

Dan Watson
8404 Aveley Manor Lane
Easton, MD 21601

* IN THE
* CIRCUIT COURT

The Talbot Integrity Project, Inc.
8404 Aveley Manor Lane
Easton, MD 21601

* FOR
* TALBOT COUNTY

Douglas Lannin Firth
27921 Southside Island Creek Road
Trappe, MD 21673

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Civil Action No.
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John Kaestner
Kimberly Kaestner
3901 Black Duck Drive
Trappe, MD 21673

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Steven P. Harris, DVM
Lynne J. Harris
4720 Wrights Mill Road
Trappe, MD 21673

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Elizabeth Anderson
Edward Delaney
3755 Margits Lane
Trappe, MD 21673

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Annie Leconte
Didier Leconte
28463 Granville Lane
Trappe, MD 21673

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Margaret Wellington
3770 Leonard Cove Lane
Trappe, MD 21673

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Plaintiffs,

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v.

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**Maryland Department
of the Environment**
1800 Washington Blvd
Baltimore, MD 21230

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Defendant.

COMPLAINT FOR WRIT OF MANDAMUS

The citizens of Talbot County, Maryland, and the entire State are being threatened by an unwarranted flow of additional sewage effluent into a small creek, a tributary of Maryland's cherished Chesapeake Bay, in violation of Maryland law. The added sewerage load arises from a construction permit issued by the Maryland Department of the Environment pursuant to an amendment to Talbot County's comprehensive water and sewer plan that the Talbot County Planning Commission has certified to be inconsistent with Talbot County's comprehensive plan. The Town of Trappe, population of less than 1,200, owns and operates an antiquated, troubled, wastewater treatment system that cannot meet current standards generally applicable to sewerage effluent discharged into the estuaries of the Chesapeake Bay. A massive subdivision known as "Lakeside," consisting of 2,500 homes and substantial commercial development, is underway in Trappe; it will *quintuple* that small Town's population. The developer intends to connect its first 120 homes to the Town of Trappe's existing sewerage plant, despite the County Planning Commission having determined that such a connection is inconsistent with the County's comprehensive plan.

The Maryland Department of the Environment faces a unique situation: it issued a construction permit based on an amendment to the County's comprehensive water and sewer plan adopted by the Talbot County Council and approved by the Department in 2020. That amendment expressly permitted the first homes built in Lakeside to hook up to the Town of Trappe's existing sewerage plant. However, a legal precondition of the Talbot County Council's adoption of that amendment was that the Talbot County Planning Commission first found that it was consistent with the comprehensive plan. What gives rise to this case, and the unique and unprecedented determination that the Maryland Department of the Environment must make, is that in 2021 the

same Talbot County Planning Commission, based on substantial new information concerning matters of public health and the environment, reversed its certification that the amendment was consistent with the comprehensive plan. *The Planning Commission specifically determined that hooking up the first 120 Lakeside homes is inconsistent with the comprehensive plan.* Thus, today, a key construction permit issued by the Maryland Department of the Environment violates that Planning Commission finding, and thus stands in violation of Maryland law. The Maryland Department of the Environment has the right, the power, and the duty to both affirmatively disapprove an amendment to the comprehensive water and sewer plan and revoke or suspend the permit because it violates the law. Yet the Maryland Department of the Environment has not acted.

The issue before this Court is two-fold:

1. Must the Maryland Department of the Environment enforce a planning commission's decision and disapprove an amendment to a county water sewer plan that a planning commission has found inconsistent with the county's comprehensive plan?
2. Must the Maryland Department of the Environment enforce a planning commission's decision and revoke or suspend a construction permit that it issued if that permit is inconsistent with a county's water and sewer plan and comprehensive plan?

The answer to both questions is yes.

These answers lead to the final two questions:

1. Shall the Court issue a writ of mandamus to compel the Maryland Department of the Environment to enforce the Talbot County Planning Commission's decision and disapprove the amendment to the Talbot County Comprehensive Water and Sewer Plan that is inconsistent with the Talbot County Comprehensive Plan?
2. Shall the Court issue a writ of mandamus to compel the Maryland Department of the Environment to enforce the Talbot County Planning Commission's decision and revoke or suspend the construction permit that is inconsistent with the Talbot County Comprehensive Water and Sewer Plan and Talbot County Comprehensive Plan?

