

*Jon Laria, Chair*  
Suite 1101  
301 West Preston Street  
Baltimore Maryland 21201

June 1, 2012

The Honorable Martin O'Malley  
Governor's Office  
State House  
100 State Circle  
Annapolis, MD 21401-1925

Dear Governor O'Malley:

The Maryland Sustainable Growth Commission was created by Senate Bill 278 and House Bill 474 in the 2010 Legislative Session at the initiative of the Governor. It succeeded the Task Force on the Future for Growth and Development in Maryland, also created by statute, which existed from 2007-10.

In 2011, the 36-member Commission began its work in earnest, meeting bi-monthly around the State. Meetings were held in Annapolis, Bel Air, Prince Frederick, Cambridge and Hagerstown. By rotating around the State, the Commission gets to see State and local programs in action, and meet with local stakeholders throughout Maryland. Typical agendas include introductory remarks and a short presentation by a local official, including, when possible, a tour of a relevant project or program.

Because the Commission is large and members must travel from across the State, the Commission has organized into seven workgroups to efficiently address the broad and substantive charge given by the legislature. The workgroups are:

- Concentrating Growth
- Education
- Housing
- Funding



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- Indicators
- Plan Maryland
- Watershed Implementation Plan (WIP)

The workgroups are led by chairs and vice-chairs designated by the Commission Chair from among Commission members, and are supported by professional staff from various State agencies. Although Commission membership is diverse, workgroup membership is not limited to Commissioners to ensure that other stakeholders and interested parties have the opportunity to meaningfully contribute to the Commission's work. The workgroups meet independently of the Commission, reporting regularly on their work at the full Commission meetings.

A great deal of the Commission's work in 2011 was focused on PlanMaryland, the state development plan prepared by the Maryland Department of Planning at the request and direction of the Governor. Accordingly, the **PlanMaryland Workgroup** met intensely during 2011, commenting in detail on two successive drafts of PlanMaryland. The workgroup provided recommendations to the Commission (see attached Exhibit A) at its November 14, 2011 meeting, which were adopted by the full Commission. These included four overarching recommendations: (1) the Plan needs to be concise and easy to read; (2) while MDP revisions substantively addressed the workgroup's earlier recommendations, ongoing collaboration between MDP, other State agencies, and the Commission will be necessary; (3) regional and inter-state collaboration must be part of PlanMaryland; and (4) a major challenge, which must be met, is to ensure that State agencies and local jurisdictions commit the resources necessary to implement PlanMaryland. The report also included detailed comments by PlanMaryland chapter.

The **WIP Workgroup** also provided recommendations that were adopted by the full Commission at its July 25, 2011 and September 26, 2011 meetings (see attached Exhibit B). The recommendations adopted at the July 25, 2011 meeting were to: (1) endorse the importance of the WIP and its associated offset and WWTP growth allocation strategies in achieving the State's economic, growth, resource protection and planning policy; (2) direct the WIP Workgroup to serve in an advisory capacity to the interagency Growth Offset Workgroup; (3) support the establishment of offset generation capacity and its integration with growth management strategies at the local level; and (4) publish a "toolbox" of pollution prevention policies and strategies for local governments. The second recommendation noted is reflected in the letter to MDP's Joe Tassone which is part of the attachment.

At the Commission's September 26, 2011 meeting, the WIP Workgroup made additional recommendations, as follows: (1) the Commission should formally recommend that the State determine "offset generation capacity" for each county, organized by trading geographies under the Bay TMDL and local TMDLs, and recommend the Governor direct the Bay Cabinet to implement this recommendation and include it in the BayStat process, and (2) The Commission should formally recommend that the State, in collaboration with EPA, clarify how policy and regulatory frameworks

under current and proposed trading programs will accommodate pollution loads from new growth and not exceed water quality standards. The first recommendation above was sent to the Governor in a November 14, 2011 letter which is part of the attachment.

The **Housing Workgroup** began its work on the development of a State Housing Plan. A State Housing Plan will work together with other State and local policy initiatives to help create opportunities for homeownership and rental housing that ensure a range of housing choices for Marylanders of all incomes. When complete, this plan will provide a policy framework to help coordinate comprehensive housing and neighborhood revitalization initiatives that support and enhance the unique characteristics of all communities statewide. The workgroup expects to present a draft plan to the Commission in 2012.

The **Indicators Workgroup** completed its “Beta Testing” exercise in 2011 and presented a final report from that sub-group to the Commission at the September meeting. The “Beta Testing” group consisted of several local government representatives who were tasked with collecting and reporting data for their jurisdictions based on the 15 proposed indicators identified by a “Technical Team” in 2010 (see attached Exhibit C).

The **Education Workgroup** developed a proposal for a “sustainable growth challenge.” This “challenge” would engage professors and college students in planning and related disciplines to take on a project that would confront an issue related to sustainable growth in their community or region. Ideally this would involve at least three educational institutions in a friendly competition. The workgroup has discussed ideas of creating a cash prize, class credit, grade or creating a “Green and Growing” Award. The workgroup investigated the planning related degrees and programs available in the Maryland’s schools. The Workgroup’s objective is to identify community colleges/universities that are not yet offering planning degrees/courses and encourage these institutions to offer either courses or degrees in urban planning or similar degrees to promote smart growth. The workgroup also reviewed existing smart growth educational best practices, such as the “Live Near Your Work” model, which has been promoted as a sustainability program by state agencies and local governments and major employers.

The **Concentrating Growth Workgroup** focused on three key areas of concern and tasked three subcommittees to come up with ways to address the following issues:

- How do we persuade more people and businesses to choose existing communities when they choose where they will live, work and invest?
- Can we encourage development in places that are targeted for growth and revitalization by streamlining the development approval process in those locations?
- What is the best way to implement sustainable growth policies in rural areas of the State?

Specific recommendations were provided to the full Commission for its consideration that addresses the first two questions above. Information was provided to the Workgroup for its consideration on the third bulleted issue in anticipation of recommendations to address that issue.

The **Funding Workgroup** this year has focused much of its attention on exploring a tax increment financing strategy for smart growth areas that would combine State and local government efforts to promote economic development and revitalization. An outgrowth of the Funding Workgroup's effort was the introduction of HB 1467, Sustainable Communities - Financing and Designation, during the 2012 General Assembly. This bill would expand the ability of counties and municipalities with designated Sustainable Communities to fund a wider array of smart growth infrastructure improvements. The Funding Workgroup has also been examining the potential of a State Infrastructure Bank, as well as enhanced tax credit ideas for the preservation of agricultural and environmentally sensitive lands.

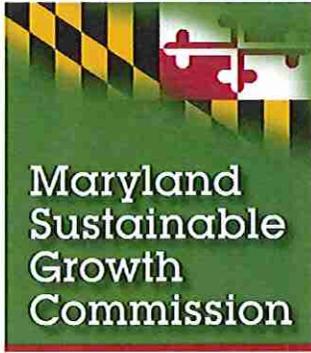
The Commission's inaugural year has provided a solid foundation on where to build. We anticipate delivering to you additional recommendations on subsequent growth reports throughout the year.

Please do not hesitate to contact me at 410.528.5506 or [laria@ballardspahr.com](mailto:laria@ballardspahr.com) should you require any further information.

Sincerely,

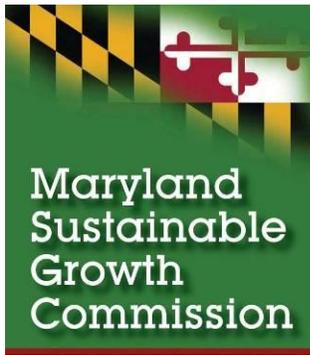
A handwritten signature in black ink, appearing to read "Jon Laria". The signature is stylized with a large, sweeping initial "J" and "L".

Jon Laria  
Chair



## EXHIBIT A

**PlanMaryland Workgroup  
November 2011  
Recommendations to the  
Maryland Sustainable Growth Commission**



## **PlanMaryland Workgroup** November 2011

### Review and Recommendation of Revised Draft PlanMaryland

#### PlanMaryland Workgroup Members

Gerrit Knaap, Chair  
David Carey, Vice Chair  
Greg Bowen  
Mike Caruthers  
Candace Donoho  
David Goshorn  
Don Halligan

Les Knapp  
Todd Lang  
Matthew Leakan  
David Lever  
Dru Schmidt-Perkins  
Rebecca Walker

#### State Agency Participants

Rich Josephson, MDP (Lead Staff)  
Chuck Boyd, MDP (Lead Staff)  
Marty Baker, MDOT  
Amanda Conn, MDP  
Peter Conrad, MDP

Jenny King, MDP  
John Papagni, DHCD  
Kate Sylvester, MDOT  
Joseph Tassone, MDP

The PlanMaryland Workgroup met on four occasions to review the revised *September 2011 draft PlanMaryland* document. The Workgroup believes that a State Development Plan is needed to help coordinate future development and land preservation strategies among State agencies and between State and local governments. The Workgroup members generally feel that the revised draft is much easier to read and understand; the document is shorter and more concise than the previous draft. Before the Plan is submitted to the Governor the Workgroup believes a number of concerns, which are listed in this report, should be addressed. Recognizing the desire of the Maryland Department of Planning to move the Plan forward and begin working with stakeholders to implement the goals and objectives of PlanMaryland, the Workgroup's recommendations are directed toward improving the final Plan document submitted to the Governor. Assuming the incorporation of these recommendations into PlanMaryland, the Workgroup endorses the revised draft Plan as a framework for moving smart growth forward in Maryland. The endorsement is also predicated on the understanding that the *PlanMaryland* document submitted to the Governor is the beginning of the state planning process, and that subsequent steps will proceed with both public transparency and ample opportunities for continued stakeholder review and input.

