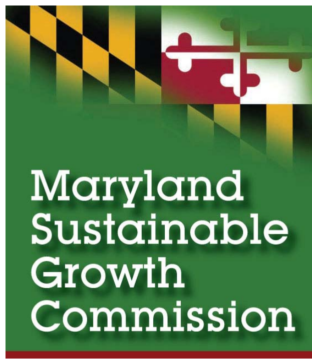


Jon Laria, Chair
Suite 1101
301 West Preston Street
Baltimore Maryland 21201

March 19, 2013

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 your initiative. It succeeded the Task Force on the Future for Growth and Development in Maryland, also created by statute, which existed from 2007 to 2010.

The 36-member Commission hosted a total of seven meetings around the State, which included a special meeting held on November 8, 2012. The special meeting afforded members of the Watershed Implementation Plan Workgroup (WIP) the opportunity to properly prepare and present formal recommendations on the Maryland Department of the Environments' draft "Accounting for Growth" regulations to the Sustainable Growth Commission. The six other regularly scheduled meetings were held in Annapolis, Columbia, Cockeysville, Laurel and Greenbelt. Typical agendas included introductory remarks and a short presentation by a local official, including, when possible, a tour of a relevant project or program.

After substantive consultation with the workgroups leadership, the Commission decided that the re-organization of several of its workgroups was necessary to ensure that implementable workplans were developed to effectively address the charges given by the legislature. The workgroups are:

- Adequate Public Facilities (APFO)
- Concentrating Growth
- Education
- Housing
- Indicators
- Plan Maryland
- Watershed Implementation Plan (WIP)

The workgroups continue to be 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. The workgroup membership is open to various stakeholders and interested parties. The workgroups continue to meet independently of the Commission, reporting regularly on their work at the full Commission meetings.

The Commission has completed its second full year of service helping to further Maryland's Twelve Planning Visions with notable accomplishments that are highlighted in this report:

The **Adequate Public Facilities Workgroup** was established to fulfill the Commission's charge to examine the statewide impacts of APFOs in Priority Funding Areas (PFA) and assess whether and to what extent these APFOs affect the achievement of the Twelve Visions. As part of the legislative reporting requirements, local jurisdictions are required to identify the following: (1) geographic areas and facilities within PFAs that do not meet local adequate public facility standards; and (2) scheduled or proposed improvements to facilities in local capital improvement programs.

A draft report on the status of the APFOs in local jurisdictions for 2010-2011 is currently under review. The APFO Workgroup's preliminary assessment of information indicates there were a limited number of APFO restrictions during this period. The number of restricts is believed to be somewhat repressed due in part to the downturn in the overall economy. A summary of the reported restrictions is included as an attachment (Appendix A). It is expected the workgroup will complete its final assessment and recommendations to the Commission in spring 2013. In the meantime, the workgroup continues to work with local jurisdictions to determine the best format by which information is reported consistently across Maryland.

The 2012 revised Workplan for members of **Concentrating Growth Workgroup** stated that the workgroup will help fulfill the Commission's charge to recommend changes in state law, regulations, policies, and procedures to achieve the Twelve Visions, focusing on laws, regulations, policies, and procedures that encourage smart and sustainable growth by concentrating development in appropriate locations. The Workgroup will also identify laws, regulations, policies, and procedures that discourage or inhibit smart and sustainable growth.

The Workgroup will also fulfill the Commission's charge to make recommendations on the adequacy, coordination, and implementation of funding mechanisms and other state assistance for planning activities, infrastructure and land preservation needed to achieve the Twelve Visions.

To accomplish the charges as outlined above, the workgroup was organized into four subcommittees – *Financing Smart Growth, Reporting on Smart Growth, Streamlining Smart Growth Approval, and Supporting Smart Growth in the Rural Economy.* The following accomplishments and recommendations were submitted by the sub-committees ***(Appendix B)***:

Financing Smart Growth Subcommittee

In December, the *Financing Smart Growth Subcommittee* presented a draft Sustainable Financing 2.0 report that included five specific recommendations that the Commission voted to support:

- Establishment of a renewable funding mechanism to increase funds for specified core Smart Growth programs, with the aim of raising at least $35 million annually;
- Enhancement of the statutory authority for Tax Increment Financing (TIF);
- Enhancement of local infrastructure financing in older communities via Local Government Infrastructure Finance Program (LGIF)) or a more formal State Infrastructure Bank (SIB);
- Strengthening of nonprofit community investors called Community Development Financial Institutions (CDFIs) through a State capacity-building program; and
- Exploration of the viability of a Smart Growth Investment Fund, a "triple bottom line", which is a public-private fund that could invest in Smart Growth projects throughout Maryland. This form of fund is intended to offer financial, social and environmental returns.

The Financing Subcommittee is continuing its work to refine these recommendations and propose specific legislative and programmatic changes.

Reporting on Smart Growth Subcommittee

This subcommittee is developing a communications and education tool that incorporates outcomes and policies that will help to raise the awareness and "Smart Growth IQ" of citizens, elected officials and various stakeholders on the status of smart growth in Maryland. This subcommittee is integrating the work from the various workgroups, as well as from other state and local smart growth indicators, into a comprehensive and easily understood status check of smart growth efforts in Maryland. The subcommittee has produced a draft set of indicators that were reviewed and commented on by the Commission. The subcommittee is continuing to investigate ways to acknowledge successful policies and initiatives and to motivate further smart growth efforts either locally or at the state level.

Streamlining Smart Growth Approval Subcommittee

This subcommittee is investigating how to improve the development approval process in smart growth locations. To demonstrate its practical benefit, this subcommittee is meeting with local governments that are interested in working with the subcommittee to streamline development approvals for smart growth projects. Subcommittee members met with representatives of Prince George's County Government and will be meeting with representatives of the City of Annapolis to discuss a pilot program aimed at streamlining the development approval process. The committee hopes to use the lessons learned from these or other jurisdictions as part of a local government education program to make it easier to build smart growth projects in communities.

