order; that it undertake a proper investigation of the matters detailed below to uncover additional information if needed; and that the Department formally disapprove R281.

¹ See Exhibit 1 for background information on the property and Applicant.

² I am also the individual who filed with Talbot County a Petition (21-01) on May 7, 2021 asking the County Council to rescind R281. That proceeding is currently underway. Through November 1, 2021, 412 individuals and the Talbot Preservation Alliance wrote the County Council to join in or formally support Petition 21-01. (That is 1.4% of the County's adult population; the same percentage in, for example, Baltimore County would equate to about 9,000 petitioners.) Petitioners are not primarily from Trappe. They are from all over Talbot County and are in large measure concerned about the integrity of our land review processes.

In Section 2 of this letter, I briefly describe three reasons why MDE must disapprove R281; each standing alone is sufficient reason for that action. But those issues, important as they are, pale in comparison to the most fundamental of problems detailed in Section 1 and which demands immediate action and a thorough, independent investigation: R281 was not just tainted. ***R281 was built on a foundation of falsehood and misrepresentation, and over many years, MDE itself actively helped advance this project against the active opposition of Talbot County by issuing invalid permits. The Department's complicity continues to this day.***

Only a proper, wholly independent, investigation can determine if many curious and unexplained aspects of the approval process for this billion-dollar project are the hallmarks of corruption, petty or large in scale--or if they simply represent an unfortunate but benign confluence of misunderstandings, innocent mistakes, and poor communication. I believe the evidence below proves some allegations I assert (e.g., that Lakeside was never categorized "S-2"). But as to other conclusions (e.g., the extent to which false premises misdirected final decisions) while the evidence I have been able to gather is strong, it may be short of proof. There are limits to what an individual can ascertain, and I believe only MDE and other appropriate, independent, governmental agencies can really get to the bottom of the matter.

But whether falsehoods were innocent or purposeful, the adoption of R281 was unalterably infected.

SECTION 1: ADOPTION OF R281 WAS ROOTED IN FALSEHOOD, AND MDE IS LARGELY CULPABLE.

The premise of the allegations I express here is that Maryland—likewise, Talbot County—is ruled by laws and regulations that are properly applied, and that steps taken in the application of those laws and regulations must themselves be properly documented and communicated to the affected parties. Maryland is not governed by the rule of email, private note, the wink-and-nod, the undisclosed ruling kept in a bottom drawer devoid of public understanding or timely judicial review.

Here are two "facts" that virtually everyone believed true in 2020 (and today) but that were actually untrue—"falsehoods"³-- that MDE had a hand in, that were widely espoused, and that the record⁴ shows were a primary reason R281 came to be adopted. The falsehoods were:

- That in the past, prior to 2010, the Lakeside project had been determined to be consistent with the Talbot County Comprehensive Plan; and
- That ever since 2002 the Lakeside property had had a sewer service classification of "S-2" (programed for development in "three to five" years)⁵.

³ The terms "falsehood," "false," and "untrue" are repeatedly used in these materials in a very specific sense; see Exhibit 2 for clarification.

⁴ Primarily transcripts of various meetings; other documents and materials including those obtained through Public Information Act requests; newspaper reports.

⁵ Applicant represented to the County that, due to the passage of time, MDE "interpreted" that actually Lakeside already was classified "S-1." Exhibit 13C, p. 21 and elsewhere. The record shows that at least some Council Members and Commissioners accepted that representation. (Exhibit 13D, p. 23; Exhibit 13H, p. 41 and elsewhere.)

Because of the misleading implications of permits invalidly issued as described below, MDE's failure to address their invalidity when called out, and its continued complicity by not correcting known falsehoods in the processing of R281, MDE seems largely responsible for these falsehoods and their malign impact on Talbot County and its citizens, although it was Applicant who introduced and repeatedly expressed the falsehoods as R281 was being considered and adopted.⁶

A. MDE's Central Role In The Adoption of R281 Based on Falsehoods.

The single most important step in the adoption of R281, the approval of Lakeside, and the undermining of Talbot County's Comprehensive Plan, perhaps occurred on December 9, 2003 when Mr. Ray Anderson checked a box on an MDE form: "Based upon our review, it has been determined that this permit X is; ____ is not; consistent."⁷

Whether inadvertently or purposefully, that behind-the-scenes action seems to have led to a misunderstanding ever after that MDE somehow had validly determined that the Lakeside project itself was consistent with the Talbot County Comprehensive Plan. It was not.

It seems that as a consequence of that checked box, in 2005 MDE issued Lakeside a discharge permit, and in 2006 MDE issued two permits for construction of water and/or sewer infrastructure⁸, which could only have been done *legally* if the County's Comprehensive Water and Sewer Plan ("CWSP") had been amended to include the related project. Such an amendment is permissible only if *the County Planning Commission* has determined the subject project to be consistent with the County's Comprehensive Plan⁹.