## **A. *General Comments***

### **1. While the revised draft Plan is better than the initial draft, the version of PlanMaryland that goes to the Governor needs to be concise and much easier to read.**

Recommendation: The revised draft Plan is significantly shorter and more succinct than the initial draft. However, there is still room for improving the reader's understanding of the concepts presented in the Plan. The various processes (e.g. identification of planning areas and preparation of Implementation Strategies) laid out in the Plan are complex. Flow charts and graphics should be used to illustrate what the Plan intends to accomplish and how the implementation process will work. The Plan includes too much detail about the data, analyses and processes that the Workgroup believes is not necessary in the final version. Wherever possible, such detail should be included in the appendices or other support reports or publications.

### **2. The revised draft PlanMaryland addresses the Workgroup's recommendations, but it will require on-going collaboration.**

Recommendations: The Workgroup acknowledges that the revised draft Plan clarified many of the previously identified issues and provides the framework for subsequent State agency and local government efforts to promote smart growth. However, achieving the goals and objectives of the Plan can only be accomplished if there is coordination and collaboration among State agencies and between State and local governments. The Plan provides a general description of tools and processes that will be used to implement the Plan, such as the Place/Special Area Designation Element (now referred to as Planning Area Guidelines) and the Implementation Strategies. The Workgroup recognizes that the details of these Plan components will require State agencies and local governments to work together. Representing a fairly broad cross-section of stakeholders, the

Workgroup offers its services to the Sustainable Growth Commission as a forum for the ongoing discussion of these components.

The Workgroup notes that the revised text of the Plan, in several sections, stresses greater collaboration between State agencies and local governments. It addresses the concern that PlanMaryland will undermine the planning and zoning authority of local governments by stating on page 1-5 that, "PlanMaryland is not a substitute for local comprehensive plans. It will not remove local planning and zoning authority. It is a policy plan that works within existing statutory authority and does not create new laws or regulations. PlanMaryland does not supplant existing laws and regulations that State agencies must follow." The Workgroup understands that the Plan does not change the statutory authority of State agencies to perform delegated duties and the autonomous authority of local government for land use planning and zoning; nevertheless, it will be imperative that all agencies and levels of government collaborate to improve the use of land, financial and human resources for all Marylanders everywhere. The Workgroup suggests that collaboration should remain an important area of focus throughout the implementation process

Some members of the Workgroup identified two specific aspects of the Plan's implementation process that remain a concern: (1) the Smart Growth Subcabinet has the final say regarding identification of Planning Areas, and (2) given the potential but yet ambiguous impact of the Implementation Strategies the input of local governments in preparing these strategies should be better defined. All of the Workgroup members acknowledged that the revised draft Plan contains two text boxes stating what PlanMaryland does and does not do. Furthermore, it was noted that the Plan states in several parts of the document that it does not create new laws but works within existing rules and regulations. Finally, the Workgroup also recognizes that the Plan provides for a six month "self-assessment" process for State agencies to evaluate existing programs and identify how Planning Areas could be incorporated into funding, programs, and procedures; and that the results of this assessment will be available before the Planning Area identification process begins. To address the concerns of some members, the Workgroup recommends that explicit steps be taken in formulating these two aspects of the implementation process to ensure maximum transparency and collaboration between State and local governments.

### **3. Regional and inter-state collaboration should be part of PlanMaryland.**

Recommendation: The revised draft Plan highlights the need for collaboration and cooperation between State and local governments; however, the Plan does not directly address the roles of regional agencies. Regional agencies, such as MPOs and planning councils, can play a significant role in helping to implement PlanMaryland, and this should be recognized explicitly in the Plan (See the detailed recommendations for Chapters 4 and 5 of this report). Similarly, the dynamic relationships between Maryland and the adjoining states are not recognized in the Plan and should be addressed. Washington, D.C., Virginia and Pennsylvania have significant impacts on land development and commuting patterns in Maryland. Counties such as Montgomery and Prince George's compete head-to-head with Northern Virginia jurisdictions on economic development opportunities. Restoring the Chesapeake Bay requires a regional partnership of states. The Plan needs to include greater recognition of these inter-state influences and issues, and promote more state-to-state collaboration on them.

#### **4. Ensuring that State agencies and local jurisdictions commit the resources necessary to implement PlanMaryland will be a major challenge.**

Recommendation: Workgroup members raised the concern that implementing PlanMaryland will likely require additional work on the part of both the local governments and State agencies to identify Planning Areas. Given the personnel limitations at the State and local level, the process of identifying Planning Areas must be relatively easy, straight-forward and fair for all parties involved. Similarly, the allocation of personnel to conduct State agency assessments and prepare Implementation Strategies will involve a significant commitment of resources. The Plan implementation schedules should be re-evaluated to determine if the timeframes are realistic and the process can be managed to ensure it is both practical and fair for both local governments and State agencies.

## **II. Specific Concerns/Issues by Chapter**

### **A. Chapter 1 – Introduction**

#### **1. The beginning of PlanMaryland must quickly present why it is needed and clearly explain what is to be accomplished.**

Recommendation: The revised draft Plan is significantly shorter and more succinct than the initial draft. However, it can be improved further so that the general reader will have a better understanding of the Plan's purpose and concepts. The Introduction of the Plan should more succinctly describe what the Plan is and what it will do. The final version of the Plan that goes to the Governor should include graphics as necessary to help clarify and simplify the components of the Plan, the implementation process, and the respective roles and relationship between State agencies and local governments in that process.

#### **2. Collaboration and Cooperation is important, but it must be apparent that the State has a clear vision.**

Recommendations: The consensus of the Workgroup was that the revised draft Plan stresses greater collaboration between State agencies and local governments. However, some members of the Workgroup believed that the tone of the Introduction is, at times, too apologetic and lacks the leadership and vision that is needed in PlanMaryland. Several instances were cited where Plan statements are qualified and tentative, when they needed instead to be strong statements of where the State of Maryland should go in the future. Other workgroup members stressed the importance of having clearly defined Plan boundaries and clarity with how the Plan interacts with local governments. Chapter 1 sets the tone and direction for the entire Plan, and as such it needs to explain more clearly and assertively what will be accomplished through this Plan and how.

***B. Chapter 2 – Trends and Land Use Implications*****1. Continue to work on shortening Chapter 2.**

Recommendation: The Workgroup acknowledged that Chapter 2 was shorter and much more readable than the initial draft. Nonetheless, Workgroup members felt that Chapter 2 should be trimmed further and much of this information should be included in as separate appendix or other support reports or publications.

***C. Chapter 3 – Visions, Goals and Objectives*****1. Better integration of Visions, Goals and Objectives**

Recommendation: Chapter 3 needs to be reworked so that the Vision statements are better integrated into PlanMaryland’s goals as opposed to just being repeated several times over. It was also suggested that each vision be attributed to the most logical and appropriate goal as opposed to attributing each vision to every potential goal.

**2. Simplify how the goals will be quantified/measured.**

Recommendations: The revised draft Plan includes benchmarks as recommended by the Workgroup. However, for many of the benchmarks, there was no agreement on what was to be measured and what that benchmark was to indicate. The Workgroup was comfortable including all of the “Established” benchmarks and supports the use of the two “Proposed” benchmarks. The Workgroup recommended eliminating all “Possible” benchmarks since how they would be measured remains questionable and no quantifiable goal standards can be agreed upon.

***D. Chapter 4 – Defining the geographic focus of the Plan*****1. Regional and metropolitan planning agencies can help identify PlanMaryland’s Planning Areas.**

Recommendation: While the revised draft Plan stresses the importance of collaboration between State agencies and local governments, the regional and metropolitan planning agencies are not mentioned, but can play an important role in coordinating the efforts of local governments, and serve as a forum to establish regional priorities, particularly in terms of regional growth centers. Chapter 4 should be amended to cite the important role that regional and metropolitan planning agencies can serve in identifying planning areas and facilitating resolution of conflicts between planning areas, particularly across jurisdictional boundaries.

## **2. Recognize that certain infrastructure expansion in Established Community Areas can be part of a Smart Growth strategy.**

Recommendation: The consensus of the Workgroup was that the Plan should acknowledge that certain infrastructure capacity improvements, such as school expansions or road widening, which may be located in Established Community Areas, may be needed to accommodate growth occurring within a nearby PFA. This issue should be acknowledged in Chapters 4, under the Planning Area descriptions.

## **3. Greater clarity on the anticipated benefits and expectations associated with Planning Areas**

Recommendation: Some Workgroup members are uncertain whether the Plan adequately articulates the benefits of the Plan to State agencies and local governments. PlanMaryland establishes a State agency assessment process where each agency will examine their existing plans, programs and regulations to determine how Planning Areas can be incorporated to improve the effectiveness of an agency's activities, while furthering the goals and objectives of PlanMaryland. The Workgroup recommends the Plan clarify that State agency assessment should articulate what the anticipated benefits to local governments will be for each Planning Area. Additionally, the Plan should address the potential conflicts that may arise between different State agency assessments. Finally, the State agency assessment process should also convey what may be expected of local governments. It is important that the Plan demonstrate to local governments and elected officials how it would be relevant to them. Explain clearly and concisely the benefits of the Plan, the Planning Area designations, and the Implementation Strategies.