Supporting Smart Growth in the Rural Economy Subcommittee

This subcommittee has struggled to find its specific focus. Initially organized to study the impediments of small town thriving and serving the needs of the surrounding rural areas, the

subcommittee has determined this emphasis overlapped issues being investigated by other subcommittees of the Concentrating Growth Workgroup. The subcommittee has recently recruited new membership from the Commission and outside stakeholders to broaden input and expertise. The subcommittee is proposing to refocus its investigations more on rural economies rather than rural places and associated functions. This subcommittee expects significant progress on refocused charge during this next year.

The **Education Workgroup** in partnership with the Maryland Association of Students Councils (MASC) composed a plan to establish a "Youth / Student Sustainable Growth Commission." The "Youth / Student Sustainable Growth Commission will create a platform for students to begin discussing growth and development issues and policies, which will help to shape the minds of our future leaders on matters of smart growth and sustainability. The workgroup continues to refine the goals and objectives for the "Sustainable Growth Challenge." The "challenge" is intended to 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. It is anticipated that the "challenge" will be launched at the University of Maryland, College Park in the fall of 2013.

The workgroup is also in the process of assessing and evaluating the effectiveness of the current education efforts and identifying course content improvements most valuable for members of planning boards and commissions and boards of appeals in Maryland. The Maryland Department of Planning, in coordination with the Maryland Planning Commissioners Association (MPCA), will be facilitating this effort.

The **Housing Workgroup** continued to develop and refine the Housing Maryland policy framework, which is described as a nexus between sustainable housing and health, transportation, education, as well as other critical community concerns. The draft plan is expected to be available for review by the Commission in early spring. At such time, the workgroup will begin establishing a baseline of housing and housing-related programs that would be used in the implementation phase. After that, the workgroup will establish priorities, research model programs, practices and processes and propose possible legislation.

The **Indicators Workgroup** presented a final report to the Commission at its December 11, 2012 meeting. The Indicators Workgroup report noted that tracking Maryland's smart growth progress is important to developing State and local growth policy. However, in response to the Commission's charge pursuant to the 2009 Smart, Green and Growing – Annual Report Act, the Indicators Workgroup has concluded after three years of investigating existing indicators that no additional local jurisdiction indicators should be mandated at this time to effectively monitor the efficacy of Smart Growth. The workgroup has concluded that "State level organizations, specifically the Department of Planning and the University of Maryland's National Center for Smart Growth, in cooperation with other State agencies and local governments, have access to much of the data necessary to create a comprehensive set of indicators that will allow all involved to track progress

toward achieving the smart growth goals." While the Commission accepted the workgroup's recommendation that no additional indicators were needed, they agreed that the workgroup should continue to serve as a resource for the Commission on this subject. More specifically, the workgroup staff is to assist the Concentrating Growth Workgroup's subcommittee report on Smart Growth trends and to work with the PlanMaryland Workgroup on monitoring the Plan" implementation . Future assignments for the workgroup are to be determined in the early spring of 2013. ***(Appendix C)***

With the acceptance of PlanMaryland, the state's first comprehensive plan for sustainable growth and development, by Governor O'Malley on December 19, 2011, the Commission's **PlanMaryland Workgroup** has turned its attention to monitoring the Plan's implementation. Even before the Plan was adopted, the workgroup was advising the State agencies on the draft Planning Area Guidelines. In early 2012, the workgroup provided recommendations on Planning Area Guidelines that were incorporated into the Guidelines endorsed by the Smart Growth Subcabinet. As local governments submit their proposed Planning Areas and are considered by the Smart Growth Subcabinet, the workgroup will monitor and comment on the evolving composite PlanMaryland Planning Areas map.

The workgroup has also been monitoring the State agencies' development of PlanMaryland Implementation Strategies. The workgroup reviewed and commented on the initial set of draft implementation strategies submitted by each State agency in July 2012. However, given number and diversity of draft strategies submitted by the State agencies, the workgroup did not provide substantive recommendation at this point. However, with the submission of the Progress Report to the Governor in September, the workgroup is scheduling meeting with each Smart Growth Subcabinet agency to hear from representatives on how they specifically intended to use these strategies to implement PlanMaryland. The workgroup will be making periodic reports to Commission on its recommendations to improve the effectiveness of the Implementation Strategies.

The **WIP Workgroup** worked diligently with a diverse set of stakeholders to facilitate the review of the Maryland Department of the Environment's draft "Accounting for Growth" (AfG) regulations. Given the uncertainties with respect to the regulation of aggregators and other unresolved issues that relate to the Septic Bill's Growth Tier III areas, the Commission on November 8, 2012 endorsed the WIP Workgroup's recommendation and voted to support the simultaneous development of a uniform strategy for implementing offset requirements and trading policies throughout Maryland, even if it the proposal of the Growth Tier III regulations would be delayed beyond the end of 2012.

A full explanation of the issues surrounding this recommendation was sent on November 27, 2012 to Senator Joan Carter Conway and Delegate Maggie McIntosh, which is part of the attachment ***(Appendix D)***.

In an effort to conceptualize, plan and implement the hosting of an annual public forum and awards ceremony, an Ad Hoc Planning / Selection Committee was created by the Commission. The theme selected by the committee for the first Annual Maryland Sustainable Growth Forum and Awards Ceremony pertained to the economic impact of smart and sustainable growth. Nominees slated to receive the Sustainable Growth Awards were chosen based on individual leadership and service and for sound community planning and development efforts. Christopher Leinberger, a dynamic speaker and author on sustainable growth and walkable urban places will deliver the Keynote Address.