As MDE did issue those permits, MDE may have gotten confused and improperly relied on Mr. Anderson's very narrow, indeed, questionable, finding of December 9, 2003. A less benign possibility is that in the application process for those construction permits The Town of Trappe or someone else actually misrepresented to MDE that the CWSP had been amended so that the project was eligible

⁶ If there is any doubt about this thesis, see Exhibit 3. It is an article published by The Center For Public Integrity on November 16, 20009 entitled "TOWN BYPASSES NORMAL CHANNELS TO AID MAJOR DEVELOPMENT." Among the telling passages is this: "...in May 2005, a Maryland Department of Planning official wrote an e-mail to an MDE official expressing similar concerns about the town's efforts to bypass the county's process for approving changes, referred to as "amendments," to its comprehensive development plan: "How can you (and we) act on an amendment that has not been locally adopted? What's up with that?"

⁷ Exhibit 4, copy of checked form.

⁸ Discharge Permit #6-25-1104 issued in Spring of 2005; Construction Permits 6-25-1104 and 6-22;23-1165 issued on May 30, 2006 and November 27, 2006 respectively.

⁹ Environment Art. 9-511. "Required conformity with county plans: Unless they conform to the county plan or revision or amendment of the county plan, the following systems and facilities may not be installed or extended: (1) A water supply system; (2) A sewerage system..."

(meaning the property had an immediate priority sewer service classification, or “S-1”¹⁰) and that the Planning Commission had found the project consistent with the County’s Comprehensive Plan. Neither was true, and those would have been false representations.

What is puzzling in the extreme, and calls into question either an innocent misunderstanding of Mr. Anderson’s checkmark or a gullible acceptance of someone’s misrepresentations, is that between the date of Mr. Anderson’s check mark and the date the first permit was issued, the Talbot County Council vehemently rejected Lakeside, refusing to grant it an immediate priority (“S-1”) classification. Surely this widely publicized¹¹ decision was known to MDE—yet MDE issued the discharge permit and the two construction permits in defiance of the County’s action. (If it was meant to be defiant, and to force the County to accept Lakeside, MDE should not have acted covertly, but directed the Talbot County Council to amend its CWSP accordingly. Such an above-board approach would have alerted Talbot County and its citizens, enabling them to respond¹² or pursue judicial review.)

In either event, the construction permits could not have been validly issued. But they were issued, and the false implications of that action (that Lakeside must have been classified S-1 and found consistent with Comp Plan) became firmly established in the minds of people in Talbot County. The record shows those falsehoods became the corrupted basis for review and adoption of R281 in 2020.

B. Lakeside Had Never Been Classified Lakeside “S-2;” It Was Always Unprogrammed.

Under Maryland law, Talbot County Itself, acting through the County Council, is primarily responsible for land use decisions. With narrow exception¹³, only the County Council can designate a property’s sewer service classification by adopting or amending its Comprehensive Water and Sewer Plan (“CWSP”). As explained in the detailed analysis in Exhibit 7, the “Sewer Service Area” map (Figure 23) in the CWSP adopted on October 22, 2002¹⁴ shows that all land on the east side of Route 50 that was not then in the

¹⁰ Exhibit 5 demonstrates that Applicant knew the *normal* procedure to request reclassification to “S-1.” It appears the Town’s attorney, around 2003, applied for reclassification of a different development from “no planned service” (which is what Lakeside was) to “S-1.” It is a simple and straightforward form, but none like it exists in the files of Talbot County for Lakeside. Contemplate how differently Lakeside would have been evaluated by the Planning Commission, the public, and the County Council in 2020 if it had properly framed as moving from “no planned service,” rather than the falsehood that for eighteen years the whole 2501-unit subdivision had been “programmed for development in 3-5 years”—and that MDE had already had determined that it was all “S-1” anyway, no matter what the County said.

¹¹ Exhibit 6, Resolution 123, which failed Dec. 21, 2004

¹² For example, by further amending its CWSP before any adverse actions were taken.

¹³ If a jurisdiction is not taking adequate action to protect health, safety and welfare of the public in its CWSP, MDE can mandate such action. See *Discussion in Smoke Rise, Inc. v. Washington Suburban San. Com'n*, 400 F. Supp. 1369 (D. Md. 1975).

¹⁴ Actually, a “Report of the Review” of the earlier plan. See Exhibit 8 for an important discussion of how the extremely restricted access to this document, even by local officials and staff (and the public) may have contributed to problems with Lakeside approvals.

Town of Trappe remained unprogrammed as it had always been, including all of the property (Lakeside and other) that was annexed in 2003.

(Mr. Michael Pullen, the former Talbot County Attorney who served for approximately 20 years--including in the period when the CWSP was adopted and R123 was considered, but who retired in 2016 before R123 was introduced--has reviewed this analysis and concurs. See Exhibit 7C.)

Until adoption of R281 on August 11, 2020, the Talbot County Council had only once amended the CWSP for any property in the Trappe area¹⁵, and that matter had no relationship to Lakeside¹⁶. Therefore, contrary to numerous representations as R281 was being considered and adopted (including in the title and text of the resolution itself), Lakeside had never been given any priority classification and was "unprogrammed."