## **4. A complete State Development Plan map will require commitment and collaboration by both State agencies and local governments.**

Recommendation: Some Workgroup members remain concerned that the local Planning Area identification process will lead to an incoherent/incomplete State Development Plan map. The revised draft Plan includes a provision that encourages local governments to identify all of their planning areas at once, so that a comprehensive assessment can take place, but this should be strongly recommended not just encouraged. To address the potential of an incoherent/incomplete State Development Plan map, the Plan should stress the importance of State agencies not only collaborating with local governments to identify Planning Areas, but also:

- stress the need for clear Planning Area guidelines that describe the appropriate location of Planning Areas in terms that local governments can understand and that are predictable for all involved; and
- outline a well articulated set of benefits/incentives for each Planning Area that local governments will want to pursue.

## **5. State-identified Planning Areas need local consultation.**

Recommendation: The Workgroup acknowledges that there may be instances of significant state importance where State agencies may need to identify Planning Areas for Preservation/Conservation (formerly referred to as Special Area Designations) that are not identified by the local jurisdiction, after having been given ample opportunity. While the draft Plan encourages joint identification of Preservation/Conservation Planning Areas, the Workgroup

recommends that additional text be added to ensure local governments are consulted if State-identified Planning Areas are considered, so that local governments are assured the opportunity to provide input.

## ***E. Chapter 5 – State Coordination and Implementation***

### **1. Clarify Climate Change Impact Guidelines on water-dependent infrastructure.**

Recommendation: It is important for the Plan to recognize that prudent public investment in Maryland's sea level rise inundation zone will be needed in certain instances to ensure the long term economic vitality of the state. Appropriate conservation efforts along Maryland's shorelines should not preclude important investment in water-dependent infrastructure, like our ports.

### **2. Regional and metropolitan planning agencies can help develop PlanMaryland's Implementation Strategies.**

Recommendation: As mentioned previously, the revised draft Plan stresses collaboration between State agencies and local governments, but does not highlight the important role that the regional and metropolitan planning agencies can play in developing, coordinating, and implementing PlanMaryland's Implementation Strategies. Chapter 5 should be amended to cite this important function as already recommended for other chapters.

### **3. There is a need to overcome the concern that PlanMaryland processes will not be collaborative.**

Recommendation: There are some Workgroup members that still have concerns that State agencies or legislators will use Planning Areas and the Implementation Strategies to override or limit local government land use decisions. While PlanMaryland states in several instances that the Plan does not create new law and will work within existing statutory laws and regulations, the concern remains with some members that some State agencies may use Planning Areas and Implementation Strategies beyond their intended purposes. To address this concern, the Plan should reiterate explicitly that that State actions taken in the name of the Plan will not usurp or undermine local planning and zoning authority. The Plan should be used by State agencies as a guide in re-aligning and improving State plans, programs and procedures to achieve the goals and objectives of PlanMaryland and is not intended to be used by State agencies to contradict existing state regulations and permitting procedures.

### **4. PlanMaryland needs to include functional area plans.**

Recommendation: Some Workgroup members expressed concern that the Plan is too focused on land use and not enough on the functional areas of transportation, economic development, environmental protection, housing, and infrastructure. The concern is that the planning area designation process and State implementation strategies are unlikely to produce a carefully considered state-wide strategy for critical investments in these functional areas. Nowhere does the Plan consider the context of the State in the larger regional, national, and international context or

the need to address these issues from a statewide lens. The Workgroup recommends that the Plan include explicit commitments to prepare statewide functional plans for these topics.

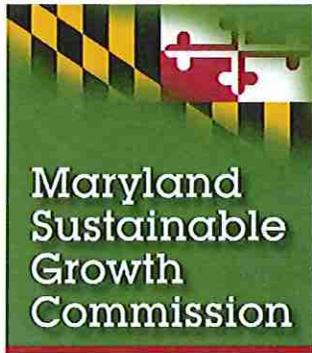
## ***F. Chapter 6 – Management and Tracking Progress***

### **1. Clarify the Smart Growth Subcabinet role in identifying Planning Areas.**

Recommendation: Some Workgroup members have concerns that the revised draft Plan has the State (i.e., Smart Growth Subcabinet) making the final decision on the Planning Areas designations without a full consideration of local governments' interests and concerns. The Workgroup recommends that provisions be included in the Plan to allow local government input to the Smart Growth Subcabinet's considerations of Planning Areas and Implementation Strategies.

### **2. The Roles of the Sustainable Growth Commission and the Smart Growth Subcabinet are still being debated.**

Recommendation: The Workgroup discussed the roles and responsibilities of the Sustainable Growth Commission and the Smart Growth Subcabinet. Some Workgroup members thought that the Sustainable Growth Commission should have a much greater role in reviewing and endorsing the identification of a Planning Area, as well as the State Implementation Strategies. Some felt that too much authority rested with the Smart Growth Subcabinet, and that there was not enough opportunity for buy-in by local governments and other stakeholders. The Workgroup did not come to a consensus on a recommended change. It was noted that State agencies will have to become more involved with the Smart Growth Subcabinet for this management system to work.



## **EXHIBIT B**

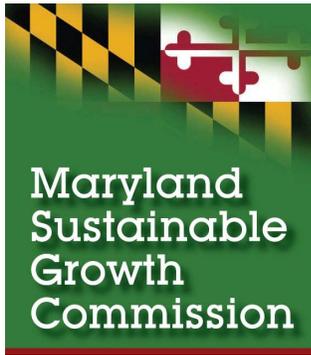
**WIP Workgroup**

**July 25, 2011**

**And**

**September 26, 2011**

**Recommendations adopted by the  
Maryland Sustainable Growth Commission**



To: Jon Laria, Chair, Maryland Sustainable Growth Commission  
Maryland Sustainable Growth Commissioners

From: Alan Girard, MSGC WIP Workgroup Chair  
Pat Langenfelder, MSGC WIP Workgroup Vice-Chair

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The Maryland Sustainable Growth Commission Watershed Implementation Plan Workgroup (WIP Workgroup) is pleased to provide this progress report and preliminary recommendations to the full Commission.

Workgroup members met on March 22, May 11, and June 23 with good attendance. Members and principal staff include:

Alan Girard, Chair  
Pat Langenfelder, Vice-Chair  
Jennifer Bevan-Dangel  
John Dillman  
Candace Donoho  
Jason Dubow  
Kurt Fuchs  
Dave Goshorn \*  
Brigid Kenney \*  
Les Knapp  
Amy Owsley  
Carol West \*

Chesapeake Bay Foundation  
Maryland Farm Bureau  
1000 Friends of Maryland  
Upper Shore Regional Council  
Maryland Municipal League  
Maryland Department of Planning  
Maryland Farm Bureau  
Maryland Department of Natural Resources  
Maryland Department of Environment  
Maryland Association of Counties  
Eastern Shore Land Conservancy  
Maryland Department of Agriculture

\* Principal Staff

## **Workgroup Meetings Summary**

### March 22

- Briefing on the WIP's role as it relates to growth and Maryland's nutrient trading policies (page 6, meeting minutes)
- Introductory conversation about the WIP Workgroup charge

### May 11

- Continued dialogue about the WIP Workgroup charge
- General agreement to support WIP implementation by developing pollution reduction resources for local governments (page 8, meeting minutes).

### June 23

- Finalization of WIP Workgroup recommendations to the Commission (page 15, meeting minutes).

## **Workgroup Recommendations Summary**

1. Endorse the importance of the WIP and its associated offset and WWTP growth allocation strategies in achieving the State's economic, growth, resource protection, and planning policy.
2. Direct the WIP Workgroup to serve in an advisory capacity to the interagency Growth Offset Workgroup.
3. Support the establishment of offset generation capacity and its integration with growth management strategies at the local level.
4. Publish a "toolbox" of pollution prevention policies and strategies for local governments.

Detailed descriptions of these recommendations and a summary of the WIP policy context in which they are made are below.

## **WIP Policy Summary as it Related to Growth and Development**

The Maryland Phase I WIP describes how concentrating development in areas served by advanced WWTPs lowers the amount of damaging nitrogen pollution affecting Maryland waterways. The WIP establishes an offset policy to encourage new development in sewerage areas by requiring 1) higher offset ratios for development that contributes high levels of per capita pollution (e.g., low-density development in non-sewered areas), 2) lower offset ratios for development that contributes low levels of pollution per capita (e.g., higher-density development in sewerage areas), and 3) no offsets for redevelopment in Low Per Capita Loading areas. The policy conceptually defines Per Capita Loading Areas (PCLAs) in order to determine where and to what degree offsets will be required to account for pollution from new growth. "Per capita" means nitrogen loads per total number of residents plus jobs accommodated within a given geographic area. As part of the policy, room for growth in sewerage areas is expected to be maintained under current WWTP caps. Specific offset requirements as discussed in Maryland's Phase I WIP are as follows:

- Development and redevelopment in Low Per Capita Loading areas and Moderate Per Capita Loading areas will not be required to offset increased point source loads from wastewater.
- Redevelopment (defined per State Stormwater Management Regulations) within Low Per Capita Loading areas will be required to meet established stormwater management requirements (relating to impervious cover, Environmental Site Design (ESD) to the maximum extent practicable (MEP), or watershed management plans) as provided in the approved local ordinance. Redevelopment projects in these areas will not be required to offset post-development non-point source loads.
- New (or Greenfield) development within Low Per Capita Loading areas will be required to satisfy stormwater management regulations and offset post-development non-point source loads above the standard forest loading rate established by MDE.
- All development in Moderate Per Capita Loading areas would be required to offset increased point and post-development nonpoint source loads (including septic system loads) in excess of the standard forest loading rate established by MDE.
- High Per Capita Loading areas may be subject to greater offset requirements, i.e., development may be required to offset point and post-development nonpoint source loads in excess of the standard forest loading rate established by MDE, at a ratio that is higher than that required in Low and Moderate Per Capita Loading areas.