Please do not hesitate to contact me at 410.528.5506 or laria@ballardspahr.com should you require any further information.

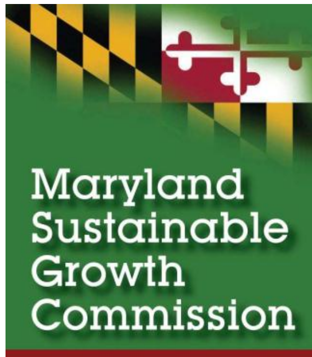
Sincerely,

Jon Laria
Chair

APPENDICES

To Follow

A thru D



APFO Workgroup Interim Report

September 24, 2012

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

From: Frank Hertsch, Chair, APFO Leadership Workgroup

Subject: Report on MSGC APFO Workgroup Review of 2012 APFO Reports

Workgroup Participants: Frank Hertsch, Chair, Jon Laria, Greg Bowen, David Carey, Jenny King, Arabia Davis, Chuck Boyd, Tyler Grote, Philip LaCombe, and Ryan Hall.

The APFO Leadership Workgroup has convened three conference calls to discuss the role and tasks of the workgroup to meet the Sustainable Growth Commission's charge to:

> *Review the reports of local jurisdictions on adequate public facilities development restrictions required by Article 66B, § 10.01 of the Code, and assess whether and to what extent adequate public facilities ordinances affect the achievement of the goals of the State economic growth, resource protection, and planning policy;*

Members of the workgroup requested a status report on the submission of the required Adequate Public Facility Ordinance (APFO) Annual Reports. The workgroup members indicated that they were interested to identify the positive and negative effects of these ordinances, particularly as they may relate to limiting or halting development activities within Priority Funding Areas (PFAs). The workgroup members expressed a concern that insufficient capacity for public facilities, such as, roads and schools could have a consequence of directing growth to areas not intended for growth.

- MDP Staff reported that APFO Reports are due every two years. The first APFO Reports were due July 1, 2010. The second APFO Reports were due July 1, 2012. Currently, there are thirty-nine (39) jurisdictions with adopted APFOs, fourteen (14) counties and twenty-five (25) municipalities.

- The MDP Yearbook 2012/2011 contains the first summary report on the impacts of APFO's, where required. The summary report includes information received from fifteen (15) jurisdictions, including 10 counties and 5 municipalities.

- The MDP 2012 APFO Inventory for Maryland Jurisdictions Report provides a complete overview of all APFOs, including facilities evaluated, links to ordinances; level of service standards by facility type; timing of APFO tests; and qualifying APFO exemptions.

- The MDP 2012 APFO Tracking Matrix provides a listing of all APFO Reports received, by jurisdiction; an inventory of any APFO restrictions, by jurisdiction and facility type; identification of any remedies; and an inventory of residential and non-residential development totals.

- As of September 19, 2012, the MDP staff is working with Anne Arundel County, Calvert County, Annapolis and Frederick to receive their APFO Reports for 2012.

- Statewide, there are limited reports of APFO restrictions that remain unresolved. Wide variations in reporting and level of service standards make comparisons between public facilities somewhat problematic. To address this issue, the Leadership team agreed that in the future a reporting template would need to be developed for consistency purposes.

Summary of Reported Restrictions:

- Baltimore County reported restrictions in fifteen (15) school districts, seven (7) signalized intersections and one (1) sewer service area. It was not clear from the information provided that the proposed remedies resolved all restrictions. For the sewer restriction, the resolution is expected to take between 5-10 years. No incremental data is provided. Staff will continue to coordinate with Baltimore County to more fully understand the scope of the remedy and proposed resolutions.

- Montgomery County reported that School Fee Payments were required for fourteen (14) schools. It was not clear that the School Fee Payments were sufficient to address the restrictions. Staff will continue to work with Montgomery County to more completely understand the conditions, including reports that the City of Rockville is considering amending the level of service standards for schools from 110% to 120%.

- Howard County reported restrictions in multiple Elementary, Middle and High Schools affecting eighteen (18) subdivisions. It was not clear from the information provided that the proposed remedies would resolve all restrictions, as the APFO Report only reports that fifteen (15) of the (eighteen) 18 new proposed subdivisions had identified a remedy. Staff will continue to work with Howard County to more completely understand the conditions.

- Queen Anne's County reported a restriction on new residential development due to School APFO restrictions. The County identified that the capacity for schools was amended from 100% to 120%. This change to the APFO standard for schools was sufficient to remove the restriction. However; the change to the APFO standard is subject to voter referendum approval in November.

- Carroll County has suspended school impact fee collection for two years.

APFO Workgroup Initial Framework:

The members discussed a framework for the APFO workgroup assessment to generally address:

- What are the effects?
- Is the restriction legitimate or not?
- What needs to be done to remedy the issue?
- What are the impacts on Smart Growth?
- Who pays?

Workgroup Member Questions:

- The workgroup members questioned whether or not local APFO reviews were conducted at the site plan stage or the permit stage? Workgroup members also questioned whether or not local APFOs prohibited new construction if the public facility was overcrowded or whether or not the APFO allowed applicants to build or buy their way out?

- Workgroup members questioned if there was any Maryland case law which prevented local governments from restricting development after a 5-7 year period, due to infrastructure deficiencies. MDP staff was requested to research and to provide workgroup members with a list of any relevant case law on this topic.

- Workgroup members questions whether or not there were any existing sewer moratoria issued by the MDE that was currently limiting development within a PFA? There was also a discussion of identifying sewer systems that are currently required to prepare a Management Plan for facilities that have reached 80% of its approved capacity. MDP staff is coordinating with MDE to seek answers to these questions.