MDE contributed directly to the establishment of these falsehoods by having issued discharge and construction permits in 2005 and 2006, which could only be done legally and validly if the project to be served was already "S-1," immediate priority,¹⁷ and had been found by the Talbot County Planning Commission to be consistent with its own Comprehensive Plan.

C. The Talbot County Planning Commission Never Determined That Amending The CWSP For Lakeside Was Consistent with The County's Comprehensive Plan.

Prior to 2020, an amendment to the County's CWSP to accommodate the Lakeside project had only been considered by the Talbot County Council once (Resolution 123, "R123"), and on December 21, 2004 it was vehemently and unanimously rejected. The Council adopted a 21-page Findings of Fact in connection with its action¹⁸.

Maryland law requires that before a County Council can **approve** a CWSP amendment, the Planning Commission must find that such amendment is consistent with the County's Comprehensive Plan¹⁹. As to Lakeside, in 2004 the Talbot County Council was so fundamentally opposed to authorizing a project of two thousand or more homes, five or six times a small town's population, and creating so many obvious conflicts with our Comprehensive Plan (e.g., protecting its rural character and quality of life), that the Council did not even send R281 to the Planning Commission for review.

¹⁵ Exhibit 9 is the County's roster of all CWSP Amendments approved between October, 2002 and August, 2021.

¹⁶ Resolution 259 pertained to eleven lots on Howell Point Road, in old Trappe across Rt. 50 from Lakeside. See discussion in Exhibit 7.

¹⁷ With the approval of MDE, Talbot County's sewer priority classification system differs from that used in the rest of Maryland, consisting of only three categories rather than six. In Talbot, only "S-1" is immediate priority, whereas elsewhere both "S-1" and "S-2" are. Exhibit 10 is a chart of comparison.

¹⁸ See Exhibit 11, Findings of Fact.

¹⁹ The reverse is not the case. A County Council can reject a proposed CWSP amendment whether or not the Planning Commission finds it is consistent with the Comp Plan.

It is possible the *general public* did not understand that the Planning Commission had not been involved because, for example, this headline had been printed in the Star Democrat on January 6, 2003:

“Planners Support Annexation By Trappe.”²⁰ As things played out, it would be easy for someone uninitiated in the intricacies of land use planning to misunderstand what that meant or forget exactly what it said. But the article is actually very clear—that the step of *annexing* 924 acres of land into the Town was consistent with the Comp Plan, but that is all that the Planning Commission considered.

In fact, the attorney for the Town was quoted as saying, “no development proposals have been presented to the town yet” although “the town expects to receive a proposal for a residential development of 200 to 250 homes to be built over four or five years...” (The annexation at that point was uncertain and had not yet gone to referendum.) Perhaps when Lakeside came before five Council Members²¹ two years later and they unanimously turned it down cold, someone might have imagined that was done in spite of an earlier finding of consistency by the Planning Commission. But that was not so.

While laymen could have been unclear, it stretches credulity to believe that experienced professionals with skin in the game—engineers and attorneys who live in the world of land use approval processes—were confused about whether Talbot County had or had not found the Lakeside project consistent with its Comprehensive Plan.

Yet in 2020, when R281 was introduced, the record clearly shows that invalid permits MDE had issued in 2005 and 2006 were front and center in the story. How could that not have created a deep but false impression that Lakeside not only had immediate priority status but also that earlier it had been certified consistent with the Talbot County Comp Plan? Consequently, only the narrow issue related to the environmental impact of Lakeside’s proposed new wastewater system was thought to be legitimate topic for review.

Consequently, I, the 412 other citizens who signed on in support of Petition 21-01, and other citizens of Talbot County, have all been denied any real opportunity to hear a presentation from the developer and the Town, and to stand up and provide information and express views about Lakeside to the Planning Commission and to the County Council on the broad array of truly fundamental issues covered by our Comprehensive Plan. And what are those issues?

- Lakeside’s impact on our rural character, fundamental to the Comp Plan...
- Lakeside’s impact on the quality of life in Talbot County, also fundamental to the Comp Plan...
- Permitting a single developer to sextuple the size of a small town with just a one-time authorization from the County and loss of any control forever after...
- Enabling a single developer of such a dominant project to operate ever after with only the regulation of a small town it will (already has?) come to dominate—including, for example, important power over zoning and land use...

²⁰ See Exhibits 12A and 12B, a Star Democrat clipping on the event.

²¹ Tom Duncan, Hope Harrington, Peter Carroll, Phil Foster (Pres), Hillary Spence

- Failing to encourage Trappe to grow on the west side of Route 50, where in 2002 the CWSP “Long-Range Plan” also designated other property “S-2” (sizable parcels that would accommodate growth in reasonable scale and increments) and in fact, identified three large tracts as “S-1,” immediate priority.
- Traffic impacts in general...
- The foolishness in particular of authorizing a town of 7,000 essentially to *straddle* the County’s (the Delmarva’s!) main highway, when the state is planning to spend billions to move traffic faster across the Bay Bridge...
- School capacity and the expense to build....
- Adequacy of Emergency Medical, Public Safety, and other County services...
- Risks of creating a new retail hub—which, with a town controlling rezoning and in thrall to a big developer, could easily happen....
- Lakeside’s impact on tourism...
- Lakeside’s impact on adjacent communities...
- Lakeside’s perverse impact on County tax revenues versus increases in expense—that is, in light of Talbot County’s real property tax revenue cap²²...
- Lakeside’s impact on the environment....