Because the answer to the final two questions is also yes, Plaintiffs, Dan Watson, The Talbot Integrity Project, Inc., Douglas Lannin Firth, John Kaestner, Kimberly Kaestner, Steven P.

Harris, DVM, Lynne J. Harris, Elizabeth Anderson, Edward Delaney, Annie Leconte, Didier Leconte, and Margaret Wellington, through undersigned counsel, bring this action for a writ of mandamus to compel Defendant, the Maryland Department of the Environment, to enforce the Talbot County Planning Commission’s decision and affirmatively disapprove Resolution 281, as amended, and revoke or suspend construction permit #20-21-1113, issued April 9, 2021, which together improperly allow sewerage from Lakeside to be directed to the existing sewerage plant, and ultimately into a small unnamed tributary of a small creek in the Chesapeake Bay watershed.

Jurisdiction and Venue

1. This Court has jurisdiction under Maryland Rule 15-701 and under Sections 1-501 and 3-8B-01 of the Courts and Judicial Proceedings Article of the Maryland Code.

Parties

2. Plaintiff Dan Watson (“Watson”) is a resident of Talbot County who resides alongside the Miles River, a tributary of the Chesapeake Bay that is affected by wastewater effluent discharged into La Trappe Creek.

3. Plaintiff The Talbot Integrity Project, Inc. (“TIP”) is a nonprofit, non-partisan organization incorporated in Maryland, with its office in Talbot County, that is committed to upholding the Talbot County Comprehensive Plan, including conformity of the Comprehensive Water and Sewer Plan.

4. Plaintiffs Douglas Lannin Firth, John Kaestner, Kimberly Kaestner, Elizabeth Anderson, Edward Delaney, Annie Leconte, and Didier Leconte are all residents of Talbot County who reside alongside La Trappe Creek, a tributary south of the Town of Trappe, Maryland into which that town’s wastewater treatment plant discharges its effluent.

5. Plaintiffs Steven P. Harris, DVM and Lynne J. Harris are residents of Talbot County who reside immediately adjacent to the planned Lakeside subdivision alongside Miles Creek, a tributary to the Choptank River that is affected by wastewater effluent discharged into La Trappe Creek.

6. Plaintiff Margaret Wellington is a resident of Talbot County who resides alongside Leonard Cove, which connects to La Trappe Creek, a tributary south of the Town of Trappe, Maryland into which that town's wastewater treatment plant discharges its effluent.

7. Defendant the Maryland Department of the Environment ("MDE") is a Maryland state administrative agency, with the vision of ensuring healthy, vibrant and sustainable communities and ecosystems in Maryland; the task of protecting and restoring the environment for the health and well-being of all Marylanders; and the authority to investigate, approve, disapprove, or modify an amendment to county water and sewer plans. Md. Code Ann., Envir. § 9-507(a).

Factual Background

8. The Town of Trappe ("Trappe"), an incorporated municipality in Talbot County, is located a few miles north of the Choptank River on the eastern shore of Maryland, a County known mainly for its rural character and network of serene tributaries that flow into the Chesapeake Bay.

9. Trappe is small, with about 400 households and marked by a single stoplight along U.S. Route 50.

10. Beginning in April 2001, Rocks Engineering Company ("Rocks"), a real estate development company from Vienna, Virginia, operating through an affiliate¹, optioned about 800

¹ Upon information and belief, Rocks is affiliated with other entities including, but not limited to, Trappe East Holdings Business Trust and Lakeside Village LLC, both of which have the same business address as Rocks and have Rocks listed as their registered agent.

acres of farmland (“Lakeside Property”) on the east of Trappe across Route 50, the major arterial highway to Ocean City that separates the majority of Trappe from the Lakeside Property.

11. In 2003, the Lakeside Property was annexed into Trappe to be developed into a large subdivision called Lakeside,² which would quintuple Trappe’s population. **Exhibit 1**, Annexation Agreement.

12. Before any construction or development on the Lakeside Property could begin, Rocks was required by law to obtain necessary permits from MDE and other authorities.