## **Workgroup Findings and Recommendations**

Recommendation 1: Commission endorsement of the importance of the WIP in achieving the State's economic, growth, resource protection, and planning policy. The workgroup agrees with the WIP finding that generally speaking, areas served by sewer accommodate additional development at substantially lower per capita nitrogen loading rates. The load from new development on well and septic is up to 10 times greater than new loads from sewer areas. We also agree that sewer service or lack thereof is not the only important determining factor contributing to water quality impacts. Larger average lot sizes (common in unsewered areas) generally increase overall stormwater runoff volumes, reduce forest cover and wetlands, and increase impervious surface, suggesting that zoning and other land use management plans, policies, and procedures also shape the nature of development and its post-development loading rates.

The WIP Workgroup supports the methodology in the WIP to maintain room for growth in WWTP loads under existing caps and establish offset requirements for new urban stormwater and septic tank loads, with greater offset requirements in areas where per capita pollution is higher. Given the critical role this policy plays in preventing pollution and limiting impacts from growth, the WIP Workgroup recommends the Commission endorse the concept of the accounting for growth policy in the WIP. A statement of support from the Commission can underscore the importance of the policy in helping create healthy, sustainable communities in Maryland – particularly as the policy seeks to enable continued growth while ensuring goals for clean water are achieved under the Bay TMDL.

Commission endorsement of the WIP can elevate the role and importance of this critical aspect of growth policy in Maryland. Because the supply of potential offsets for water quality impacts under the accounting for growth framework is finite, the WIP will encourage local jurisdictions to renew focus and attention on smart growth by maximizing economic development in appropriate areas while limiting per capita pollution under revised land use plans. The framework plays a vital role in promoting pollution prevention as the preferred means to avoid offset requirements. By supporting the WIP, the Commission can help prompt development of local land use policy in the near term that adequately prepares communities for the expected implementation of the accounting for growth program in 2013. Commission endorsement of the WIP is consistent with the Commission's charge to recommend policies

and procedures to achieve the State's economic, growth, resource protection, and planning policy, including the directive to carefully manage land and water resources to restore and maintain healthy air and water, natural systems, and living resources.

Recommendation 2: Direct the WIP Workgroup to serve in an advisory capacity to the interagency Growth Offset Workgroup, once that workgroup is ready to receive input into the development of offset strategies that will implement the WIP. The interagency Growth Offset Workgroup, convened by the Bay Workgroup in 2010, established the WIP accounting for growth strategy and is now developing options for a draft State-level accounting for growth program, which will be shared with stakeholders in late 2011. Growth Offset Workgroup members have suggested strategy development could benefit from perspective and input from WIP Workgroup members. The WIP Workgroup recommends the Commission direct the WIP Workgroup to serve in an advisory capacity to the Growth Offset Workgroup, once it is ready to receive input in support of the development and finalization of Maryland's offset policy implementation strategy.

Recommendation 3: Advise State and county governments to establish and track offset generation capacity by county or watershed trading geography. The WIP Workgroup recognizes it will be both difficult and costly to offset pollution from new growth. Every new household increases the nutrient load to the Bay, but some more than others. Maryland is projected to add approximately 500,000 households by 2035, with about 74% served by WWTPs and 26% served by well and septic. While the number of new households on well and septic will be substantially fewer in number, they will produce three times the amount of pollution generated by new households served by central sewer. In other words, 26% of the State's future growth will account for three-fourths of its future wastewater and stormwater pollution. Recognizing that a larger percentage of development occurring in areas served by advanced WWTPs will result in a lesser increase in nitrogen pollution overall, the WIP offset policy is an appropriate and needed tool for discouraging growth on well and septic.

It is unrealistic, however, to expect growth on well and septic will not occur. Where are the offsets for this growth to be found? Except for agricultural BMPs, few options exist in any sector to cost-effectively achieve offset requirements, and agriculture is already being asked to implement BMPs to achieve significant reductions just to meet its allocation. Even for those farms that may be eligible to install BMPs and sell nutrient credits to offset impacts in other sectors, preliminary analysis indicates limited capacity to achieve gains from such a program. Of 125 farmers surveyed by MDA in the Upper Chester watershed, 63 were eligible to participate with 25 of those expressing interest in selling nutrient credits.

A better accounting of "offset generation capacity" in each jurisdiction is necessary for local governments to balance available offsets with the projected need for them, or develop plans to generate offsets. Offset generation capacity is the maximum number of BMPs required to offset water quality impacts from new growth after all BMPs needed to meet pollution load allocations are assigned. A local accounting of offset generation capacity could include:

- A list and amount, within each trading geography, of agricultural BMPs (manure transport, precision agriculture, alternative crop production, etc.) that can be implemented on farms already achieving target nutrient reduction levels and available by jurisdiction to offset pollution from projected new growth, and;
- A list and amount, within each trading geography, of non-agricultural BMPs (such as nitrogen-reducing septic systems, stormwater retrofits, and non-major WWTP upgrades) available by jurisdiction to offset pollution from projected new growth.

The WIP Workgroup suggests the Commission, consistent with its charge, recommend that offset generation capacity in Maryland be established by county or watershed trading geography. The effort could build on the existing State system for tracking BMP implementation, and should be developed cooperatively by State and county jurisdictions. The accounting should describe the BMPs available, their cost, and the amount of pollution from new growth they will offset. This is especially important to provide predictability and stability in the development market. It also supports the EPA directive to fully account for pollution from new growth and achieve the Bay TMDL within the required timeframe.

Recommendation 4: Produce a publication that serves as a “toolbox” of pollution prevention policies and strategies for local governments. Given the challenges of offsetting projected pollution loads from new growth, the WIP Workgroup believes it is essential that all new development patterns prevent pollution to the maximum extent possible. Pollution prevention not only will help local jurisdictions meet and maintain pollution load targets, it will also reduce the amount of pollution needed to be offset.

Local jurisdictions are in need of tools and resources that can support pollution prevention and implement the WIP. An efficient way to provide this information is through a publication that serves as a “toolbox” of policies and strategies for local governments to utilize. The publication could be structured as follows:

1. Introduction: growth and development’s role in achieving and maintaining pollution reduction targets under the WIP
2. Offsetting pollution from new growth
  - a. Maryland’s offset policy under the WIP
  - b. Determining offset generation capacity at the local level – filling the gaps with BMPs beyond those assigned to meet pollution load allocations
  - c. The value of pollution prevention in reducing the need for offsets
3. Pollution prevention tools for counties, cities, and towns. Tool descriptions should quantify pollution reduction potential
  - a. Accounting for growth in comprehensive plans
  - b. Promoting higher density through incentives
  - c. Redevelopment options and opportunities
  - d. Market mechanisms
  - e. Successful models
  - f. Tracking and reporting best practices
4. Pollution prevention at the site plan level
5. Altering codes and ordinances to encourage green building practices
6. Technical and financial resources

This proposed publication is beyond the capacity of the WIP Workgroup to produce internally. We therefore recommend the Commission identify external resources to support this project. Potential funding sources include the Chesapeake Bay Trust, the Abell Foundation, Town Creek Foundation, the Harry R. Hughes Center for Agro-Ecology, and EPA. A third party such as the University of Maryland Center for Smart Growth Research and Education could be commissioned to create the publication, and the Commission could disseminate it on the web and through public forums. To maximize value, the publication should be delivered within six months, the period during which local jurisdictions need to be hearing most about their responsibilities related to the WIP and resources available to support their work. We recognize the draft State-level accounting for growth program won’t be available for stakeholder review until late 2011 and will not be implemented until 2013. However, local governments can still act now to prevent pollution from new development and to consider offset generation capacity when creating and revising land use plans.

**Maryland Sustainable Growth Commission  
Watershed Implementation Plan Workgroup**

**Meeting Minutes  
March 22, 2011**

Present

Alan Girard  
Pat Lagenfelder  
Jason Dubow  
John Dillman  
Jenny King  
John Rhoderick  
Brigid Kenney  
Jennifer Bevan-Dingle  
Kim Hoxter

Introductions

Participants introduced themselves and spent a few moments discussing their reasons for participating in the Workgroup.

Agenda

Alan Girard proposed the following agenda and discussion topics:

- Briefing on WIP and, specifically, its role as it relates to growth
- Maryland nutrient trading policies and role in WIP
- Questions for discussion:
  1. What are the tools related to the WIP and growth that the Workgroup would like to focus on?
  2. What is the charge of the Workgroup?