The record shows that only the last issue, as it relates to wastewater, was reviewed in any real depth by the Planning Commission and County Council in 2020. Was that not due in very large part to the falsehoods authenticated by invalid MDE permits, and the central role that played in the framing of R281? The record shows that other factors were, at most, nominal topics for the Planning Commission’s review.

Fortunately, there is a clear record (transcripts, videos, contemporary documents from many sources) showing exactly how Lakeside was presented and reviewed throughout the nine months following introduction of Applicant’s request for an amendment to the CWSP, aka R281, on December 17, 2019²³. Suffice it to say that telling of the false story began immediately:

- First, the title was read, which included this falsehood: **“TO RECLASSIFY AND REMAP [parcels called out] FROM “S-2”...(AREAS WHERE IMPROVEMENTS...ARE PROGRAMMED FOR PROGRESS WITHIN THREE TO FIVE YEARS) TO “S-1”....”** (Note that the falsehood in that title was read at the beginning of every Council discussion of R281, and listeners (including County staff) got the message every time: *Eighteen years ago, Talbot County said this was supposed to happen in three years, five at most.*)

²² A billion-dollar increase in the County’s assessable tax base generates no increased real estate tax revenue beyond that already established by formula, other than for schools. Talbot County property tax revenue cap.

²³ Exhibits 13A-G are the relevant portions of all the transcripts leading up to adoption of R281. Exhibits 13H-13L are the relevant portions of all the transcripts related to Petitioner’s efforts to rescind R281.

- In a matter of minutes, Mr. Pack, the Council President, asked Rocks'²⁴ attorney, **"I know the application, the permit that was issued by MDE back in '04, '05 has now since expired. So is MDE treating this as a new application, or are they treating this as an extension of the old application, old permit I should say?"** Perhaps unintentional, but the meaning carried to every listener (including County staff): *Lakeside had permits fifteen years ago and was ready to go. That could only have been done if, way back then, there was a finding of consistency and if it was classified immediate priority. R281 just puts the project back to where it had been long ago.* All false.

The record shows that R281 was framed in this exact manner from that night until August 11, 2020 when it was adopted, tainted throughout by falsehoods for which MDE shares responsibly.

The charges that Lakeside's 2005-06 permits had been illegally issued; the County's 2009 call for an investigation by the MDE Secretary; a shocking article by the Public Integrity Center—all these were surely known to Rocks' attorney, the Town's attorney, the co-applicants, and many people at MDE. Predictably, they spoke not a word about it on the public record, and no reports of private conversations have surfaced. (The only person still engaged on behalf of the *County* who was also involved in that era was the County Engineer, and in the face of obviously strong political backing to make Lakeside happen, he did not bring it up either, at least on the record.)

Prior to 2020, the Talbot County Planning Commission never evaluated any of the issues bulleted above, and never received public comment from any Talbot citizen on issues of the most fundamental importance to our community. Is it any wonder so many citizens of Talbot County are angry today? Very many see Lakeside as crazy, a travesty for Talbot County. Yet, but for some rather technical wastewater permit issues, it was presented in 2020 as a *fait accompli*. In a vague sort of way, folks have a sense that they never really had an opportunity to have their say—because they didn't²⁵.

MDE was largely responsible for the de facto elimination of the County's *proper* review of consistency. By issuing invalid permits, MDE authenticated, perhaps unintentionally, the deep but false impression that Lakeside was classified S-1, that all the important procedural steps and all of the substantive review for consistency, had been completed many years ago.

D. MDE FAILED TO CORRECT MISIMPRESSIONS WHEN CALLED OUT, AND CONTINUES TO ACTIVELY MISLEAD THE COMMUNITY ABOUT THE INVALID PERMITS.

Twice in the past MDE was called out with regard to improprieties in the issuance of Lakeside permits. Twice in the past MDE was formally asked to investigate the validity of the Lakeside permits.

²⁴ The development company behind Lakeside is Rocks Engineering of Vienna Virginia. See Exhibit 1.

²⁵ The Town of Trappe had public hearings on Lakeside, but County residents were not permitted to speak.

The first occasion was in February 2004, when an attorney, Mr. Phillip Hoon, wrote MDE and Talbot County on behalf of some local citizens²⁶, stating, **"We believe that certain incomplete information provided MDE has caused MDE to make an erroneous determination that [Lakeside has] been properly included in the Talbot County 2002 CWSP."** This was very shortly after Mr. Anderson had checked the consistency box described above. There is no evidence of any response from MDE.