The Talbot County Comprehensive Water and Sewer Plan and Permit Process

13. On October 22, 2002, Talbot County adopted its current Comprehensive Water and Sewer Plan (“CWSP”). **Exhibit 2**, 2002 Talbot County CWSP.³

14. MDE issued its approval of the CWSP on February 20, 2003. **Exhibit 3**, February 20, 2003 MDE Approval Letter.

15. Among many other things, detailed maps set forth in the CWSP show those parcels of land that had been given a sewer service priority classification at the time of its adoption. *See Exhibit 2*, 2002 Talbot County CWSP at Chapter 2, Page 44 (“Figure 23”).

16. The Talbot County CWSP uses three⁴ water and sewer service priority classifications.⁵ *Id.* at Chapter 1, Page 7.

² The Lakeside subdivision is sometimes still known as “Trappe East,” the name first used to refer to the project, and before that, to the general area.

³ The 2002 CWSP was actually a “Report of the Review” of an earlier CWSP, as explained in its introduction. It has been amended 64 times as of September 28, 2021.

⁴ Most other counties in Maryland employ a six-tier system for classifying sewer service priority. In those counties, S-1 and S-2 are considered immediate priority. *See Exhibit 4*, Comparison of CWSP Classifications.

⁵ The CWSP deals not just with sewerage facilities, but with water utilities also, including “water service priority classifications” that exactly parallel those for sewerage, such as “W-1,” “W-2,” and “W-3”. In this Complaint, all references to water classifications are simply omitted, as they are irrelevant to matters in this case.

17. “S-1” indicates “areas served or to be served by community, multi-use, or shared sanitary facilities which are either existing, under construction, or have immediate priority status.”

Id.

18. “S-2” indicates “areas where improvements or extensions to existing, or construction of new community, multi-use, or shared sanitary facilities are programmed for progress to ‘S-1’ classification within a THREE TO FIVE YEAR PERIOD.” *Id.* (emphasis in original).

19. “S-3” indicates “areas where improvements or extensions to existing, or construction of new community, multi-use, or shared sanitary facilities are programmed for progress to ‘S-1’ classification within a SIX TO TEN YEAR PERIOD.” *Id.* (emphasis in original).

20. Any parcel of land without an S-1, S-2, or S-3 sewer service priority classification in the CWSP has never been formally designated for sewer service and the parcel is considered “unprogrammed.”

21. In the Talbot County system, only “S-1” is defined as “immediate priority,” and a parcel that is classified anything but S-1 needs to be reclassified as S-1 under the CWSP before it can obtain discharge and construction permits to receive sewer service. See **Exhibit 5**, March 2, 2004, County Council President Philip Carey Foster Letter to Dr. Tien of MDE.

22. To request a reclassification of a service area as S-1, the requesting party must submit a proposed amendment to the CWSP to the Talbot County Council (“County Council”). **Exhibit 2**, 2002 Talbot County CWSP at Chapter Three.

23. Any amendment to the CWSP that is submitted to the County Council must be sent to the Talbot County Planning Commission (“Planning Commission”) and be certified as

consistent with the Talbot County Comprehensive Plan (“TCCP”) before it can be approved and enacted by the County Council. Md. Code Ann., Envir. § 9-506(a)(1)(ii); COMAR 26.03.01.02.

24. There is no restriction on the County Council rejecting a proposed amendment before submitting it to the Planning Commission. *See e.g.*, **Exhibit 6**, Resolution 123.

25. The Planning Commission has exclusive and conclusive decision-making authority to determine whether changes in priority classifications and proposed amendments to the CWSP are consistent with the TCCP. Md. Code Ann., Envir. § 9-506(a)(1)(ii); COMAR 26.03.01.02.D; *see* **Exhibit 7**, December 13, 2021 Planning Commission Letter at 2.

26. Only if the Planning Commission certifies a CWSP amendment as consistent with the TCCP can the County Council adopt it. *See* § 9-506(a)(1)(ii); COMAR 26.03.01.02.D.

27. Once the proposed amendment is certified by the Planning Commission as consistent with the TCCP and adopted by the County Council, it is submitted to MDE for its approval, disapproval, or modification. Md. Code Ann., Envir. § 9-507.

