

BEFORE THE COUNCIL OF TRAPPE

In the Matter of:

Good Faith Compliance Review
for the Lakeside Development Rights
and Responsibilities Agreement

RESOLUTION NO. 1-2017

* * * * *

The Council of Trappe DOES RESOLVE as follows:

WHEREAS, Section 13.01 of Article 66B, Annotated Code of Maryland (“Development Agreement Statute”) authorizes and regulates the execution of development rights and responsibilities agreements (“DRRAs”) between certain public entities and persons who desire to develop private property within a public entity’s jurisdiction; and

WHEREAS, pursuant to the Development Agreement Statute, the Town established procedures for the consideration of DRRA applications by property owners or other persons having an interest within the Town’s jurisdiction; and

WHEREAS, on March 1, 2006, the Town entered into a DRRA governing the project now known as “Lakeside” (formerly “Trappe East”), which DRRA is recorded among the Land Records of Talbot County at Liber 1428, folio 86 (the “Lakeside DRRA”). The Lakeside DRRA requires the Town to conduct a periodic review of the Petitioner’s¹ good faith compliance with the terms of the Lakeside DRRA (“Periodic Review”); and

WHEREAS, the Town has independently reviewed the Petitioner’s information concerning the Petitioner’s good faith compliance with the Lakeside DRRA.

NOW, THEREFORE, the Council of Trappe finds and determines as follows:

Section 1. Recitals

The Council of Trappe hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the Town Council set forth below.

Section 2. Compliance with Lakeside DRRA

The Council of Trappe hereby finds and determines that, based on the information provided by the Town staff and the Petitioner’s “Good Faith Compliance Review Report”

¹ Excepting the parcels of land described by deeds recorded among the Land Records of Talbot County in Liber 543, folio 61 and Liber 1848, folio 209, Trappe East Holdings Business Trust is the owner of the property subject to the DRRA, is successor-in-interest to the Petitioners under the DRRA, and is therefor referenced hereinafter as “Petitioner”.

attached hereto and incorporated herein by reference as "Exhibit 1", the Petitioner has demonstrated good faith compliance with the Lakeside DRRA for the period commencing March 1, 2006 through April 5, 2017.

Section 3. Certificate of Compliance

The Town Council hereby directs and authorizes the President of the Town Council to issue to the Petitioner an Estoppel Certificate memorializing this "Finding of Compliance" that can be recorded and relied upon by the Petitioner in the form attached hereto and incorporated herein by reference as "Exhibit 2".

Section 4. Certification

The Town Clerk shall certify the adoption of this Resolution.

Section 5. Effective Date

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the Council of Trappe on the 5th day of April 2017, by a vote of 5 in favor and 0 opposed.

ATTEST:


Erin Braband, Clerk


Norm Fegel, President

EXHIBIT 1

**LAKESIDE DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT
GOOD FAITH COMPLIANCE REVIEW
PETITIONER'S REPORT – APRIL 5, 2017**

Project Name: Lakeside (formerly “Trappe East”)

Petitioners: Trappe East Holdings Business Trust, Developer/Owner (“Petitioner”)

Proposal: 2017 Review of the Lakeside Development Rights and Responsibilities Agreement (“DRRA”) to Determine Good Faith Compliance

Location: The proposed project is generally located on the east side of Route 50, north of Barber Road and south of Backtown Road

Area: 857.8 Acres

Agent: Ryan Showalter, McAllister, DeTar, Showalter & Walker LLC

Existing Zoning: Planned Neighborhood (“PN”)

Existing Land Uses: Agriculture and mineral extraction

Background:

In 2006, the Council of Trappe approved the establishment of a PN zoning district and approved a PUD Plan and design guidelines for the mixed-use project known as “Lakeside” (formerly “Trappe East”) (the “Project”). The DRRA vesting these approvals was entered into between the then-contract purchasers of the Project site and the Town and was effective on March 1, 2006. The DRRA contemplates bi-annual Town Council review of the Petitioner’s compliance with the provisions of the DRRA on or before each even numbered anniversary of the Effective Date thereof. The bi-annual compliance review process provides the Town an opportunity to periodically review the project’s implementation and ensure compliance with the project conditions.

The Good Faith Review is triggered by the Town’s notice to the Petitioner pursuant to Section 13.1. A Good Faith Review was not conducted in 2012. The Town conducted a DRRA Good Faith Review in 2013 and 2015.

