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TO: Board of Directors of Drum Point Property Owners Association, Inc.
Board of Directors of Property Owners Association Chesapeake Ranch Estates, Inc.

FROM: Corinne G. Rosen, Esq.

RE: SHUR Funds – Special Taxing District Status

DATE: June 2, 2008

This memo will address the question of whether the special taxing districts which were created by Calvert County for DPPOA and POACRE pursuant to Title 4, of the Code of Public Laws, Calvert County Code, are eligible to obtain additional State Highway User Funds (“SHUR” funds) directly from the State of Maryland as “municipalities” pursuant to Maryland Code, Transportation Article, Section 4-405 (a).

Maryland Code, Transportation Article, Title 8., Section 8-401(e) provides as follows: “Municipality: means any municipal corporation, special taxing district, or other political subdivision of this State other than a county or Baltimore City” *(emphasis added – the use of the words “or other” above seems to indicate that Section 8-401(e) is referring to a the municipal corporation and special taxing district referenced therein as a type of political subdivision. –see also the definition of a “political subdivision” under Maryland Code, Transportation, Title 1, Section 1-101(k), which provides that a “political subdivision” includes (1) any county or municipal corporation, and(2) unless the context requires otherwise, any special taxing district).*

Maryland Code, Transportation Article, Title 8., Section 8-405 (a) provides that “Any municipality authorized by law to construct or maintain streets or roads may request its share of highway user revenues provided under this subtitle from the Administration”. (The “Administration” defined as the State Highway Administration of the State of Maryland).

Maryland Code, Transportation, Title 1., Section 1-101 , Definitions, (j)(1) and (2) provides that “Person” includes an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind and any partnership, firm, association, public or private corporation, or other entity; and unless the context provides otherwise, this State, any county, municipal corporation, or other political subdivision of the State, or any of their agencies or units”.

Maryland Code, Article 26. Miscellaneous Governmental Entities, Section 1., Definitions. (b) provides as follows: "Governmental entity" means a special taxing district which (1) is a unit of government responsible for an area situated solely within a single county; (2) has a governing body elected independently of the county government; (3) is financed with revenues secured in whole or in part from special taxes or assessments levied on real property situated within the area; (4) performs municipal services for residents of the area; and (5) was not created for a limited or special purpose".

The issue raised by County Attorney Demedis to DPPOA (as stated in DPPOA's memo to this office dated December 10, 2007) was whether the particular type of special taxing district under which the Association's operate is similar to that of a "government" (i.e. municipal corporation or other political subdivision of a state), or a geographical area designated for limited revenue-producing purpose. For reasons stated below, it is the opinion of this firm that the special taxing district(s) created for DPPHA and POACRE pursuant to Title 4.m of the Code of Public Laws, Calvert County Code, would not likely be considered a "municipality" pursuant to Maryland Code, Transportation, Title 8, Section 8-401, and is better characterized as a geographical area for limited revenue-producing purposes rather than characterized as a "government".

In Williams v. Anne Arundel County, 334 Md. 109 638 A.2d. 74 (1994), a private homeowners association, covering a residential community of about 2,200 homes, petitioned the County for a special community benefit district in the community. The County created such a district pursuant to the Anne Arundel County Code, and a uniform assessment was levied on real property tax accounts, to be collected and enforced in the same manner as the county real property taxes, with the special benefit taxes to be deposited into a special account for the district's benefit. A homeowner challenged the County Ordinance which created the special community, asserting that it was invalid because the tax levied was not for a "public purpose". The Court ruled in favor of Anne Arundel County in the case.

The Court, in defining the nature of special community benefit tax districts, held as follows: "The Association is the vehicle or instrumentality that the County Council has recognized to administer and expend the special benefit assessments imposed and collected by the County. The County Council ordains the purposes for which those assessments may be expended".

The STD's authorized by Calvert County Code, Title 4., and created by the Calvert County Board of County Commissioners fit the general description set forth in Williams v. Anne Arundel County.

Calvert County Code, Title 4.: Section 401(a) (2) - "The County Commissioners may levy and collect special taxes or assessments on property in those districts receiving special benefits to pay the cost of furnishing, providing and maintaining, community roads and streets... lakes, canals, and other community-wide amenities and other special

privileges or benefits as the County Commissioners may approve.”; Section 401 (b) (1) and (2) – “A special taxing district may not be created or special tax levied until a petition requesting a district is received from a homeowner’s association...the petition shall be accompanied by a resolution of the governing body of the homeowners association and by an opinion of counsel of the homeowners association that the petition is a duly authorized act of the homeowners association and is within the powers of the association; Section 4-104 (a) (1) – The County Commissioners may grant a portion or all of the funds received from the special tax to the homeowners’ association that petitioned for the creation of the special taxing district; Section 4-104 (b) (2) – The homeowners’ association may use the funds granted under paragraph 1. of this subsection only for the benefit of its members in accordance with the stated purpose and nature of the special taxing district”.