Workgroup Discussions:

The workgroup discussed the need to prepare a frame work to address the types of impacts that the group wanted to address and strategy for getting something done, including:

1. The standards for an APFO ordinance and questioned if existing APFOs could contain language which was overly or underlie permissive. Suggestions to consider were:

    - Examine a few of the ordinances to ensure that they are valid and well written;
    - Examine if APFO ordinances are supporting Smart Growth;
    - Evaluate any restrictions to Smart Growth projects, such as, TODs;
    - Evaluate if available State funding uses a rationale method; and
    - Consistency of APFO ordinances with Twelve State Visions and Bay Restoration.

2. Whether or not local governments were using APFOs to protect the public health or to restrict development activity?

3. How development activities impacted by APFO would result in a moratorium for a temporary period of time until the capacity issue was resolved?

4. How much capacity was available for public facilities and whether or not development in preferred growth areas had been effected?

5. A need for a trigger for more capacity and if capacity issues were a result of the County/Towns not funding additional capacity or that the State wasn't doing its part?

6. If local governments had financial plans to remedy infrastructure deficits and what is being done at the local and state levels to get more infrastructure in the right places? What are the capital processes and funding mechanisms for curing infrastructure deficiencies?

Adequate Public Facilities Report Outline:

The committee discussed a general outline for the report that the group would produce. There is concern that a report limited to analysis of the available data may be less than satisfactory due to the wide variation of Adequate Public Facilities Ordinances (APFO) and the limited data available.

The following outline was suggested as a frame work for the report within which the available data could be used to provide more specifics where hard data is available:

1. Discuss the predecessors to APFO
    a. Building moratoria imposed to address immediate threats to public health and safety.
    b. The limitations of such growth control.
        i. After the fact reaction to health threats
        ii. Failure to go beyond health threats and address quality of life issues
        iii. Failure to provide in solutions to inadequate facilities

2. Adequate Public Facilities Ordinances may address issues beyond public health concerns
    a. Adequacy to meet expectations and provide levels of service relating to quality of life over and above threats to health.
    b. Facilities including but not limited to those necessary to address immediate health concerns.

3. Types of facilities APFO may address
    a. Sewers
    b. Potable Water
    c. Roads
    d. Schools
    e. Fire protection services
    f. Police protection
    g. Libraries
    h. Recreation Facilities

4. Levels of service and adequacy beyond immediate health threats
    a. Sewers
        i. Bacteriological control
        ii. Resource protection
    b. Potable Water
        i. Bacteriological control
        ii. Water quality standards
        iii. Daily consumption
        iv. Fire protection
    c. Roads
        i. Life safety
        ii. Intersection congestion
        iii. Air quality and environmental protection

   d. Schools
      i. State capacity construction funding
      ii. Community expectations
      iii. Temporary classrooms
   e. Fire protection
   f. Police protection
   g. Libraries
   h. Recreation

5. Types of APFO
   a. The simplest ordinances set a standard for adequacy in a category and prohibit building activity until the standard is met. These have some recognized shortcomings.
      i. Corrective Measures may be lacking. Within the most lively and polarized debates concerning APFO all sides agree the growth limitations should be of a temporary nature for the purpose of allowing time to provide or otherwise relieve demands on facilities. With no mechanism to provide adequate facilities the circumstances which lead to substandard facilities may simply continue without improvement.
      ii. Risk of underutilization. When multiple APFO tests are imposed the cumulative effect is that the perfect is the enemy of the good. If for example a jurisdiction has adopted standards for 4 categories and on fails adequacy the public investment in other categories may go unused until the on inadequate facility is resolved.
      iii. Growth areas are more susceptible to facilities limitations
   b. There are a number of variations of adequate public facility ordinances which not only imposes moratoria but attempt to provide a mechanism for relief. There are several variations to this general theme.
      i. Some require the construction of facilities of sufficient capacity to bring the facilities to adequacy standards
      ii. Some require the construction of facilities of sufficient capacity to offset the capacity required to serve the proposed development
      iii. Some require the payment of fees collected for the purpose of contributing to construction costs of facilities necessary to meet adequacy standards

6. APFO and public policy initiatives
   a. Smart Growth
   b. Community preservation
   c. Economic growth and jobs formation
   d. Chesapeake Bay water quality
   e. Twelve State Visions

7. The timing issue and fixed limits
   a. Facility design to meet peak demands
      i. May be necessary for facilities with direct health consequences
      ii. May result in economic waste where facilities are underutilized for long periods of time in order to meet maximum demands

b. Specifics
   i. Should we design roads to meet all peak demand
   ii. Should we design sewers to meet all peak demand
   iii. Should we build enough schools to eliminate temporary classrooms
   iv. How many major fires should our water system be ready to fight

8. Conclusions and Recommendations

Adequate Public Facilities Ordinances

I. State Law Authorization

Article 66B §10.01 – applies to all jurisdictions (Land Use Article "LU" §§7-101 to 7-103)

§10.01.

(a) To encourage the preservation of natural resources or the provision of affordable housing and to facilitate orderly development and growth, a local jurisdiction that exercises authority granted by this article may enact, and is encouraged to enact, ordinances or laws providing for or requiring:

(1) The planning, staging, or provision of adequate public facilities and affordable housing;

(2) Off–site improvements or the dedication of land for public facilities essential for a development;

(3) Moderately priced dwelling unit programs;

(4) Mixed use developments;

(5) Cluster developments;

(6) Planned unit developments;

(7) Alternative subdivision requirements that:

(i) Meet minimum performance standards set by the local jurisdiction; and

(ii) Reduce infrastructure costs;

(8) Floating zones;

(9) Incentive zoning; and

(10) Performance zoning.