Resolution 281

28. Under the 2002 CWSP, most of the land on the east side of Route 50 near Trappe (generally known as “Trappe East” in 2002⁶)—including all of the farmland optioned by Rocks: the Lakeside Property—was unprogrammed; that is, none was classified as S-1, S-2, or S-3. **Exhibit 2**, 2002 Talbot County CWSP, Figure 23.

⁶ After 2002 when the term “Trappe East” appeared on the CWSP, Rocks named the subdivision itself “Trappe East.” In 2019 the subdivision was rebranded “Lakeside.”



Figure 23 from 2002 Talbot County CWSP showing the area east of Route 50, where Lakeside would be located, had been given no sewer service priority classification at all.

29. Thus, in order to receive the requisite MDE permits for sewer service to the land, the developers first needed to have the Lakeside Property reclassified as S-1.

30. On December 17, 2019,⁷ Trappe East Holdings Business Trust (“TEHBT”)⁸ and Trappe, as co-applicants, submitted a proposed amendment to the CWSP, called Resolution 281 (“R281”), to the County Council. **Exhibit 9**, Resolution 281.

⁷ A request to reclassify the Lakeside Property as S-1 came before the County Council only one time before December 2019. That request was rejected by the County Council on December 21, 2004 by a 5-0 vote. The County Council had not even referred the request to the Planning Commission for consideration of consistency. See **Exhibit 8**, December 21, 2004 County Council Findings of Fact.

⁸ Upon information and belief, Trappe East Holdings Business Trust is affiliated with Rocks and Lakeside Village LLC.

31. Among other things, if adopted, R281 would for the first time move the Lakeside Property from “unprogrammed” status to a designated sewer service priority classification: “S-1,” immediate priority.⁹

32. R281 was clear that all sewerage generated by the entire Lakeside subdivision would be treated at a new wastewater treatment facility to be built by Rocks at its expense.¹⁰

Exhibit 9, Resolution 281 at Exhibit F.

33. The County Council sent R281 to the Planning Commission for review.

34. On February 6, 2020, the Planning Commission rejected R281, finding that it was inconsistent with the TCCP because it reclassified all of the Lakeside Property as S-1 at once with no “phasing.”

35. On February 11, 2020, TEHBT and Trappe submitted Amendment 1 to R281 (i.e., Resolution 281, As Amended: “R281AA”) to the County Council, which, among many other things, would split the classification of the Lakeside Property into two phases: S-1 immediate priority status for the northern portion, and S-2 (development in 3-5 years) for the southern portion.

Exhibit 10, Resolution 281, As Amended.

36. Additionally, R281AA would allow the first phase of the Lakeside subdivision (120 homes) to connect to and discharge sewerage into Trappe’s Existing Wastewater Treatment Plant (“Existing Plant”). **Exhibit 10**, Resolution 281, As Amended at Exhibit F.

⁹ Although R281 purported to reclassify the Lakeside Property from S-2 to S-1, as stated, that land did not carry an S-2 sewer service priority classification or any other CWSP sewer service priority classification by Talbot County and was still unprogrammed.

¹⁰ In January 2019, TEHBT and Trappe, as co-applicants, applied for a discharge permit (Permit Application #19-DP-3460) – which was actually the renewal of a discharge permit which had expired in 2010 – to construct this new wastewater treatment plant that would support the entire proposed 2,500-home project. That permit is not the subject of this action.

37. On June 10, 2020, after several meetings and a required public hearing, and despite the Public Works Advisory Board's unanimous recommendation against its passage, the Planning Commission voted 3-2 to certify that R281AA was consistent with the TCCP.

38. On August 11, 2020, the County Council, after a required public hearing, adopted R281AA by a vote of 4-1.

39. The sewer service area map embedded in R281AA sets forth the reclassification of many properties not described in the title or text of the Resolution and which reclassifications were never reviewed at a public hearing, or by the Planning Commission for a determination of consistency with the TCCP, or by the County Council. *Compare Exhibit 2*, 2002 Talbot County CWSP, Figures 23 & 24 *with Exhibit 10*, Resolution 281, As Amended, Exhibit B.