Agenda Item #1: Growth allocations and considerations in the WIP

- Jason Dubow briefed the Workgroup on the “Accounting for Growth” section of Maryland’s Phase 1 WIP submission.
- The full Phase 1 WIP submission can be downloaded at [http://www.mde.state.md.us/programs/Water/TMDL/Documents/www.mde.state.md.us/assets/document/MD\\_Phase\\_I\\_Plan\\_12\\_03\\_2010\\_Submitted\\_Final.pdf](http://www.mde.state.md.us/programs/Water/TMDL/Documents/www.mde.state.md.us/assets/document/MD_Phase_I_Plan_12_03_2010_Submitted_Final.pdf). The Accounting for Growth section is located in Chapter 3
- Maryland’s approach to accounting for growth in the WIP (and approved by EPA) is to allow for a growth allocation in WWTP’s. All other growth must be offset by BMP implementation that results in an equal reduction in nutrient and sediment loads.
- Important Terms / Concepts:
  - “Offset Generation Capacity”: the smaller the footprint/acre of new growth, the more growth you can accommodate. For example, it is easier to offset growth in sewered areas (lower footprint) than in septic areas.
  - “Post Development Load”: applied measurement in the WIP is nutrient load after development, not net change from previous nutrient load. This is to

prevent consideration of conversion of agricultural land (higher nutrient loading) to development (lower nutrient loading) as a BMP.

#### Agenda Item #2: Maryland Nutrient Trading policy and role in WIP

- John Rhoderick briefed the Workgroup on Maryland's Point to Non-Point Nutrient Trading Program and its possible role in the WIP.
- More information can be viewed at: [www.mdnutrienttrading.org](http://www.mdnutrienttrading.org)
- Basic concepts:
  - Before a farm can sell nutrient credits, they must first meet "baseline" – defined as that farm's portion of the nutrient reduction necessary to meet the watershed's TMDL requirements.
  - 10% of nutrient credits generated will be retired to realize a net nutrient reduction.
- To date, 126 farmers have been evaluated to participate in the program
  - 50% of those met the baseline requirements
  - 40% of those that met baseline expressed an interest in participating
  - 3 of the interested farmers have applied
  - 2 of the applicants were subsequently rejected
  - 1 remains pending review.

#### Agenda Item #3: General Discussion

- There was brief discussion of possible issues that the Workgroup could address. Possible items for Workgroup efforts included:
  - How do we encourage/require counties to be more pro-active in their growth vs responding individually to each developer's proposal?
  - Should we institute a graduated series of offsets for development, i.e. minimal offset for development in sewered area, moderate offset in infill, large offset in undeveloped rural areas?
  - Need to better communicate the need for smart growth and its role in meeting out TMDL to the public at large.
  - Need to encourage/require counties to incorporate WIP criteria and strategies into their Comprehensive Plans

#### Action Items before Next Meeting

- Workgroup members were asked to respond to Dave Goshorn ([dgoshorn@dnr.state.md.us](mailto:dgoshorn@dnr.state.md.us)) with their responses to the following three question by **April 22** in preparation for the next meeting:
  1. What is the outcome of the WIP Workgroup you want to see, bearing in mind our responsibility to advise and make recommendations to the full Commission? (Please be specific as you can.)
  2. Name three specific actions the Workgroup should take to achieve this outcome. These can be certain areas of focus, policy alternatives, program ideas, or anything else that will help our group produce useful results.
  3. List research or educational needs of the Workgroup you suggest we fulfill, including ways to address them (resource people, publications, etc.)

**Maryland Sustainable Growth Commission  
Watershed Implementation Plan Workgroup**

**Meeting Minutes  
May 11, 2011**

**Present**

Alan Girard  
Jason Dubow  
Jenny King  
Brigid Kenney  
Jennifer Bevan-Dingle  
Kim Hoxter  
Dave Goshorn  
Candace Donoho  
Meg Andrews  
Kurt Fuchs

**Introductions**

Participants introduced themselves.

**Agenda**

Alan Girard proposed a two-part agenda:

1. Review written responses to the three questions posed at the end of the March 22, 2011 meeting (see below), and provide opportunity for additional responses from other members.
2. Collectively agree upon priorities for Workgroup attention.

**Questions for Discussion**

1. What is the outcome of the WIP Workgroup you want to see, bearing in mind our responsibility to advise and make recommendations to the full Commission? (Please be specific as you can.)
2. Name three specific actions the Workgroup should take to achieve this outcome. These can be certain areas of focus, policy alternatives, program ideas, or anything else that will help our group produce useful results.
3. List research or educational needs of the Workgroup you suggest we fulfill, including ways to address them (resource people, publications, etc.)

## Agenda Item #1: Written responses by Workgroup members

Each member summarized their responses below and high points were recorded on flip charts.

### Pat Langenfelder

Question 1: Recommend policies/strategies to reduce pollution loads associated with growth, rather than relying on offsets.

Question 2:

- encourage “smart” planning by counties to lessen impact of growth to environment
- educate local governments as to WIP requirements
- strategies to encourage counties to incorporate smart growth and improved water quality goals in local planning

Question 3:

- Information/studies on septic technology, costs, availability, etc.
- Studies/information on inhibitors to growth in urban/growth areas – zoning, APFOs, etc.
- Growth trend shifts since the downturn in economy: not just population, but the type of housing desired by consumers, consumption of land per dwelling

### Jason Dubow

Question 1: There are four outcomes the WIP Workgroup could contribute to:

First, as part of the Phase II WIP process, County-level teams will discuss how to allocate pollution reduction responsibilities among “responsible parties” within the County geography, including municipal and County government, as well as among “source sectors”, including agriculture, WWTPs, septic tanks, and urban stormwater. The Bay Workgroup and Bay Cabinet will have a role in this as well. This dividing up of responsibilities can influence our ability to sustain the agricultural industry and to implement smart growth. **The SGC WIP Workgroup could ensure it is a part of this decision process by providing recommendations for how these allocations should take place at the local and State level.**

Second, also as part of the Phase II WIP process, because of the new Chesapeake Bay Program (CBP) model run (results scheduled for release in mid-July), the Bay Workgroup and Bay Cabinet will need to take a new look at the Phase I WIP strategies and decide whether they should be changed, expanded, or reduced in order to achieve the new source sector allocations provided by the new CBP model run. In addition, based on the efforts of the County-level teams, the Bay Workgroup and Bay Cabinet will need to integrate the commitments made by the local teams

with the State-level strategy to implement the new source sector allocations. In both cases, the decisions will have ramifications on whether we can sustain the agricultural industry and implement smart growth. **The SGC WIP Workgroup could ensure it is a part of this decision process by providing recommendations on what Maryland’s final Phase II WIP strategies should be.**

Third, as discussed at the 3/22 SGC WIP Workgroup meeting, given the finite number of BMP opportunities available to both reduce current amounts of pollution and to serve as “offset credits” to account for new development, the best approach is to limit the amount of nutrient and sediment pollution from new development. New development in sewered areas results in about 10 times less nitrogen pollution than new development in non-sewered areas. **The SGC WIP Workgroup could examine local and State smart growth, land use planning, and zoning measures to limit the amount of nutrient and sediment pollution from new development, and could provide recommendations for new or revised programs and policies for limiting this impact further.**

Fourth, as discussed at the 3/22 SGC WIP Workgroup meeting, at the direction of the Bay Workgroup, the Growth/Offset Workgroup has convened to develop a draft statewide accounting for growth program. **The SGC WIP Workgroup could review and provide feedback on the draft statewide accounting for growth program once it’s available for review this fall/winter.**

Question 2:

The WIP Workgroup should review the Phase I WIP strategies and allocations and consider the impacts on smart growth and agricultural conservation measures.

Before the State makes key decisions on Phase II WIP allocations and strategies, the WIP Workgroup should meet with the Bay Cabinet to discuss the WIP Workgroup’s recommendations on Phase II WIP allocations and strategies.

Review materials regarding local and State efforts to reduce pollution from new development through smart growth and agricultural conservation measures. Consider participating in meetings of the Task Force on Sustainable Growth and Wastewater Disposal, which will focus in part on this issue.

Review and provide feedback on the draft statewide accounting for growth program.

Question 3:

Rich Eskin (MDE) could present on the Phase I WIP process and strategies and the Phase II WIP process.

Jennifer Bevan-Dangel (1,000 Friends) could present on local and State smart growth efforts.

Amy Owsley

Question 1: On your questions, my perspective has been focused a bit more parochially - mainly on how to help Eastern Shore counties in their goals/deadlines. As such, I've talked with several planning staff about the tmdl/wip process and have found most to be eager and willing to engage - but also stuck behind several difficult roadblocks. I wonder if this WIP workgroup can help facilitate targeted support to local governments to make the implementation of sound and innovative land use practices a reality. Some issues brought up locally are: good data (especially loading and targets upon which to base plans); process streamlining (pretty heavy reporting requirements that aren't necessarily dovetailing with each other or with existing county reporting requirements); opportunities for cross county/regional sharing of resources; and plan for ground-truthing loading data in the future. Also, I think the workgroup can help identify to highest priority education needs for local governments - at this point it seems they are scrambling to just keep up with the timeline, and not able to think about how the WIP will affect their current and future plans for land us.

Dave Goshorn

Question 1: The two primary outcomes I would like to see the workgroup develop and recommend to the full commission are. 1) a suite of recommendations on how the state, local governments, NGOs, and general public can best work collaboratively on implementing the significant requirements of the WIP (i.e. not get stuck on specifics of individual WIP actions, but rather how to the above groups work together to achieve the ultimate goal), and 2) recommendations on an outreach effort to educate the general public, special interest groups, local governments, etc on the economic and social benefits of achieving a restored Chesapeake Bay – not just the environmental benefits.