(b) Notwithstanding any other provision of law, a local legislative body that exercises authority granted by this article may enact ordinances or laws providing for the transfer, with or without consideration, of real property belonging to the local jurisdiction to a public or private entity, to use in developing or preserving affordable housing.

(c) The authority provided under this section is not intended to limit a local jurisdiction's authority to:

(1) Exercise any planning and zoning powers not expressly authorized under this section; or

(2) Adopt other methods to:

(i) Facilitate orderly development and growth;

(ii) Encourage the preservation of natural resources; or

(iii) Provide affordable housing.

Article 28 §7-120 – applies to Prince Georges and Montgomery Counties (LU §23-106)

(a) In addition to any other authority granted by this article, the County Council of Montgomery County and the County Council of Prince George's County, by legislation, may impose in their respective county standards and requirements for the purpose of avoiding the scattered or premature subdivision or development of land because of the inadequacy of transportation, water, sewerage, drainage, school, or other public facilities.

(b) In Prince George's County:

(1) Notwithstanding the provisions of subsection (a) of this section, the County Council of Prince George's County shall impose adequate public facilities standards and requirements under subsection (a) of this section with respect to schools; and

(2) This subsection does not apply to any property located in an infrastructure finance district approved before January 1, 2000.

II. Maryland Case Law on Adequate Public Facilities

Malmar Associates v. Prince Georges County, 260 Md. 292 (1970)

- A Prince George's County special exception ordinance that required proof of adequacy of school facilities before the granting of a special exception was legal

MNCPPC v. Rosenberg, 269 Md. 520 (1973)

- Prince George's County APFO assumed valid
- Court overturns decision of MNCPPC to deny subdivision based on school adequacy based on testimony in case

Annapolis Market Place v. Parker, 369 Md. 689 (2002)

- Rezonings premised on adequacy of public facilities are legal
- Court overturns Board of Appeals finding that applicant had met the burden of proving adequacy because the applicant had not presented affirmative evidence on the adequacy of facilities as required by the ordinance.

Nes v. Anne Arundel County, 95 Fed. Appx 497 (2004)(4th Circuit Court of Appeals)

- Property owner challenges Anne Arundel County's APFO in federal court on equal protection grounds arguing that the APFO imposed development conditions on her that were not imposed on other developers.
- Federal appeals court held that County did not impose different development conditions that would violate the equal protection clause.

III. Seminal Out-of-State Case

Golden v. Town of Ramapo, 30 N.Y.2d 359 (1972)

New York's highest court held that:

- Town’s APFO (sewer, drainage facilities, parks, schools, roads and firehouses) was constitutional and not a unconstitutional taking of property without compensation.
- Restrictions in APFO must be of a certain duration, i.e., not permenant, and founded upon estimate determined by fact.

Golden is cited by the Maryland Court of Appeals in *MNCPPC v. Rosenberg*, 269 Md. 520 (1973)

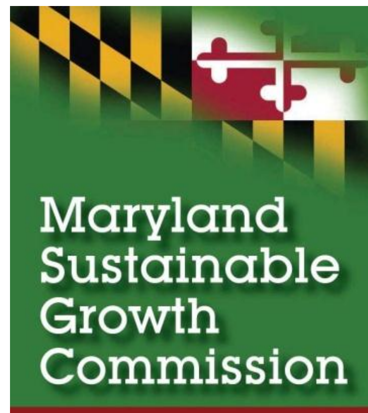
Sustainable Maryland 2.0

Financing Smart Growth

Recommendations to the Sustainable Growth Commission

By its Concentrating Growth Workgroup

January 2013



ON THE COVER:

Recently renovated row homes in the historic Greenmount West neighborhood of central Baltimore, by developer TRF Development Partners.

SPECIAL THANKS:

Special thanks to Kevin Baynes, John Papagni, Mary Kendall, and Olivia Ceccarelli of the Maryland Department of Housing and Community Development for their work in conducting research for and writing the report. And, special thanks to Matthew Arozian of ENC Strategy for volunteering graphic design support.

Financing Smart Growth

Recommendations to The Sustainable Growth Commission From its Concentrating Growth Workgroup

January 2013

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Executive Summary

EXECUTIVE SUMMARY

In January of 2010, the Revitalization Incentives Workgroup of the Task Force on the Future for Growth and Development in Maryland issued the report, "Sustainable Maryland: Accelerating Investment in the Revitalization and Livability of Maryland's Neighborhoods." In summary, the 2010 report identified four overarching goals for reinvestment in Maryland's existing and historic neighborhoods as follows (and Appendix A is a summary of the additional recommendations):

Goal 1: Attract and sustain private investment in revitalization areas and projects.

Goal 2: Preserve the authentic "sense of place" and historic character of Maryland communities.

Goal 3: Advance green and sustainable development practices in tandem with revitalization investment.

Goal 4: Connect Maryland families to economic opportunity in improving communities.

The Task Force has since evolved into the Sustainable Growth Commission which asked its Concentrating Growth Workgroup (the Workgroup) for an update on the status of the 2010 report recommendations as well as identification of next-step priorities for financing Smart Growth moving forward. *The purpose of the Workgroup's report is to recommend specific next steps for enhancing and expanding public-private partnerships and the financing available for the revitalization and redevelopment of Maryland's existing communities.*

There has been significant progress in the two years since the 2010 recommendations were issued, including:

- Legislative enhancement of and budgetary support for such place-based revitalization programs such as Community Legacy, Neighborhood BusinessWorks, Community Investment Tax Credits and the Maryland Sustainable Communities Rehabilitation Tax Credit Program.
- Creation and implementation of the *Sustainable Community Area* designation in 2010 to renew and align State and local investment in local revitalization priorities. So far, 27 communities have refined their revitalization target areas and strategies through SC designation.
- Relaunching of the *Local Government Infrastructure Finance* program (LGIF) which had been stymied for two years by turbulence in the bond markets. Under the enhanced LGIF program, since 2010, local infrastructure projects totalling $75.9 million have been financed.
- Establishment of the *Maryland Housing Counseling Fund*, a sustainable funding source for nonprofit housing counseling agencies that are working to stabilize homeownership and, therefore, neighborhoods affected by the foreclosure crisis. More than $10 million has been granted to nonprofits since 2010.