Discussion:

To date, due to the current status of the housing market, no construction related to the project has occurred. As reflected by the 2010, 2013 and 2015 Good Faith Compliance Reviews, subsequent to the effective date of the DRRA, Petitioner, a Maryland business trust, acquired fee simple ownership of the entire project site with the exception of approximately 2.359 acres of land currently owned by D. Estelle and Elizabeth Slaughter. The option on the land owned by the Slaughters has expired, although such land remains subject to the PN zoning district. Additionally, a portion of the project site has been

subdivided and conveyed to Delmarva Power & Light Company for an electric substation to serve the project.

Information Required Pursuant to Section 13.3

Housing Units Developed (by number, type and location):

No housing units have been constructed on the project site since March 1, 2006.

Infrastructure Installed (by category and location):

No infrastructure for the project has been constructed on or off of the project site since March 1, 2006. The Council of Trappe, Town Planning Commission and Petitioner prefer to utilize the Town's existing wastewater treatment plant to serve the Project, rather than the construction of a separate wastewater treatment plant. The project is anticipated to be served through the expansion and upgrade of the Town's existing wastewater treatment plant. While the initial phase(s) of the project could be served by the existing wastewater treatment plant's capacity and the parameters of the existing discharge permit, as additional phases of the project are constructed, the wastewater treatment plant will need to be upgraded to achieve the discharge criteria necessary for land application. The Petitioner and the Town continue to explore the alternatives with respect to upgrading the existing wastewater treatment plant, which both believe would be a positive change to the project.

The parties recognize that the utilization and expansion of the existing wastewater treatment plant will require amendments to the DRRA, which will commence at the appropriate time.

Status of participation by Petitioner and others in the provision of or financing of public infrastructure:

Pursuant to Resolution No. 2-2006, the Council of Trappe established the Lakeside Special Taxing District to secure the repayment of special obligation bonds to be issued by the Town to finance public infrastructure for the Project. On November 7, 2007, by Ordinance No. 11-2007, the Town authorized the issuance of special obligation bonds for public improvements within Lakeside in an aggregate principal amount not to exceed \$60 million, provided that such bonds and the interest thereon shall never constitute a general obligation debt of or a pledge of the Town's full faith and credit or taxing power. On November 5, 2008, by Ordinance No. 8-2008, the Town extended the time period for issuance of such bonds through December 31, 2009. On November 4, 2009, by Ordinance No. 7-2009, the Town extended the time period for issuance of such bonds through December 31, 2011. On November 2, 2011, by Ordinance No. 8-2011, the Town extended the time period for issuance of such bonds through December 31, 2013. On November 6, 2013, by Supplemental Ordinance No. 6-2013, the Town extended the time period for issuance of such bonds through December 31, 2015. Finally on December 2, 2015, by Supplemental Ordinance No. 6-2015, the Town extended the time period for issuance of such bonds through December 31, 2017.

Proposed dedications of infrastructure offered by Petitioner:

Since the Petitioner has not constructed any infrastructure to serve the project, Petitioner also has not offered or proposed the dedication of infrastructure since March 1, 2006. In addition, as set forth above, the Petitioner and the Town continue to explore alternatives with respect to utilizing and expanding the Town's existing wastewater treatment plant to serve the Project.

Additional compliance matters offered by Petitioner:

At all times since March 1, 2006, the Petitioner has strictly complied with all obligations established by the DRRA.

Conclusion:

Based upon the foregoing, TEHBT respectfully requests the Town to confirm the Petitioner's good faith compliance with the DRRA from the date of its execution through April 5, 2017. Similarly, the Council of Trappe has also requested that the Petitioner confirm the Town's good faith compliance with the DRRA through the same date—for which an Estoppel Certificate executed by the Petitioner is attached. Petitioner understands that the next Good Faith Compliance Review will be initiated by the Town to occur in 2019. Finally, Petitioner requests that the Town memorialize its good faith determination by adoption of a resolution that authorizes the execution of an Estoppel Certificate consistent with Exhibit H of the DRRA.

Please contact Ryan D. Showalter at 410-820-0259 with any questions or requests for additional information.