Question 2:

1. Understanding among the workgroup members of the requirements of the WIP and how we go to this point.
2. Understanding of the workgroup members of the implications to the state, local governments, private interests, and general public if Maryland does not meet its TMDL by the deadline.
3. Identification, discussion, and understanding for possible recommendation of innovative approaches (ex. ecosystem markets) in addition to traditional tools in order to help Maryland meet the TMDL requirements.

Question 3:

1. Discussion of economic impacts and value of a restored bay (Doug Lipton, UMD)
2. Discussion of innovative approaches to achieving our TMDL (Dave Goshorn, others)
3. Discussion of outreach approaches (?)

## Jennifer Bevan-Dangel

Question 1: Shift the conversation away from the final step, offsets, and towards the first step, integrated land use planning into the Phase II WIPS. Have a hierarchy of actions counties, and the state, can take, starting with changing zoning to encourage redevelopment and limit rural sprawl, then going to having developers create the smartest developments possible, and ending with creating a strong offset program for whatever growth is not accounted for.

### Question 2:

1. Produce a policy document that lists the possible ways to integrate land use into the WIP process. This list could include state actions, such as limiting new development on septic systems in rural areas, and local actions, such as recommended zoning in rural areas.
2. Have some recommended requirements that are quite easy to do, for example the counties should include in their Phase II WIPS a promise to link WIP efforts to their comprehensive plan re-writes when their comp plans come up for revision.

Question 3: I think local governments would find useful a document (maybe a white-paper) on the WIPs that details what the growth allocation element is and how to implement it into their planning efforts. Much of the WIPs really takes existing work of TMDL plans and moves it one step forward. The growth piece is the most new and different element they are tackling.

## Brigid Kenney

Question 1: The portion of the WIP most relevant to the work of the Commission is the “accounting for growth” section. The preliminary schedule for developing offset policies and procedures for septic systems and land development is:

- 2011 Research and develop more detailed approaches for offsets. Evaluate the need for legislative and regulatory changes for the strategy. Obtain stakeholder and public comment. If needed, seek necessary authority to undertake research, the appointment of a task force, and/or authorization to implement elements of the offset procedures.
- 2012 Finalize the development of the offset policies and procedures.
- 2013 Initiate the implementation of the offset policies and procedures.

I would like to see the WIP Workgroup function as a stakeholder and be the conduit for comments from the Commission to those developing the detailed approach. Once the policies and procedures are final, the Workgroup might arrange a conference for local governments to discuss options for implementing them in their jurisdictions.

### Question 2:

1. Make formal contact with the interagency group working on developing the policy and request a preliminary briefing.
2. Discuss ideas about improvements or alternatives, first within the Workgroup and then with the entire Commission.
3. Communicate the recommendations of the Commission to the interagency group

Question 3: No current ideas

**Agenda Item #2: Group identification of priorities**

The Workgroup identified the following X major points based on the above and then voted on prioritization as topics for Workgroup attention:

1. **7 Votes** Produce a white paper listing policy, strategies, tools, etc for local governments to utilize in developing and implementing the WIP (“Toolbox”). White Paper should identify existing tools and also direct agencies to develop identified new/innovative tools. White Paper would also direct local governments to targeted support (ex. data, process streamlining, report requirements, etc). Workgroup would not develop the toolbox, but rather would identify needed tools and lead agencies / groups for populating it.
2. **6 Votes** Recommend new programs / policies designed to limit pollution from development and/or maximize growth within offset generation capacity limits. Ask local governments to provide a list of offsets currently available (ex. fee-in-lieu, banks, etc)
3. **4 Votes** Make recommendations on ways to increase local government planning to improve water quality and quantity (i.e. pro-active vs re-active). Integrate WIP activities into Water Resources Elements and visa versa. Ensure that Water Resources Elements provide for clean water outcomes
4. **3 Votes** Educate local governments (including municipalities) on WIP requirements.

5. **2 Votes** Provide feedback on the draft Statewide Accounting For Growth element of the WIP once it is available for review.
  
6. **1 Vote** Recommend components of public outreach campaign on economic, social, and environmental value of a restored Chesapeake Bay and WIP's role in realizing.
  
7. **1 Vote** Develop specifics and recommend a Sustainable Growth Commission on-going forum (beyond 2011) on WIP Development and Implementation.
  
8. **0 Votes** Provide information on inhibitors to Smart Growth in designated areas.
  
9. **0 Votes** Provide input into Phase 2 WIP allocations and strategies.
  
10. **0 Votes** Be aware and avoid duplication of efforts of other existing groups.
  
11. **0 Votes** Make recommendations on how to share resources for WIP development and implementation at the local level.
  
12. **0 Votes** Make recommendations on how all sectors can contribute appropriately to meeting WIP requirements (i.e. sectors with more expensive BMPs should not be excluded, but rather we should identify means for them to provide support to other sectors with more cost effective BMPs)

**Next Meeting**

To be set soon for early June.

**Maryland Sustainable Growth Commission  
Watershed Implementation Plan Workgroup**

**Meeting Minutes  
June 23, 2011**

**Present**

Alan Girard  
Amy Owsley  
Candace Donoho  
Jason Dubow  
Jenny King  
Jennifer Bevan-Dingle  
Kim Hoxter  
Dave Goshorn  
Kurt Fuchs  
Pat Langendfelder  
John Rhoderick

**Introductions**

Participants introduced themselves.

**Agenda**

Alan Girard proposed a two-part agenda:

3. Review and discuss draft memo on WIP recommendations to Sustainable Growth Commission.
4. Discuss invitation to respond to Sustainable Growth Commission with comments on PlanMaryland.

**Agenda Item #1: Discussion of draft memo from WIP Workgroup to Sustainable Growth Commission on “WIP Workgroup Progress Report and Recommendations”**

- Alan Girard reviewed and summarized draft memo to be delivered and reported out to Sustainable Growth Commission at their July 25, 2011 meeting.
- Discussion followed on each of the four recommendations contained in the memo and suggested revisions. Alan Girard and Jenny King will work to make specific changes and send back out to the workgroup. General comments / revisions were as follows:
  1. Recommendation #1: In addition to recommending that the Sustainable Growth Commission (SGC) endorse the importance of the WIP process, the memo should also recommend a recognition of the relationship between the WIP and PlanMaryland and that the two documents should be more tightly coordinated.
  2. Recommendation #2: The workgroup had no general changes to this recommendation.
  3. Recommendation #3: The workgroup recommended that the first sentence of the last paragraph be rephrased to emphasize the state as the lead, in consultation with

the counties and municipalities, in developing the offset generation capacities and requirements. The workgroup also recommended that there be a more refined definition of “offset generation policies”.

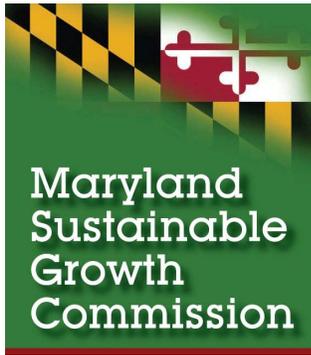
4. Recommendation #4: There were a variety of text revisions which Alan Girard will incorporate.

### **Agenda Item #2: Comments on PlanMaryland**

- The Workgroup decided to respond to the invitation by the Sustainable Growth Commission to comment on PlanMaryland.
- Candace Donoho and Dave Goshorn will work with Greg Bowen (Calvert County and member of Sustainable Growth Commission PlanMaryland Workgroup) to develop a short list of specific recommendations and forward them to Alan Girard by COB July 8.

### **Next Meeting**

Next meeting was set for Monday, August 1, from 1:00 pm – 3:00 pm at DNR headquarters in Annapolis.



To: Jon Laria, Chair, Maryland Sustainable Growth Commission  
Maryland Sustainable Growth Commissioners

From: Alan Girard, MSGC WIP Workgroup Chair  
Pat Langenfelder, MSGC WIP Workgroup Vice-Chair

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The Maryland Sustainable Growth Commission Watershed Implementation Plan Workgroup (WIP Workgroup) respectfully submits this follow-up report and recommendations to the full Commission as requested at the Commission's July 25, 2011 meeting.

### **Recommendation Summary**

1. The Maryland Sustainable Growth Commission should formally recommend the State determine the "offset generation capacity" for each county, organized by trading geographies under the Bay TMDL and local TMDLs. The Commission should recommend the Governor direct the Bay Cabinet to implement this recommendation and that it be included as part of the BayStat process.
2. The Commission should formally recommend the State in collaboration with EPA clarify how policy and regulatory frameworks under current and proposed trading programs will accommodate pollution loads from new growth and not exceed water quality standards.

### **How the WIP helps achieve Maryland's goals for growth**

Maryland's Phase I Watershed Implementation Plan (WIP) is an integral part of the State's overall growth management strategy. The U.S. Environmental Protection Agency (EPA) requires Bay jurisdictions to develop programs that ensure all new pollution loads are offset. Maryland's WIP implements this requirement by encouraging new development to occur in a manner that generates less wastewater and stormwater pollution on a per-capita basis, thereby promoting development patterns that pollute less and result in greater land use efficiency. This "accounting for growth" strategy helps Maryland achieve its vision for concentrating development in and around existing population and business centers, and discourages development on well and septic, estimated to generate up to 10 times the amount of pollution loads from sewered areas. The statewide land use goal of increasing the current percentage of growth located within

Priority Funding Areas and decreasing the percentage of growth located outside Priority Funding Areas is directly supported by the Maryland WIP.