- Establishment in the FY13 budget of $2.5 million for a new *Strategic Demolition and Smart Growth Impact Fund* to support high impact redevelopment projects in Sustainable Community areas, and renewed funding in the Governor's proposed FY14 budget at $7.5 million.

However, much work remains to better position brownfields and other areas in older existing communities for significant private-sector redevelopment investment. The following recommendations for next steps for leveraging private-sector smart growth investment were developed through review of best practices in other states and large municipalities.

This report was presented by the Chair of the Concentrating Growth Workgroup, Derick Berlage, to the Commission at January 28th, 2013 meeting. The Commission voted to endorse the report and its recommendations.

PRIORITY NEXT STEPS FOR FINANCING SMART GROWTH:

- Establishment of a renewable funding mechanism for specified Smart Growth programs, with the aim of raising *at least* $35 million annually.
- Enhancement of legislative authority for Tax Increment Financing (TIF) such that substantial new investment can be made in older existing communities and with State incentives.
- Enhancement of local infrastructure financing in older communities via the Local Government Infrastructure Finance program or a more formal Infrastructure Bank.
- Strengthen nonprofit community investors – Community Development Financial Institutions (CDFIs) – through a State capacity-building program.

The first priority recognizes that State support continues to be critical to catalyzing and leveraging private investment in local revitalization priorities. The remaining three identify specific tools and entities that are underutilized in Maryland but have been effectively used in other states to greatly expand private investment . *Leveraging private investment at a significantly larger scale is required if older communities are to become competitive for redevelopment and concentrated growth.*

Key Smart Growth Programs and Funding Sources

CHAPTER ONE: KEY SMART GROWTH PROGRAMS AND FUNDING SOURCES

In order for broader smart growth goals to be met, Maryland's older communities – rural, suburban and urban – need to attract significant investment from private developers, businesses and homebuyers -- the kind of investment that is more easily attracted to newer "sprawling" communities. The Concentrating Growth Workgroup reviewed funding trends for the State's "place-based" smart growth programs, those that uniquely attract private –sector reinvestment in communities targeted for revitalization. These key programs (Section A below) catalyze significant private investment for economic growth in existing Maryland communities. They were created in the "initial wave" of Smart Growth programs in the late 1990s and early 2000s and include grants, loans and tax credits programs that have proven to be very effective in drawing new investment to targeted revitalization areas, including to designated Sustainable Communities and local historic districts. In addition, in the FY13 budget, the Governor identified the need to provide support for high-impact redevelopment projects that could not move forward without public support for strategic demolition and site acquisition assistance; the Strategic Demolition and Smart Growth Impact Fund (SGIF) was launched in 2012 for that purpose, and the Governor has proposed renewal funding for the program in the FY14 budget.

Over the last six years, despite the economic downturn and budget crisis, the O'Malley-Brown administration has funded these revitalization programs at significant levels. However, the Workgroup recommends that funding be significantly expanded, including through the establishment of a new renewable source of funds. A number of the smart growth programs below are funded through annually allocated General Obligation (GO) bonds or set tax credit levels; two of the programs – Maryland Heritage Areas and Community Parks & Playgrounds – do have a renewable funding source. Other complementary State programs that have a "renewable funding source" are summarized in Section B; these provide examples for types sources of renewable support that have been used in Maryland.

Section A: Key smart growth programs that catalyze reinvestment in existing communities.

Program and Year Created	Lead Agency	Eligible Area	Program Description and Eligible Uses	Eligible Applicants	Recent Appropriations and Avg. Award	Funding Demand and Details	Current Funding Source
Community Legacy (CL) 2001	DHCD/NR	Sustainable Communities	Capital grants and loans designed to assist communities that have the potential, with modest public and private investment, to be vibrant places to live and work. Projects should capitalize on community strengths and be part of a larger revitalization strategy.	Local Governments Community Development Organizations Groups of Local Governments	FY 2013 - $6 M FY 2012 - $4.25 M FY 2011 - $4.25 M FY 2010 - $2.1 M FY 2009 - $4.7M Avg. Award: $100,000	3:1	GO Bonds
Neighborhood Business Works (NBW) 1995	DHCD/NR	Sustainable Communities	Flexible gap financing to small businesses locating or expanding in Sustainable Communities.	Maryland-Based Small Businesses (defined by the U.S. SBA)	FY 2013 - $4.25 M FY 2012 - $4.25 M FY 2011 - $4.0 M FY 2010 - $4.0 M	Open and Rolling Financing ranges from $25,000 to	GO Bonds