40. On November 4, 2020, MDE issued a letter formally approving the County Council's adoption of R281AA, which, among other things, confirmed the granting of a sewer service priority status to each phase of Lakeside, and allowed sewerage from the first 120 homes in Lakeside to flow to the Existing Plant. **Exhibit 11**, November 4, 2020 MDE Approval Letter.

41. In light of the Lakeside Property's reclassification under the CWSP to S-1, on April 9, 2021, TEHBT obtained construction permit #20-21-1113 from MDE to connect the Lakeside Property's sewerage system to the Existing Plant ("Hook-up Permit," i.e., the permit at issue in this action). **Exhibit 12**, Permit #20-21-1113.

42. That Hook-up Permit on its face noted expressly that: "This permit may be suspended or revoked upon a final, unreviewable determination that the permittee lacks, or is in violation of federal, state *or local approval necessary to conduct the activity authorized by this permit.*" *Id.* (emphasis added).

The Planning Commission's Rescission of R281AA

43. On May 7, 2021, six months after MDE formally approved the County Council's adoption of R281AA, Watson filed a petition with the County Council requesting introduction of a resolution to rescind R281AA due to alleged improprieties,¹¹ and such rescission effort became known in the community. **Exhibit 13**, Petition 20-21.

44. On July 1, 2021, Watson wrote to the Planning Commission presenting information he alleged required rescission of the Planning Commission's original finding that R281AA was consistent with the CWSP, and supplemented that information with more materials submitted throughout 2021. **Exhibit 14**, July 1, 2021 Watson Letter to Planning Commission.

45. Subsequently, other citizens and organizations similarly came forward and presented new information to the Planning Commission.

46. Among them was James T. Smullen, Ph. D., who on September 29, 2021, prepared a report and opinion on the recent violations of the discharge permit for the Existing Plant. **Exhibit 15**, Report and Opinion of James Smullen.

47. Dr. Smullen concluded that the Existing Plant was severely out of compliance and needing upgrades, and the reported failures of the Existing Plant in 2021 were caused by the sewerage systems and Existing Plant's inadequacies. *Id.* at 3-4.

48. The report concluded that "[u]ntil the plant upgrade construction is completed, it would not be prudent to allow any significant additional new service connections to the system,

¹¹ The County Council first refused to permit Watson to formally present the petition, contrary to its Rules of Procedure, and Watson had to petition the Talbot County Circuit Court for a writ of mandamus before the County Council ultimately relented and permitted him to present the information many months later—and well after construction at Lakeside had begun. By the time Watson presented its petition, over four-hundred citizens of Talbot County had contacted the County Council in writing requesting to join in the petition.

beyond those actually in-place today, until the planned plant and collection system upgrades are completed and fully operational.” *Id.* at 15-16.

49. On September 30, 2021, ShoreRivers, a nonprofit organization in Easton, Maryland, communicated Dr. Smullen’s findings to the Planning Commission and recommended that “the Planning Commission [] rescind its finding that Resolution 281[AA] was consistent with the Talbot County Comprehensive Plan.” **Exhibit 16**, September 30, 2021 ShoreRivers Letter to Planning Commission.

50. After many meetings and a public hearing to review the substantial quantity of new information about the Existing Plant and the impact on the public health and environment of connecting the proposed Lakeside sewerage system to that plant, Planning Commission Chair Chip Councell recommended that the Planning Commission reconsider its certification of R281AA as consistent with the TCCP.

51. On November 3, 2021, upon reconsideration, the Planning Commission determined that R281AA was inconsistent with the TCCP, thereby rescinding its June 10, 2020 certification of R281AA.

52. Specifically, the Planning Commission found that the initial hook-up of 120 homes to the Existing Plant was inconsistent with the TCCP (“the Planning Commission’s Finding”):

the initial hook-up of up to (120) homes from the Lakeside Development into the existing Trappe wastewater plant is inconsistent with the Talbot County Comprehensive Plan until the Trappe wastewater treatment plant meets ENR standards and any flow coming from the Lakeside Development should meet ENR standards.

Exhibit 17, November 3, 2021 Planning Commission Meeting Minutes at 5-6.