Five years later three citizens, the Talbot Preservation Alliance, and the Talbot County Council itself requested the Secretary of MDE to open an investigation. Mr. Alspach, an attorney, wrote Secretary Wilson on July 15, 2009²⁷ about the MDE construction permits his clients had "belatedly learned about"—and where it took a PIA request to get the information. With evidence attached, Mr. Alspach questioned the validity of the permits saying, "These documents demonstrate that MDE was induced to issue these permits on the basis of inaccurate and misleading information submitted by representatives of the Town of Trappe." Concluding, Mr. Alspach made a statement that remains true today: "As a result of Trappe's procurement of construction permits for a sewer project that is not consistent with the Talbot County CWSP, *the entire process for comprehensive water and sewer planning in Talbot County has been rendered meaningless.*"²⁸

As a result of Mr. Alspach's letter and the request from the Talbot County Council, MDE began, purportedly, an investigation into the validity of the Lakeside permits and the improprieties which corrupted their issuance—but it was never completed. The Applicant was able to get the investigation dropped through a most interesting maneuver. On February 3, 2010 the Town of Trappe wrote to Secretary Wilson and to the Talbot County Council²⁹ suddenly announcing it was abandoning its plans for a new wastewater treatment plant for Lakeside³⁰, and "formally surrendered" its construction permits³¹.

On February 16, 2010, the MDE Planning Director, on behalf of Secretary Wilson, wrote³² Mr. Alspach: "At your request and the request of the Talbot County Council. MDE began a review of whether the construction permit for the new Trappe East Wastewater Treatment Plant had been validly issued." She

²⁶ Exhibit 14. Mr. Hoon's letter in turn includes exhibits from MDE files. Mr. Hoon also asked that the County Council "immediately initiate an investigation of this matter."

²⁷ Exhibit 15. Having no practical access to the entire CWSP document and seeing the same materials as others in the Community, Mr. Alspach also refers to the Lakeside property inaccurately as "S-2".

²⁸ Unrelated, but about this same time, a bit of a scandal broke out regarding Lakeside when it was learned that somehow MDE had put the project on or near the top of its list, scheduling it to receive \$21mm in funds from the American Recovery and Reinvestment Act ("ARRA") to pay for sewer and water infrastructure that, under agreements with the Town, Rocks was to pay for. The work was purported to be "shovel ready," even though, among other things, the CWSP had not been amended. See Star Democrat article, Exhibit 16.

28. Exhibits 17A and 17B, letters from the Town.

³⁰ And, instead, would direct all the sewerage from the planned 2501 homes to the existing Trappe plant.

³¹ The discharge permit had expired on December 1, 2010.

³² Exhibit 18, MDE letter.

advised that this “development makes it unnecessary for MDE to take any action with respect to this permit.”³³ Conveniently for the Applicant and supporters of Lakeside, a formal challenge to the validity of the Lakeside permits, and an investigation into improprieties, was thwarted. And nothing in the record indicates that the episode garnered any public attention, so the implications of the issuance of permits in 2006 stood strong in public perception as reflected in Mr. Pack’s comment thirteen years later.

Applicant and staff made no mention of the 2009 challenges to the legality of the earlier Lakeside permits and the aborted investigation when R281 was presented in 2020. The Applicant and others emphasized repeatedly that such permits were in place long ago, and everyone proceeded on the basis that R281 was practically a formality, focusing only on narrow issues related to the most recent plans for the wastewater facility.

MDE continues today to ignore the missteps that made the original permits invalid and the improprieties that it surely knows tainted the R281 approval process and misled Talbot County citizens, the Planning Commission, and the County Council by holding out that the groundwater discharge permit currently under consideration is merely a *renewal*³⁴ of the long expired—and invalid—2005 permit. Implicitly, the same characterization would pertain to Lakeside’s construction permits.

E. MDE’S POWERS OVER COUNTY CWSPs DOES NOT EXTEND TO FORCING COUNTY TO APPROVE LAKESIDE:

MDE does have considerable power with respect to County Comprehensive Water and Sewer Plans. No amendment to a CWSP is effective until approved by MDE, and it has the power to approve, disapprove, or even modify an amendment. In fact, MDE has the power to mandate changes in a County’s CWSP in some circumstances³⁵. From all of this, one might infer that any position taken by MDE on matters of CWSPs is limitless and unassailable and that it may “interpret” regulations as it wishes and issue permits as it sees fit³⁶. But that surely overstates the case.

³³ The discharge permit had expired on December 1, 2010.

³⁴ Announcement by Ms. Dela Onyemaechi at MDE Public Hearing on October 28, 2021. See transcript.

³⁵ Where a County is not doing enough to protect health, safety and welfare, MDE can dictate that the CWSP be amended to require more. Discussed in *Smoke Rise, Inc. v. Washington Suburban San. Com'n*, 400 F. Supp. 1369 (D. Md. 1975).

³⁶ This dismissive attitude is expressed bluntly in an email sent by a Ms. Pellicano of MDE to the Talbot County Engineer on September 10, 2019. “In regards to your question about COMAR and the designations, COMAR says what it says and the County may differ.... In regards to the development, **they have been in a planned service area since at least 2002** [note falsehood] and if they are ready to proceed then they are ready to proceed; to us at this point **it does not matter what designation they have** since they are planned for service.” [Emphasis added.] See Exhibit 19, email string.