Program and Year Created	Lead Agency	Eligible Area	Program Description and Eligible Uses	Eligible Applicants	Recent Appropriations and Avg. Award	Funding Demand and Details	Current Funding Source
			Eligible uses include but not limited to acquisition, new construction or rehab, leasehold improvements, machinery and equip.	Nonprofit Organizations (which contribute to a broader revitalization effort)	FY 2009 - $5.0 M Avg. Award: $200,000	$500,000 for up to 50 percent of a project's total cost.	
Community Investment Tax Credit (CITC) 1996	DHCD/NR	Priority Funding Areas, with priority given to Sustainable Communities	State tax credits for use as incentives to attract contributions from individuals and businesses to benefit local projects and services. Businesses and individuals that donate can earn tax credits equal to 50% of the value of the money, goods or real property contribution.	Nonprofit organizations designated as a 501(c)(3) by the Internal Revenue Service	FY 2013 - $1 M FY 2012 - $1 M FY 2011 - $1 M FY 2010 - $1 M FY 2009 - $1 M Avg. Award: $20,000	3:1 Contributions of money, goods or real property worth $500 or more are eligible for tax credits. Individuals and businesses may claim a maximum of $250,000 in tax credits per year.	State of MD Tax Credit
Local Government Infrastructure Financing 1988	DHCD/CDA	Projects service Priority Funding Areas	Community Development Administration (CDA) issues bonds, on behalf of counties, municipalities and/or their instrumentalities, to finance projects that serve the community at large such as streetscape improvements, transp. enhancements, and water and sewer treatment facilities.	Maryland counties, municipalities and/or their agencies	Financing ranges from $150,000 to $10 Million Avg. Award: $1.5 M	Open and Rolling Bond Market twice a Year	DHCD's CDA issues tax-exempt bonds
The Maryland Sustainable Communities Rehabilitation Tax Credit Program 1996	MDP/MHT	Commercial: National Register or local historic district, or certain historic or non-historic structures in a Certified Heritage Area. Residential: National Register or local historic district.	Provides Maryland income tax credits based on a percentage of the qualified capital costs expended in the rehabilitation of a structure for the following types of projects: •20% credit for single-family owner-occupied residences and commercial buildings •25% credit for high-performance commercial buildings •10% credit for non-historic structures in historic districts or Sustainable Communities	Commercial income-producing properties (including office, retail, rental housing, etc.) Owner-occupied residences Heritage Areas: Only non-residential structures used for heritage tourism-related purposes	Commercial: FY 2013 - $7 M FY 2012 - $7 M FY 2011 - $10 M FY 2010 - $5 M FY 2009 - $10 M FY 2008 - $14.7M FY 2007 - $30.3 M FY 2006 - $20 M FY 2005 - $0 Residential: No Cap	Commercial: 5:1 Residential: Open and Rolling The qualified rehabilitation costs exceed the greater of 50% of the adjusted basis value of the structure or $25,000.	State of MD Tax Credit

Program and Year Created	Lead Agency	Eligible Area	Program Description and Eligible Uses	Eligible Applicants	Recent Appropriations and Avg. Award	Funding Demand and Details	Current Funding Source
Maryland Heritage Areas Program, 1996	MDP/MHT	Maryland's current twelve Certified Heritage Areas	Maryland's Heritage Areas are locally designated and State certified regions where public and private partners commit to preserving historical, cultural and natural resources for sustainable economic development through heritage tourism.	Grants: Non-profits and governments. Loans: Non-profits, governments, businesses, individuals.	FY 2013 - $3 M FY 2012 - $2.598 M FY 2011 - $3 M FY 2010 - $3 M FY 2009 - $3 M FY 2008 - $3 M FY 2007 - $3 M FY 2006 - $1 M FY 2005 - $1 M Avg. Award: $35,000	1.5:1 Annual Application	State of MD Property Transfer Tax
Community Parks and Playgrounds, 2002	DNR	Municipal corporations and the City of Baltimore are eligible.	Maryland's Community Parks & Playgrounds Program invests in the future of established communities by revitalizing parks and playgrounds statewide. With the support of the Governor and the Maryland General Assembly, a total of $49.9 million has been approved so far, to restore 511 park & playground projects for our communities across Maryland.	Municipal Corporations and the City of Baltimore	FY 2011-2013 – $2.5 M FY08-FY10, $5.0 M	FY 2012: 3.6:1	State General Funds and State General Obligation Bonds, which may be authorized on an annual basis by the Governor and General Assembly.

Section B: Examples of State programs with renewable funding sources.

Program	Lead Collecting Agency/ Benefactor	Year Created	Program Description and Eligible Uses	Eligible Applicants	Funding Levels/ Annual appropriation	Funding Source(s)
Program Open Space	Judiciary (Circuit Courts)/Dept. of Natural Resources	1969	Acquire recreation and open space for public use.	Funds are split between state and local government, with the state receiving more funding. State funds purchase land for state parks, forests, wildlife habitats, and other natural, scenic, and cultural resources for public use; some go to capital, operating, and maintenance costs. Funding is granted to local governments ("Localside POS") using an allocation formula (accounting for amount transfer tax collected, population growth, etc.) to help them buy land and build parks so they can meet their Land Conservation and Recreation goals.	No fixed annual appropriation; amount has fluctuated greatly, especially in recent years. $20 million over three years (FY12-14) for Localside POS, which includes operating costs. State receives more for its projects.	Maryland real estate transfer tax (.5 of 1%) and federal programs like the National Park Service's Land and Water Conservation Fund. In addition to POS, funds collected from the Maryland real estate transfer tax goes toward other DNR programs like easement acquisition and agricultural land preservation.
***Treasure the Chesapeake* License Plate Program**	Motor Vehicle Administration (MVA)/ Chesapeake Bay Trust	1990	Grants go toward removing trash and restoring habitat, running children's educational and public awareness programs, and building capacity for watershed and river organizations.	Nonprofits, religious institutions, schools, and other tax-except entities Local governments	In FY 2011, 50,000 Maryland drivers purchased and 200,000 drivers renewed a Bay plate. Total grant award in FY2011 (from all Trust funding sources) was more than $5.5 million.	Voluntary fee collected by the SHA.
Chesapeake Bay Fund Tax Donation	Comptroller of Maryland/ Chesapeake Bay Trust	1989	See Bay license plate program.	See Bay license plate program.	In 2010, Maryland residents contributed $1.1 million through the tax check-off program.	Volunteer donation to the Chesapeake Bay and Endangered Species Fund collected by the comptroller. Proceeds divided evenly between the Chesapeake Bay Trust and the Maryland Department of Natural Resources' Wildlife and Heritage Division.