53. On December 13, 2021, the Planning Commission emailed the County Council, stating:

After our discussion, we voted 3-2 to rescind our certification of consistency with the Talbot County Comprehensive Plan (TCCP) following advice that we could consider rescission if there was new information that was not available at the time of our original certification. We thought that a direct explanation of our actions would facilitate communication between our two respective bodies and focus attention on the legal aspects of our determination.

...

We understand that the Planning Commission’s finding is conclusive on this issue. We also understand that the Planning Commission has the authority to make amendments to the County Water and Sewer Plan **and that Maryland State Law requires adherence to the Commission’s consistency decision.**

Exhibit 7, December 13, 2021 Planning Commission Letter at 2. (emphasis added).

54. On December 16, 2021, the Planning Commission’s letter to the County Council was delivered to MDE.

Talbot County Council’s Refusal to Rescind R281AA

55. Between August 2021 and March 2022, the County Council introduced and considered two proposed amendments to the CWSP: Resolution 308 (“R308”), which would directly rescind the previously passed R281AA and prohibit any Lakeside connections to the Existing Plant; and Amendment 1 to previously proposed Resolution 313 (“R313AA”) that, if adopted, would have prohibited sewerage coming from the Lakeside subdivision to be directed to the Existing Plant, until that plant and any flow coming from Lakeside met Enhanced Nutrient Removal (“ENR”) standards.¹²

56. Despite the Planning Commission’s Finding and November 3, 2021 determination that R281AA was inconsistent with the TCCP, the County Council failed to adopt either R308 or R313AA.¹³

¹² The original version of Resolution 313 did not require the Existing Plant to meet ENR standards and, as a result, on January 5, 2022, the Planning Commission determined that Resolution 313, in its original form, was inconsistent with the TCCP. The original Resolution 313 never went to the County Council for a vote.

¹³ On March 2, 2022, the Planning Commission found that R313AA was consistent with the TCCP.

The Maryland Department of the Environment's Inaction

57. Watson first communicated with MDE about concerns in this case on September 27, 2021, and many times thereafter. **Exhibit 18**, Watson September 27, 2021 Email to MDE.

58. On February 3, 2022, acknowledging the fundamental contradiction between the Planning Commission's rescission of R281 and Lakeside's continued development, MDE sent a letter to the Planning Commission and the County Council seeking clarification of the "definitive position regarding the proposed [Lakeside] project" of both respective bodies. **Exhibit 19**, February 3, 2022 MDE Letter.

59. In the letter, MDE stated that such a clarification was necessary to assess the "multiple permits, licenses, and subdivision applications pending MDE's science-based review," and acknowledged its legal duty "to ensure that they comply with applicable environmental and public health law. *A vital component of MDE's review is consistency with local land use, comprehensive plans, and water and sewer plans.*" *Id.* (emphasis added).

60. On February 15, 2022, the County Council and Planning Commission held a joint work session to review and discuss information related to Lakeside to try to reach consensus.

61. The two institutions failed to furnish a joint, unified statement considering their irreconcilable disagreement.

62. On March 23, 2022, the County Council responded to MDE that because of the failures of Resolutions 308 and 313, "the provisions of the CWSP applicable to the Project as set forth in Resolution No. 281 [as amended] remain in full force and effect, and the Project may proceed in accordance therewith." **Exhibit 20**, March 23, 2022 County Council Letter to MDE.

63. On March 25, 2022, the Planning Commission reiterated to MDE that it had rescinded its June 10, 2020 certification that R281AA was consistent with the TCCP and that the

initial hook-up of 120 homes to the Existing Plant was inconsistent with the TCCP until the plant and all connected projects including Lakeside meet ENR standards. **Exhibit 21**, March 25, 2022 Planning Commission Letter to MDE.

64. On April 26, 2022, a final letter was sent to MDE, once more requesting that the Department disallow the Hook-up Permit and do the right thing.

Harm to Community

65. On July 15, 2021, more than sixty days after Watson petitioned for rescission of R281AA, construction began on the first homes of the Lakeside subdivision.