Growth is guided to Maryland's existing communities under the WIP by requiring urban stormwater and septic tank pollution from new growth to be offset. Development that pollutes more per capita (land use characterized by large lots and septic tanks) must offset more pollution per capita than development that pollutes less per capita (smaller lots, infill and redevelopment, centralized sewage treatment). The "accounting for growth" policy also calls for higher levels of pollution from development per capita to be offset at a higher ratio than development that pollutes at lower levels, with no requirement to offset pollution from redevelopment, a preferred form of growth.

Pollution offsets help account for a differential in cost and level of treatment that exists in controlling pollution in rural and urban areas. Traditional septic systems serving development in rural areas, for example, can pollute more and cost less to install and manage than service from high-performing waste water treatment systems in cities and towns. By accounting for the full pollution impacts of growth and ensuring that no net increase in pollution from new growth occurs, the policy not only plays a fundamental role in maintaining Maryland's pollution reduction levels under the Bay TMDL, it also is a primary tool for reversing consumption of land outside PFAs – now at 78% of the statewide acreage associated with residential development – helping reduce the overall impacts of suburban sprawl on Maryland's economy, environment, and communities.

### **Closing the implementation gap**

To offset pollution from new growth under the WIP, developers are encouraged first to locate development in areas where loads will increase the least (i.e. infill or redevelopment). Then on-site pollution loads are expected to be minimized through existing stormwater and sediment and erosion control regulations, as well as low-impact design and construction. Additional offsets can be undertaken off-site by the developer or purchased as nutrient credits (offsets) used to pay for establishment of off-site Best Management Practices (BMPs) at ratios that at least negate the impact of pollution anticipated from the new development.

The level and extent to which BMPs are available to offset impacts from new growth, however, are uncertain. Specifically:

1. Without a geographically-based inventory of BMPs, it is impossible to know whether a sufficient supply of BMPs exists within an area to offset new growth that is not redevelopment and thereby prevent pollution from increasing under the TMDL, and;
2. Acceptable locations for establishing BMPs per the offset policy have not been established, nor have the conditions under which BMPs established in one watershed can account for pollution from new growth in another.

In order for the "accounting for growth" policy under the WIP to produce intended results within the timeframes prescribed under the Bay TMDL, the supply of BMPs available to support new growth should be established as soon as possible. Such an inventory is essential for preparing local and state decision-makers with adequate information about the costs and ability to offset

pollution impacts from new growth, especially since planning and approval timelines for development projects are often measured in years. It also encourages policy that prompts innovation in the development sector and signals to developers premiums associated with offsetting pollution impacts may exceed the costs of preventing pollution outright.

### **The Risks of Failing to Establish “Offset Generation Capacity” – An Example**

Suppose a large-scale transportation project is developed to support 100,000 new homes within a growth area. A request to offset projected pollution from the new homes might come many years after elements of the transportation project are initiated. When the request is made, what are the consequences of finding insufficient BMP’s exist to offset pollution projected to be generated by the housing development the transportation project supports? In one outcome, pressure from government, citizens, and developers could result in the transportation project moving forward only to find the housing it’s intended to serve cannot be built due to insufficient offset capacity. In another outcome, the transportation project could be halted or substantially altered to accommodate a need to identify yet-to-be-determined pollution reduction capacity through BMP establishment, leading to dashed expectations among government, citizens, and developers, which in turn could lead to political fallout and/or lawsuits. In a third outcome, offsets could be purchased at the beginning of the project, but project modifications later on could result in a need for more offsets than are available, stopping the project well down the development pipeline. “Offset generation capacity” established prior to consideration of such projects could avoid many of these challenges.

From a smart growth perspective, establishing “offset generation capacity” can encourage more highly refined public land use, development, and infrastructure policies that support the outcomes intended by both State and local growth management strategies. Since smart growth results in low per capita nutrient impacts compared to sprawl, development that is concentrated in and around existing population and businesses centers would be promoted consistent with State growth policy. In some cases, an inadequate policy response to finding insufficient “offset generation capacity” after opportunities for meeting Bay TMDL requirements and offsetting impacts from new development are no longer available may induce sprawl. Establishing “offset generation capacity” sooner rather than later can result in better results from land use planning, smarter growth, and more successful efforts to protect the Chesapeake Bay.

### **Workgroup recommendation**

#### Recommendation 1

**The WIP Workgroup advises the Maryland Sustainable Growth Commission formally recommend the State determine the “offset generation capacity” for each county, organized by trading geographies under the Bay TMDL and local TMDLs.**

“Offset generation capacity” should be determined through one or both of two methods:

1. Work with local governments within each County to develop a BMP inventory that identifies BMP opportunities sufficient to meet Bay TMDL requirements and BMP opportunities available to offset pollution impacts from new development, and;

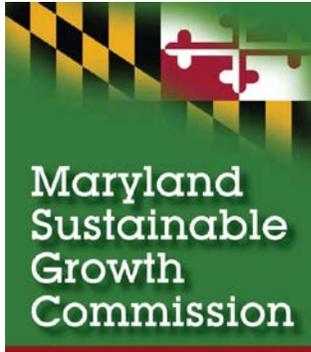
2. Use the Chesapeake Bay Program watershed model to provide generalized, county level land use based estimates of BMP opportunities sufficient to meet Bay TMDL requirements and BMP opportunities available to offset pollution impacts from new development.

An initial inventory of BMPs should be completed by June 2012 and updated every 6 months to help inform development of the State's offset policy due for implementation in 2013. An inventory at a minimum should include the amount (measured in pounds) of nitrogen, phosphorus, and sediment anticipated to be reduced toward achieving either load reduction targets under the Bay TMDL or offsetting new pollution projected from development under Maryland's accounting for growth framework. A BMP inventory should also include an estimate of establishment locations and willingness to trade. Estimates of these elements in the near term can be based on data collected in the Upper Chester watershed (where a study shows forty percent of certain farmers eligible to sell nutrient credits are willing to participate) as well as Howard County and Baltimore County where data collection is planned. Finally, the inventory should estimate the cost of establishing the BMPs it includes.

There are no federal or state requirements to determine "offset generation capacity." To ensure implementation of this recommendation within the proposed timeframe, **the WIP Workgroup advises the Maryland Sustainable Growth Commission formally recommend the Governor direct the Bay Cabinet to assign agency responsibility for implementing this recommendation and that it be included as part of the BayStat process, which helps ensure implementation of Governor directives by State agencies.**

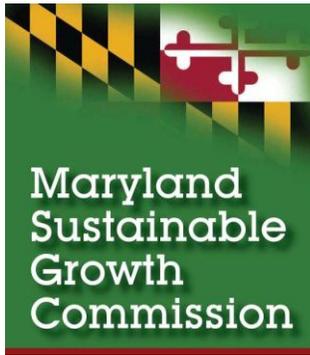
#### Recommendation 2

Recognizing the underlying premise that local water quality is to be protected and maintained under the Bay TMDL and associated water quality limited segments, establishing "offset generation capacity" requires some certainty about the ability to locate BMPs outside the watershed in which an increase in pollution load would otherwise occur as a result of new development. Trading geographies have been established under Maryland's point-point and point-nonpoint trading policies, which establish the conditions under which certain kinds of pollution trading are permitted. It is not clear, however, whether the alterations of those geographies would be necessary to accommodate elements of the pending offset policy being developed to account for new loads from growth. **The WIP Workgroup therefore advises the Commission formally recommend the State in collaboration with EPA clarify how policy and regulatory frameworks under current and future trading programs will accommodate pollution loads from new growth and not exceed water quality standards in the Bay TMDL.** We view this as especially important when BMP opportunities for offsetting impacts from new development are expected to become increasingly limited.



## EXHIBIT C

**Indicator's Workgroup  
"Beta Testing"  
Status Report to the  
Maryland Sustainable Growth Commission**



**To:** Jon Laria, Growth Commission Chairman

**From:** Sandy Coyman and Frank Hertsch

**Date:** September 26, 2011

**Re:** Indicators Workgroup Status Report

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## **Introduction**

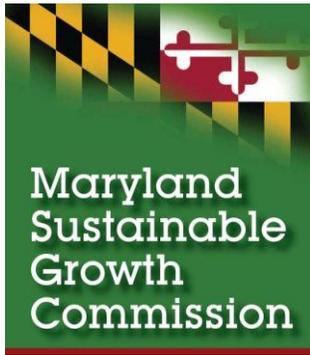
This document is the Indicators Work Group status report to the Maryland Sustainable Growth Commission for the Commission's September 26, 2011 meeting. Below the work group provides background on its work to date, the results of the four beta testing jurisdictions' review of the proposed indicators and the work group's findings and recommendations. The work group received results and indicator assessments from two jurisdictions, and partial results/assessments from the other two jurisdictions; the work group will continue to seek complete results.

A review of the existing required five indicators and the analyzed potential indicators ability to address the commonly accepted ten principles of smart growth and Maryland's twelve visions is attached along with a matrix of the beta testing results received to date. Although only partial results are in, the work group believes its initial recommendations can begin Commission members' thought process on this matter. Final results and final recommendations will be transmitted as they become available.