In the 1992 case *Holmes v. MRA*³⁷ there is a lengthy discussion of the principal of “preemption” dealing with which level of government expressly or implicitly “occupies” a particular field when state and local actions come into conflict. In *Holmes*, the Court determined that the state “occupies” the field of solid waste management, at least as to asbestos³⁸. But, as Ms. Dorsey, Assistant Secretary of MDE, said at a recent hearing³⁹, when it comes to land use decisions and determining the consistency of a CWSP amendment with a County Comprehensive Plan, that authority lies with the County, in particular the County Planning Commission, and the process involves public hearings and judicial review.

Powerful as it is, MDE did not have the legal power to issue permits for a project based on the falsehoods that the property in question had been designated “S-2” and that the project had been found consistent with the CWSP by the Talbot County Planning Commission.

F. BECAUSE CONSIDERATION OF R281 WAS TAINTED WITH FALSEHOODS, INCLUDING THOSE FOR WHICH IT WAS RESPONSIBLE, MDE MUST DISAPPROVE R281.

The citizens of Talbot County are the aggrieved parties here. MDE must promptly revoke its November 4, 2020 approval of R281, issue a stop work order of some type, investigate the matter, and if facts are as they appear, disapprove R281. For many, the evidence enclosed with the letter would alone be sufficient for the Department to reach such a conclusion to disapprove.

SECTION 2: THREE OTHER REASONS MDE’S APPROVAL OF R281 MUST BE REVOKED.

A. THE PLANNING COMMISSION HAS FOUND A CENTRAL ELEMENT OF R281 INCONSISTENT.

On November 3, 2021, the Talbot County Planning Commission found that one of the most central components of R281—authorization to connect Lakeside to the existing Trappe wastewater treatment plant— is ***inconsistent*** with the Talbot County Comprehensive Plan⁴⁰. The record shows the Commission reviewed and considered extensive new information about pollution and very serious problems with that plant that affect the health, safety and welfare of Talbot County, and made its

³⁷ *Holmes v. MRA*, 90 Md. App. 120 (1992) 600 A.2d 864.

³⁸ *Holmes* also contained this: “COMAR Section 9-502(c) states that “[a]ny rule or regulation [of MDE] adopted under this subtitle does not limit or supersede any other county, municipal, or State law, rule, or regulation **that provides greater protection to the public health, safety, or welfare.**” [Emphasis supplied.] It might make sense that MDE could require a County to amend its CWSP to do something it does not wish to do in order to better protect health, safety and welfare; it would make no sense that MDE could mandate a finding of consistency or a change of sewer classification against the will of a County if that decision launches a project that threatens or undermines the public’s health, safety and welfare—particularly one as enormous and transformational as Lakeside.

³⁹ Introductory remarks at MDE Public Hearing on October 28, 2021 concerning Lakeside discharge permit.

⁴⁰ Though word spread in the community immediately, the County Attorney and Council were only formally notified of the news of this finding on November 22, 2021. See Exhibit 24C. Video of that PC meeting and others is available at https://talbot-md.granicus.com/player/clip/540?view_id=1&redirect=true. In a remarkable display of chutzpa, two weeks later the developer of Lakeside nevertheless installed a sewer line from the first section of Lakeside that connects to the existing system.

determination on that basis⁴¹. As consistency with a County's Comprehensive Plan is a legal prerequisite to adoption of an amendment to a Comprehensive Water and Sewer Plan, MDE is required to reverse its approval of R281 at this time.

While the significant environmental problems associated with R281 are not detailed here but only outlined briefly in Exhibit 20, they are very serious. These include existing problems (recent permit violations, permitted excessive nutrient discharges; high levels of bacterial pollution in La Trappe Creek, a receiving stream) and threats to Miles Creek that could evolve over years to cause enormous environmental harm. Many of MDE's responsibilities in this area are delegated by EPA under the Clean Water Act, so this is likely a matter EPA Region 3 will want to assess.

B. R281 RECLASSIFIED AND REMAPPED THE WRONG PROPERTY.

R281 remapped and reclassified numerous parcels shown on the CWSP's new "Sewer Service Area" map (Figure 23) that are not the parcels identified to be remapped and reclassified in the title and text of R281 (the "Parcels Called Out")⁴². Very many properties in the Trappe vicinity were remapped and reclassified that are not owned by the developer (co-applicant), are not zoned Planned Neighborhood District, and are not part of Lakeside, and some of which are not within the Town limits⁴³.

And the acreage cited in R281 does not come close to corresponding even to the acreage of the Parcels Called Out (off by forty acres⁴⁴), much less the lands actually remapped and reclassified.

This is not a minor clerical or administrative error; it significantly changed the property interests of many other individuals (some for the better, some for the worse) throughout the Trappe area. Among the effects, *those changes reduced the threat of competition to the developer* from possible development of other parcels—including downgrading tracts that on the Long-Range Planning map (Figure 24) in the County's 2002 CWSP were designated with a *higher* priority than the Lakeside property!