The special taxing districts created for DPPOA and POACRE (as opposed to DPPOA and POACRE themselves), created pursuant to Title 4. of the Calvert County Code, do not appear to fit the definition of a “person” under Maryland Code, Transportation, Title 1., Section 1- 101 ... (a “person” includes (1) an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind and any partnership, firm, association, public or private corporation, or other entity; and (2) unless the context provides otherwise, this State, any county, municipal corporation, or other political subdivision of the State, or any of their agencies or units”).

Calvert County, DPPOA and POACRE are legal “persons”, both pursuant to Maryland Code, Transportation, Title 1. Definitions, Section 1-101, (j) (1) (DPPOA & POACRE) and (j) (2) (Calvert County), and generally (i.e. the County, DPPOA and POACRE have the capacity to sue or be sued, to enter into a contract, etc.). However, it is my opinion that the special taxing districts created for DPPOA and POACRE by Calvert County pursuant to Title 4. of the Calvert County Code are not “persons” under either Section 1-101 or generally.

It is also my opinion that the special taxing districts created by Title 4. of the Calvert County Code do not create “governmental entities”. As defined in Maryland Code, Article 26, Miscellaneous Governmental Entities, Section 1., Definitions, (b) “Governmental entity” means a special taxing district which (1) Is a unit of government responsible for an area situated solely within a single county; (2) has a governing body elected independently of the county government;... (5) was not created for a limited or special purpose”. (Note: all five (5) elements contained in the statutory definition contained above would have to be met by the special taxing district to be defined as a governmental entity.) DPPOA and POACRE are not “units of government”, they are private corporations. Both DPPOA and POACRE elect boards in the context of their corporate documents, not as part of a state or local “government”. The special tax district created by the Calvert County Code, Title 4. are by the terms of that statute for a “limited” or “special” purpose.

It is noted that there are special tax districts (referred to as “special districts”) in some Maryland counties (i.e. Allegany County and Montgomery County), which were

created by state law and local referendum prior to the passage of home rule in these counties, and are counted as "governments" by the U.S. Census Bureau Census of Governments (and likely meet the definition of "municipality" for purposes of Section 8-405 of the Maryland Code, Transportation Article.) These special tax districts cannot be abolished or modified by the counties in which they are situated (unlike the DPPOA and POACRE special taxing districts), and these special tax districts elect their own governing boards (i.e. elect governing boards for the special taxing district, as opposed to DPPOA and POACRE, which elect a board of directors for the association, not for a "special taxing district" entity).

In contrast, the type of special taxing district under which DPPOA and POACRE were created operate within the territory of an established government (i.e. Calvert County, which is a "political subdivision" of the State of Maryland), and serve to finance additional services in limited geographical areas (DPPOA and POACRE) for the purpose of producing limited revenues for specified purposes by property taxation.

In short, it is my opinion that the creation and operation of the DPPOA and POACRE special taxing districts (i.e. the statute under which they were created, the methods and limitations by which they operate pursuant to the statute, the Court's definition of the nature of special benefit tax districts in Williams v. Anne Arundel County, the lack of "person" status of the DPPOA and POACRE special tax districts, and the U.S. Census Bureau' method of counting only certain types of special tax districts as "governments", (but not the type created by Title 4. of the Calvert County Code), indicate that the type of special taxing district created pursuant to Title 4. of the Calvert County Code does not fall under the definition of a "municipality" as defined by Maryland Code, Transportation Article, Title 8., Section 8-401(e). As such, it is my opinion that it is unlikely that DPPOA and POACRE would be eligible to obtain SHUR funds directly from the State Highway Administration pursuant to Maryland Code, Transportation Article, Title 8, Section 8-405 as a "municipality".

It is my understanding that the Calvert County Attorney planned to request a legal opinion from the Maryland State Attorney General on the question of whether "special tax districts" such as created for DPPOA and POACRE are "municipalities" for the purpose of Section 8-405. Should that occur, this question can be re-visited should the Attorney General issue a more favorable legal opinion on this issue.