## **Background**

In July of this year, an indicator beta testing group was formed to further "test" the usefulness and feasibility of collecting the fifteen specific indicators proposed to the Growth Commission, in December of 2010. This group is comprised of representatives from four jurisdictions: Kathleen Freeman (Caroline County Planning), Kathleen Maher (City of Hagerstown Planning), Pamela Dunn (Montgomery County Planning), and Lynn Thomas (Town of Easton).

The beta testing group met in July to discuss the indicators to be tested and the process for collection. Each representative was provided a matrix including the fifteen indicators with a series of questions about each indicator. Questions included data availability, source information, feasibility of collecting indicator if not currently available, and thoughts on

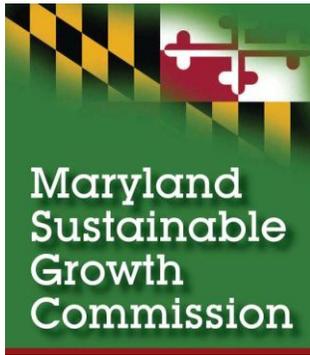


proposed indicators and potential source recommended by technical team. Participants were also asked to provide data for a number of the indicators.

To assist in the effort of data collection workgroup staff gathered data for a number of the indicators, primarily those available from Census or other Federal data sources. For each of the indicators gathered by workgroup staff prepared a summary document for each indicator with the caveats and summary data for all counties. A matrix is attached with the completed data for the four beta jurisdictions. We will make the individual summaries available to anyone interested in them.

The fifteen indicators recommended by previous work groups for consideration by the Growth Commission include:

1. Housing Choices, including affordability:
  - a. Housing Vacancy Rate
  - b. Housing production / growth
  - c. Rental and Owner Affordability
  - d. Home Sales and Affordability
2. The Impact of Growth on the Environment, including Land, Air, & Water:
  - a. Development on septic systems
  - b. Percentage of new development served by public sewer
  - c. Acres of open space in permanent protection and the means of protection
  - d. The amount of forest acres cleared, conserved, and planted
  - e. Wastewater treatment plant capacity and reported flow
  - f. Land Use Change - loss of agricultural resource lands
3. The Job and Housing Balance:
  - a. Jobs-Labor Force Ratio
4. The Impact of Transportation on Growth:
  - a. Mode shares of transit, walk and bike for work or non-work, telecommuting
  - b. Transit ridership rates
  - c. State major transportation investment inside or outside PFAs



5. The Impact of Growth on Cultural and Historic Resources:
  - a. Number of projects reviewed for compliance with federal and State

## **Beta Group Findings**

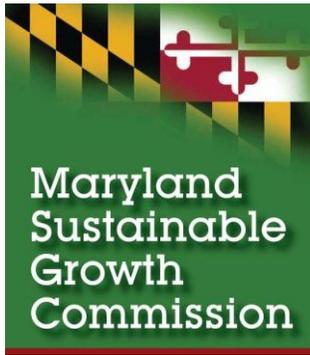
### **Housing Choices, including affordability**

Four indicators were reviewed by the beta testing jurisdictions in this category. These included housing vacancy rate, housing growth/production, rental/owner affordability and home sales affordability.

1. Housing vacancy- Beta testers agreed that Census/ACS (American Community Survey) is the best data available at the County and Municipal level. However this data is not always timely, one recommendation from group is to use 2010 Census as base and update every 3 years with ACS. Testers also noted that the HUD data would be timelier and would be available in the near future, as conflicts with USPS are getting resolved. However, these data are only available at the Census Tract level which would make reporting at the municipal level difficult.
2. Housing growth/production- This indicator is already required as of July 1, 2011. All beta testers did note that this data is available through permitting process and there have not been any difficulties in gathering this information.
3. Rental/owner affordability- All participants agreed that the Census/ACS is the best source for this information. Only comment is that the data will only be updated every three years.
4. Home sales and affordability- Responses on the ability to collect this metric varied across the group. The municipal representatives noted that there is no current source for this information and it would be difficult to collect. At the County level, the proposed data source is acceptable. Additional comments proposed the use of MLS (Multiple Listing Service) or BLS (Bureau of Labor Statistics) data to complete the computation.

### **The impact of growth on the environment, including land, air and water**

1. Development on septic systems and sewer- All participants noted that these two indicators could be collected. The data is available from permit data or health department.
2. Acres of open space in permanent protection- Data are available for all jurisdictions. Most noted that if collected they would provide the data. It was suggested that if this indicator were proposed



a specific list of types of lands to be included be outlined in detail, as the level of detail and availability varies for some types of easements.

3. Amount of forest acres cleared, conserved, & planted- Comments varied by participant for this metric. Most noted that this information is required under the Forest Conservation Act and is available in other required reports. However, not all jurisdictions currently maintain an active database of this information; therefore if historical data were needed it would involve some work.
4. Wastewater treatment plant capacity- Metric is available from local utilities.
5. Loss of agricultural resource lands- Responses varied from having their own tracking database to only collecting when part of a development project. No members suggested that the Agricultural Census (collected every 5 years) could not be a potential source of the data; however it was noted that if more timely data are available those should be used.

### **The job and housing balance**

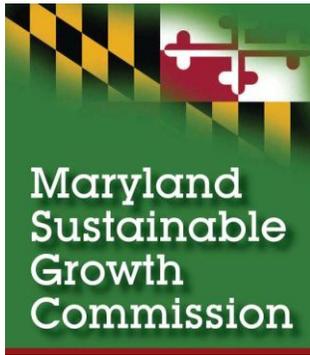
1. Jobs-labor force ratio- Most jurisdictions noted some type of difficulty in collecting or credibility of the data proposed for this. In addition, the data are only available at the County level.

### **The impact of transportation on growth**

1. Mode shares of transit, walk, bike for work and non-working- Participants agreed with proposed data source, noting that is what the jurisdiction currently uses.
2. Transit ridership rate- Response for this metric varied. Some jurisdictions noted that this information is available from local authorities, while others noted it is not currently collected. It is noted that this data is available from the Council of Governments therefore it may be possible to collect this data for many jurisdictions.
3. State and local major transportation investment by PFA- Most participants note that this is not something they currently collect. While the State does collect this information, comment was made about ability to collect at local level. Only one participant noted they can provide this data from their CIP (Capital Improvement Plan).

### **The impact of growth on cultural and historic resources**

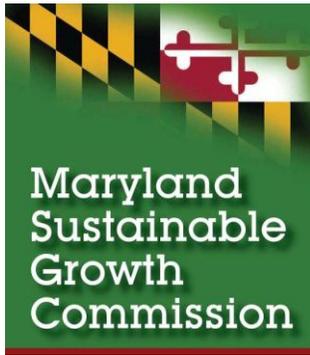
1. Number of projects reviewed for compliance with Federal and State laws (Section 106) - Program is administered by the Maryland Historic Trust. While it appears this data may be available at the County level, there is not currently a designation of those projects at the municipal scale.



## Work Group Findings and Recommendations

### Findings

1. The existing required indicators coupled with the potential indicators address the ten commonly accepted smart growth principles and Maryland's twelve visions at least tangentially.
2. The existing required indicators address many of the principles and visions but not all.
3. The possible indicator of "housing production/growth" is already addressed by the existing required indicators.
4. Eight of the remaining potential indicators can be readily calculated from data available to or collected by the Maryland Department of Planning.
5. Six potential indicators rely on locally generated data. Five of which the beta testing group had data to prepare them.
6. Many local jurisdictions have modest staff resources and these resources have declined recently due to budget cuts.
7. Maryland Department of Planning and the Center for Smart Growth have the capability to gather data and calculate indicators.
8. The Maryland Department of Planning is preparing a web based tool to assist with local jurisdictions' preparation of the required local annual development activity reports. This tool should be explored for its capability to produce the potential indicators.
9. Two beta testers have provided their assessment of the potential indicators and the use of indicators in general. Their comments are below.
10. Beta testing results are not conclusive at this point. Additional experience with data gathering and indicator calculation and analysis is needed. To this end, use of the state's annual report web tool could be a useful mechanism for a program of additional testing. However, it is noted that not all jurisdictions will choose to use the annual report web tool.



### Recommendations

1. Determine whether the Center for Smart Growth or MDP should be the developer of the Census and state data based indicators and provide appropriate funding. The selected organization would also collate the local based indicators. All indicators should be compiled and analyzed in an annual report.
2. The MDP web tool should be modified to collect the potential indicators. However, an alternative format will be designed for those jurisdictions that choose not to use the web tool.
3. An expanded beta testing group of sufficient size should be gathered and be committed to providing the data for the local information based indicators for a four-year test period. A core group of beta testers of sufficient size should be assembled . This group should commit to providing the local data needed to calculate the local data dependent indicators. Also other local jurisdictions may voluntarily provide this type data as part of their annual reporting. They may then use the resulting indicators to assess their smart growth progress. At the end of the period, the efficacy of the potential indicators should be assessed. Continuation of this effort and the mechanism for their expanded data collection should be determined at that time.
4. MDP should monitor the potential indicators' use and MDP may add the results to its annual report.
5. The required and potential indicators do not access jurisdictions' development guidance system (zoning, subdivision and other implementation ordinances) for their smart growth potential. Indicators addressing this shortfall should be provided.