More importantly, these mapping problems reveal that the Applicant, and perhaps MDE, either misunderstand the significance of the Sewer Service Area map and the Long-Range Planning Sewer Service Area map that are embedded in Talbot County's CWSP, or understand well but sometimes misused them.

Refer to Exhibit 21 for complete documentation of this issue.

⁴¹ Exhibit 20, summary of concerns with existing Trappe plant.

⁴² And, in a complete non-sequitur, inserted the identical map as both the "Sewer Service Map" (Figure 23) and the "Long-Range Planning Sewer Service Map" (Figure 24), again illustrating a misunderstanding of the issues.

⁴³ The Parcels Called Out even seem to omit one parcel that is owned by the developer, is zoned Planned Neighborhood District, and is part of Lakeside.

⁴⁴ Off by 40 acres. See Exhibit 22.

C. CWSP PROHIBITS SEWER EXTENSION UNTIL THE CURRENT SYSTEM IS SAFE AND ADEQUATE.

The CWSP, as originally written and as it exists today even after adoption of R281, states that ***“Prior to extending sewer service into the growth areas, the Town of Trappe would assure...the safety and adequacy of its public sewer supply system is maintained for all its users.”***⁴⁵ Clearly, this statement requires that the *existing* Trappe sewer system—currently with an antiquated and often failing treatment plant and a collection system rife with inflow and infiltration problems—must be made ***“safe and adequate”*** for existing Trappe citizens before investments are made to expand the system to serve prospective new residents. A perfectly logical provision the County adopted and readopted to provide for the health, safety and welfare of citizens, and that was ignored or overlooked in MDE’s approval process. Revocation of R281 is required due to that oversight.

SECTION 3: CONCLUSION:

A. UNCERTAINTY AS TO ROOT CAUSE OF “FALSEHOODS” REQUIRES INVESTIGATION:

The primary reason R281 must be revoked is rooted in “falsehoods.” The evidence attached clearly shows MDE was involved. Those falsehoods infected the integrity of Talbot’s land use review process as the County considered R281.

How, and by whom, were such fundamental misunderstandings first introduced in the consideration of the issuance of permits and approval of Lakeside by MDE and then Talbot County? I have no idea, and make no allegations. Whether these falsehoods arose from innocent mistakes, or confusion, or misrepresentations, or erroneous inferences arising inadvertently--or by design--from omissions or half-truths, or in some other manner and for some other purpose, can be found out only through a proper independent investigation—not by a local citizen working from home.

But once these untruths were established as “fact,” it is easy to trace how they continued to be propagated, innocently and unknowingly by many people, with a straight line running directly to the adoption of R281.

Self-evidently, falsehood, whether innocent or purposeful, has no place in any regulatory matter, even the least significant. But Lakeside is not just another project, a subdivision like hundreds of others. ***It is a billion-dollar deal in a rural cornfield that will transform Talbot County without the citizens being able to legitimately participate as required by law.*** A rigorous, independent investigation is required.

B. SUMMARY:

Lakeside would be a transformative project for the small rural county of Talbot. It literally would change our future forever. The County—not MDE, and not a tiny municipality that itself is only the size of a

⁴⁵ Exhibit 23. CWSP p. 2-47.

subdivision in most places and inevitably will be in thrall to the developer—holds the exclusive right and responsibility under Maryland law to make fundamental land use decisions for itself by taking actions *it* determines are consistent with our Comprehensive Plan.

That did not occur at Lakeside at least in part because MDE de facto pre-empted and usurped the County's right to determine consistency with its own Comp Plan.

The evidence suggests falsehoods corrupted the entire review of R281—and MDE itself was largely responsible for or facilitated those falsehoods. False premises colored R281, and undermined the ability of the Talbot County Council and the Planning Commission to consider the proposition honestly and untainted. And the citizens of Talbot County—the aggrieved parties--were denied their right to participate in an honest process.

Every citizen and property owner in Talbot County, when doing something with his or her own property, must play by the rules. If the owner of a little cottage wishes to hook up to sewer, he or she must get the property classified "S-1," and the Planning Commission must review the question in its entirety and hear comments or objections from the public before determining whether that action is or is not consistent with our Comprehensive Plan. Only if consistent, can the County Council decide whether to approve the requested change, by adopting an amendment to the CWSP. ***If regular citizens need to play by the rules, why not Rocks Engineering and the Town of Trappe, in undertaking a billion-dollar project, the biggest, most transformative ever seen in Talbot County?***

I urge that MDE revoke its earlier approval of R281, issue a stop work order for Lakeside⁴⁶, investigate thoroughly, and if facts prove out, disapprove R281.