66. On August 23, 2021, in the face of mounting community opposition, Pete Leshner, Council Member for the County Council and current Vice President, met with Ryan Showalter, attorney for Lakeside's developers, to discuss Lakeside in the context of Mr. Leshner's intent to introduce R308, which would rescind R281AA.

67. At that meeting Mr. Showalter stated that his client "understood that they were proceeding at their own risk." **Exhibit 22**, Affidavit of Pete Leshner.

68. On or about the third week of November 2021, the key sewer line connecting the first phase of homes to the Existing Plant was installed – some weeks after the Planning Commission found that directing Lakeside sewerage to the Existing Plant was inconsistent with the TCCP.

69. The plats for Sections 1A (95 lots) and 1B (25 lots) of the Lakeside subdivision were approved on February 14, 2022 and have been recorded in the Land Records of Talbot County. **Exhibit 23**, Recorded Lakeside Plats.

70. Each plat contains a certification made by an officer of the Maryland State Health Department that conflicts with the Planning Commission's Finding: "Lots (1 through 95/96

through 120) as shown hereon are approved for community water and community sewer systems *and their use is in accordance with the Talbot County Water and Sewer Plan* and Code of Maryland Regulation 26.04.03.” *Id.* (emphasis added).

71. As shown below, Construction is underway and Lakeside lots and single-family homes are being advertised for sale or lease on the internet and in print. **Exhibit 24**, Lakeside Advertisements.





72. Talbot County faces an environmental threat to the land and waters of the County if MDE permits more sewerage to flow into the antiquated Existing Plant.

73. La Trappe Creek is seriously impaired, and the headwaters are shallow and dominated by effluent from the Existing Plant, putting the creek's precious shellfish sanctuary and reserve in jeopardy. *See Exhibit 15, Report and Opinion of James Smullen.*

74. The below pictures were taken from the area downstream from the Existing Plant's discharge point,¹⁴ where the unnamed tributary meets La Trappe Creek.



¹⁴ No other streams or sources discharge into that unnamed tributary other than the Existing Plant.

75. The first phase of Lakeside, consisting of 120 homes (the first of 2,500 total) would increase the current number of homes in Trappe by about 25%, and thus the sewerage load on the Existing Plant and sewerage system by a similar proportion, further stressing La Trappe Creek.

76. Imminent and irreparable harm will ensue because of MDE's continued inaction.

77. More than six months have passed since the Planning Commission's Finding, and absent action by this Court, sewerage will flow from Lakeside to the Existing Plant despite the Planning Commission's Finding that such added sewerage is inconsistent with the TCCP.

Count I:
Writ of Mandamus Against MDE to Enforce the Planning Commission's Decision
and Disapprove R281AA

78. Plaintiffs repeat and reallege Paragraphs 1-77 as though the same were set forth fully herein.

79. Under Maryland Rule 15-701, Plaintiffs seek a writ of mandamus to compel MDE to perform its statutory duties.

80. Each county is required to have a county water and sewer plan that is approved by MDE. Maryland Code, Envir. § 9-503(a)(1).

81. Maryland Code, Envir. § 9-506(a)(1) provides that "before a county governing body may adopt a county plan or a revision or amendment to the county plan . . . the county planning agency shall certify that the plan, revision, or amendment is consistent with the county comprehensive plan."

82. Maryland Code, Envir. § 9-507 grants MDE the power and duty to approve, disapprove or modify county water and sewer plans adopted by counties, which adoption is expressly conditioned on a county planning commission's previous certification of consistency with the county comprehensive plan as aforesaid (i.e., in Maryland Code, Envir. § 9-506(a)(1)).

83. Given the fact of the Planning Commission's rescission on November 3, 2021, nullifying *ab initio* its earlier certification of consistency, MDE in turn must formally disapprove R281AA, and has the authority to do so.

84. MDE has the duty, responsibility, and authority to enforce the laws of the State of Maryland as they pertain to public health and the protection of Maryland's environment, including Maryland Code, Envir. § 9-506.

85. MDE's disapproval of R281AA following the Planning Commission's rescission of its certification of consistency, a prerequisite to its adoption, is properly, and must be, ministerial.

86. MDE has no authority to permit a county water and sewer plan amendment inconsistent with a county comprehensive plan (e.g., the CWSP amendment in R281AA that the Planning Commission has certified to be inconsistent with the TCCP).