ESTOPPEL CERTIFICATE

Date: April 5, 2017

To: Council of Trappe
P.O. Box 162
Trappe, Maryland 21673

Re: *2017 Good Faith Compliance Review
Development Rights and Responsibilities Agreement, dated March 1, 2006
and recorded at Liber 1428, folio 86 in the Land Records of Talbot
County, Maryland ("DRRA").*

Commissioners:

In accordance with Section 18 of the DRRA, the Successor Petitioner have the authority to certify, as of the date hereof, the following. Capitalized terms herein will have the meanings assigned to them in the DRRA unless otherwise defined herein:

1. The Property covered by this Estoppel Certificate is depicted by Exhibit "D" of the DRRA, which is incorporated herein by reference, saving and exception such portions as are owned by: (i) D. Estelle Slaughter and Elizabeth Slaughter, which land is described by deed recorded among the Land Records of Talbot County, Maryland in Liber 543, folio 61, and (ii) Delmarva Power & Light Company, which land is described by deed recorded among the Land Records of Talbot County, Maryland in Liber 1848, folio 209.

2. The DRRA is in full force and effect and has not been amended, modified or supplemented in any way except as: (i) indicated by the Assignment and Assumption Agreement recorded among the Land Records of Talbot County in Liber 1682, folio 303, and (ii) otherwise specified herein. The Successor Petitioner hereby confirms that the Town has strictly and in good faith complied with the DRRA from the date of its recordation through April 5, 2017.

3. The Successor Petitioner has not sent any notice of default to the Town under the DRRA.

4. This Estoppel Certificate is made by undersigned Successor Petitioner, which has authority to execute the same, and may be relied upon by the Town.

Respectfully,

TRAPPE EAST HOLDINGS BUSINESS TRUST,
a Maryland business trust, by Trappe East Business
Holdings, LLC, a Delaware limited liability
company, as sole shareholder and trustee

By: 

By: Nicholas P.H. Rocks, President

EXHIBIT 2

ESTOPPEL CERTIFICATE

Date: April 5, 2017

To: Trappe East Holdings Business Trust
c/o Ryan D. Showalter, Esq.
McAllister, DeTar, Showalter & Walker LLC
100 N. West Street
Easton, Maryland 21601

Re: **2017 Good Faith Compliance Review**
Development Rights and Responsibilities Agreement, dated March 1, 2006 and recorded at Liber 1428, folio 86 in the Land Records of Talbot County, Maryland ("DRRA").

Ladies/Gentlemen:

In accordance with the DRRA, the Council of Trappe ("Town") has the authority to certify, as of the date hereof, the following. Capitalized terms herein will have the meanings assigned to them in the DRRA unless otherwise defined herein:

1. The Property covered by this Estoppel Certificate is depicted by Exhibit "D" of the DRRA, which is incorporated herein by reference, saving and exception such portions as are owned by: (i) D. Estelle Slaughter and Elizabeth Slaughter, which land is described by deed recorded among the Land Records of Talbot County, Maryland in Liber 543, folio 61, and (ii) Delmarva Power & Light Company, which land is described by deed recorded among the Land Records of Talbot County, Maryland in Liber 1848, folio 209.

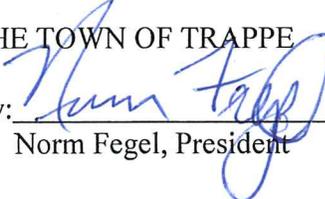
2. The DRRA is in full force and effect and has not been amended, modified or supplemented in any way except as: (i) indicated by the Assignment and Assumption Agreement recorded among the Land Records of Talbot County in Liber 1682, folio 303, and (ii) otherwise specified herein. The Assignment and Assumption Agreement entitles Trappe East Holdings Business Trust ("TEHBT") to all of the rights and benefits accruing to the Petitioners (except Slaughter Land LLC) under the DRRA. The Town hereby confirms that the TEHBT, as Petitioner, has strictly and in good faith complied with the DRRA from the date of its recordation through April 5, 2017.

3. The Town has not sent any notice of default to the Petitioner under the DRRA.

4. This Estoppel Certificate is made by the Town and may be relied upon by the addressees, any lender related to or secured by all or a portion of the Property, and any purchaser or lessee of all or a portion of the Property, as applicable. As evidenced by the Resolution attached hereto and incorporated herein, the undersigned has authority to execute this Estoppel Certificate on behalf of the Town.

Respectfully,

THE TOWN OF TRAPPE

By: 
Norm Fegel, President