Sincerely,



Dan Watson

NOTE: The Exhibits to this letter are over 50 digital files totaling ~150MB and so are too large to transmit electronically. All can be viewed and downloaded from the following site:

<https://www.dropbox.com/sh/eoiruyrprqummeb/AABot94T3u4L95oZaNLLWVJua?dl=0>

CC: Benjamin H. Grumbles, Maryland Secretary of the Environment
Suzanne Dorsey, Assistant Secretary, Maryland Department of Environment
Les Knapp, Program Manager, Maryland Department of Environment
Brian E. Frosh, Maryland Attorney General
Adam C. Ortiz, Regional Administrator, Region 3, EPA
Karen Melvin, Director, Enforcement and Compliance Assurance, Region 3, EPA

⁴⁶ A good deal of construction has already taken place at Lakeside, and superficially it might seem that the developer is "vested," that it's too late to take action. But Maryland law says "vesting" is dependent on a showing of "good faith." See Exhibit 24.

Cecil A. Rodrigues, Regional Counsel, Region 3, EPA
Talbot County Council and local officials.

EXHIBITS TO MDE LETTER DEC 1, 2021

All Exhibits listed below are available to view or download at the following site:
<https://www.dropbox.com/sh/eoiruyrprqummeb/AABot94T3u4L95oZaNLLWVJua?dl=0>

EXHIBIT #	DESCRIPTION
1	THE LAKESIDE PROPERTY AND R281 APPLICANT
1A	GENERAL LOCATION MAP
1B	LAKESIDE PUD PLAN
1C	STAR DEM REPORT ON LAKESIDE REJECTION
1D	TALBOT SPY ARTICLE NOV 16, 2021 RE TRAPPE
2	"FALSEHOODS" -- "FALSE" -- "UNTRUE"
3	PUBLIC INTEGRITY ARTICLE 2009--TOWN BYPASSES NORMAL CHANNELS
4	ANDERSON CHECK BOX FOR CONSISTENCY
5	COUNTY FORM FOR REQUESTING CHANGE IN SEWER PRIORITY CLASSIFICATION
6	RESOLUTION 123, FAILED DEC 21, 2004
7	ANALYSIS SHOWING LAKESIDE WAS NEVER S-2
7A	RESOLUTION 259
7B	TRAPPE AREA 2002 CWSP P. 43-47
7C	PULLEN CONCURRENCE WITH ANALYSIS
8	2002 CSWP HAS ALWAYS BE VIRTUALLY INACCESSABLE
8A	ORIGINAL DISTRIBUTION LIST, 2002 CWSP
9	CWSP AMENDMENT LIST
10	CHART COMPARING CLASSIFICATION SYSTEMS
11	FINDINGS OF FACT FROM DECEMBER 21, 2004
12A	STAR DEM CLIPPING JAN 6, 2003 RE ANNEXATION
12B	END OF ARTICLE (10A)
13	RECORD OF COUNTY'S REVIEW OF R281 AND OF RESCISSION
13A	DEC 17, 2019 COUNCIL MEETING
13B	FEB 11, 2020 COUNCIL MEETING
13C	MAY 20, 2020 PC MEETING
13D	JUNE 3, 2020 PC MEETING
13E	JUNE 10, 2020 PC MEETING

- 13F JULY 21, 2020 COUNCIL MEETING
- 13G AUG 11, 2020 COUNCIL MEETING
- 13H MAY 11, 2020 COUNCIL MEETING
- 13I JUNE 22, 2021 COUNCIL MEETING
- 13J JULY 13, 2021 COUNCIL MEETING
- 13K AUG 24, 2021 COUNCIL MEETING
- 13L OCT 12, 2021 COUNCIL MEETING
- 14 HOON LETTER OF FEBRUARY 20, 2004
- 15 ALSPACH LETTER OF JULY 15, 2009
- 16 STAR DEM 2009 ARTICLE RE ARRA
- 17A TOWN OF TRAPPE LETTER TO MDE FEB 3, 2010
- 17B TOWN OF TRAPPE LETTER TO COUNTY FEB 3, 2010
- 18 MDE LETTER TO ALSPACH FEB 16, 2010
- 19 EMAIL STRING, MDE-CLARKE 2019
- 20 SUMMARY OF INFO ON EXISTING PLANT.
 - 20A SR LAB DATA REPORT
 - 20B SR REPORT TO PC
 - 20C SMULLEN REPORT
 - 20D SMULLEN APPENDIX
 - 20E SMULLEN SUPPLEMENT
 - 20F PHOTOS OF LA TRAPPE CREEK
- 21 FULL EXPLANATION OF MAPPING PROBLEMS
 - 21A RESOLUTION 281 IN ITS ENTIRITY
 - 21B MAP 1 -- NEW MAP SUBSTITUTED BY R281
 - 21C MAP 2 -- FIG 24 "LONG-RANGE PLANNING SEWER SERVICE AREA" IN 2002 CWSP
 - 21D MAP 3 -- FIG 23 "SEWER SERVICE AREA" IN 2002 CWSP
- 22 ACREAGE v. PARCELS CALLED OUT
- 23 CWSP PAGE 2-47.
- 24 FACTS GERMANE TO "GOOD FAITH VESTING" OF RIGHTS AT LAKESIDE:
 - 24A PETITION 21-01
 - 24B JULY 1, 2021 LETTER TO PLANNING COMMISSION