87. Injury is resulting from MDE's violation of its statutory duties because Plaintiffs, who are personally affected by wastewater effluent discharged into La Trappe Creek, are denied the benefit of having the Planning Commission, a non-political body, determine consistency of the CWSP with the TCCP, as required by law.

88. This court should grant a writ of mandamus compelling MDE to enforce the Planning Commission's decision and affirmatively disapprove R281AA.

Count II:
Writ of Mandamus Against MDE to Enforce the Planning Commission's Decision and
Revoke the Hook-up Permit

89. Plaintiffs repeat and reallege Paragraphs 1-88 as though the same were set forth fully herein.

90. Under Maryland Rule 15-701, Plaintiffs seek a writ of mandamus to compel MDE to perform its statutory duties.

91. Maryland Code, Envir. § 9-511 provides that no sewerage system may be “installed or extended” unless it “conform[s] to the county plan or revision or amendment to the county plan.”

92. Maryland Code, Envir. § 9-262(b) provides that “[t]he [MDE] Secretary may revoke or change any permit issued under this subtitle¹⁵ after the Secretary gives the permit holder notice of the proposed revocation or change.”

93. The face of the Hook-up Permit expressly provides that “[t]his permit may be suspended or revoked upon a final, unreviewable determination that the permittee lacks, or is in violation of federal, state or local approval necessary to conduct the activity authorized by this permit.”

94. Despite the Planning Commission’s Finding that the initial hook-up of 120 homes to the Existing Plant is inconsistent with the TCCP—and subsequent December 2021 notice of rescission of certification of R281AA—MDE has taken no action to rescind the Hook-up Permit.

95. Without rescission of the Hook-up Permit, Rocks and Trappe will continue work on the Lakeside subdivision, including installation and extension of sewer lines and making “hook-ups” in contravention of the Planning Commission’s Finding.

96. MDE has the duty, responsibility, and authority to enforce the laws of the State of Maryland as they pertain to public health and the protection of Maryland’s environment, including Maryland Code, Envir. § 9-511.

¹⁵ The Hook-up Permit was issued under Md. Code Ann., Envir. § 9-204. See **Exhibit 12**, Permit #20-21-1113 at 3.

97. MDE’s rescission of permits that do not conform to the CWSP—including because of the CWSP’s inconsistency with the TCCP—is intended to be, and properly must be, ministerial.

98. MDE has no authority to permit the installation or extension of sewerage systems inconsistent with the TCCP.

99. MDE has acted in violation of Maryland Code, Envir. § 9-511 by refusing to revoke the Hook-up Permit.

100. Injury is resulting from MDE’s violation of its statutory duties because La Trappe Creek, and consequently all Plaintiffs, will suffer injury if MDE permits sewerage from Lakeside to be directed to the Existing Plant before such time as that plant meets ENR standards, in direct and notorious contradiction of the Planning Commission’s Finding.

101. Connections to the Existing Plant before such time as that plant meets ENR standards would significantly increase the wastewater effluent being discharged into La Trappe Creek and adversely impact Plaintiffs’ safety and enjoyment of the waters of Talbot County and their property which abuts those tributaries.

102. This Court should grant a writ of mandamus compelling MDE to (a) rescind the Hook-up Permit, and (b) cause an immediate suspension of any work to install or extend any sewerage system being constructed that is inconsistent with the TCCP as determined by the Planning Commission, and to cause an alteration or removal of the portion of the work installed after the date of the Planning Commission’s Finding proscribing that “hook-up.”

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Issue a writ of mandamus ordering and compelling MDE to enforce the Planning Commission’s decision and (a) disapprove R281AA, (b) revoke the Hook-up Permit, and (c) cause

an immediate suspension of any work to install or extend any sewerage system being constructed that is inconsistent with the TCCP as determined by the Planning Commission, and to cause an alteration or removal of the portion of the work installed after the date of the Planning Commission's Finding proscribing that "hook-up."

2. Award all such other relief as the Court deems just and proper.

Jury Demand

Plaintiffs hereby demand a jury trial on all issues so triable.

Dated: May 27, 2022

Respectfully submitted,

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