Program	Lead Collecting Agency/ Benefactor	Year Created	Program Description and Eligible Uses	Eligible Applicants	Funding Levels/ Annual appropriation	Funding Source(s)
***Our Farms, Our Future* Agricultural License Plate Program**	MVA/Maryland Agricultural Education Foundation	2001	Increase agricultural literacy via elementary, middle, and high school programming, and the mobile Maryland Agriculture Showcase.	Funds go toward educational programs and a small grant making program for teachers.	Over $5,548,000 has been generated from the "Ag Tags" since they were available in 2001.	Ag Tag revenue is part of larger MAEF funding that includes grants, individual contributions, and fundraiser programs.
Small, Minority- and Women-Owned Fund **NOTE: The program is still in draft form, so all information is subject to change.**	Comptroller/Dept. of Business and Economic Development (DBED)	2012-13	Provide loans/equity investments to small, minority- and women-owned businesses. 50 percent of funds have to be used in locations where casinos are located.	Loans from DBED will be granted to fund managers, who will then give out loans to small, minority- and women-owned businesses. Potential agencies include Anne Arundel Economic Development, and Meridian Management Group, which contracts with DBED for another small business program.	Monies have not been disbursed since the opening of the first Md. casino. For 2011, about $2 million was collected; for 2012, about $3 million; and for 2013, there is a projected $7 million. Program is projected to generate $7 million annually.	1.5 % of all "video lottery terminal" (slots) revenue.
Maryland Affordable Housing Trust (MAHT)	DHCD/DHCD	1992	Encourages affordable housing for Md. households earning less than 50% of area or statewide median income through competitive funding rounds. Uses include: -capital costs rental /homeownership -nonprofit financial assistance capacity building -resident supportive services. Not place-based.	Nonprofits Public housing authorities Government agencies For-profit entities	State appropriation of $1.5 million for FY2012. Revenue fluctuates greatly with the real estate market. In FY2011, MAHT awarded about $3.1 million; in FY2010, MAHT awarded about $2.2 million.	A portion of the interest generated by title company escrow accounts, the return of unused funds, and loan repayments. The Trust may also accept donations from the federal government, state government, local governments and private sources.

Chapter Two

What’s Missing? Tools and Case Studies

CHAPTER TWO: WHAT'S MISSING? TOOLS AND CASE STUDIES

Making existing communities competitive for new investment and growth is a essential for reaching smart growth outcomes in Maryland. An expanded tool box is needed to leverage significant private investment in these targeted communities. The Workgroup has identified the following set of tools and funding mechanisms that are underutilized or weak in Maryland:

- Tax Increment Financing targeted for investment in revitalization areas
- Infrastructure Banks
- Community Development Financial Institutions (CDFIs)

This is not meant to be an exhaustive list. For instance, the federal New Markets Tax Credit (NMTC) is not well utilized in Maryland. However, if CDFIs were stronger in Maryland, then usage of NMTCs would also be stronger. Therefore, building the strength of CDFIs can directly lead to more use of the NMTCs which are often administered by CDFIs.

More generally, much more could be done to use State and local financing incentives to drive more private development to revitalization target areas relative to the broader PFAs. The following case studies show how other jurisdictions are using certain financing mechanisms to make high-impact projects and the needed infrastructure more feasible in communities with less healthy markets.

CASE STUDY ONE:
FINANCING TOOL—TAX INCREMENT FINANCING (TIF)[1]

Overview

Tax Increment Financing (TIF) is a method used by local governments to help finance local economic development projects by assigning property tax revenue resulting from increases in assessed values within a designated TIF district. TIF devotes incremental tax revenues generated by property value increases to support new development. TIF expenditures are generally debt financed in anticipation of increased tax revenue. Originated in 1952 in California, currently 49 states (including Maryland) and the District of Columbia authorize the use of TIF by county or municipal governments. With cutbacks in other sources of public funding for housing

[1] Source: Partners for Economic Solutions, "Introduction to Tax Increment Financing," March 2011.

and community development projects, TIF should be considered as a good tool for funding public improvements in support of high impact community redevelopment projects.

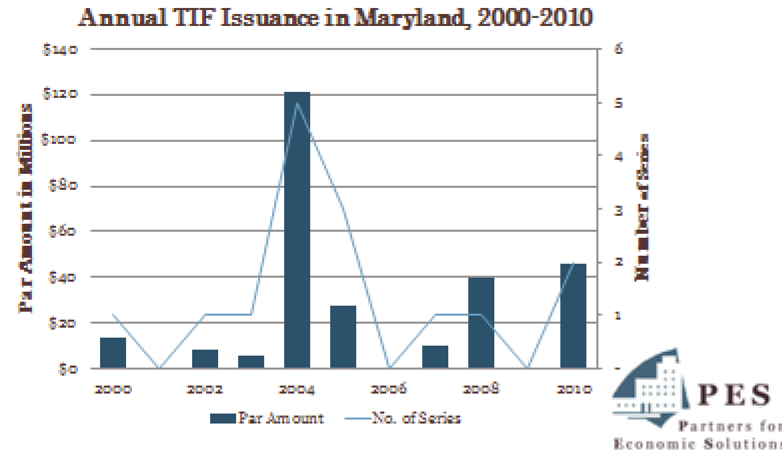
Tax revenues generated based on property values at the time a TIF district is established will continue to flow to the jurisdiction's General Fund during the term of the TIF. During the life of the TIF, the local tax revenues generated by the increase in property values are deposited in a special fund to finance public infrastructure and other eligible uses. Any incremental revenues not needed for debt service revert to the jurisdiction. When all bonds have been repaid, the jurisdiction then receives all of the property tax revenues generated by the redevelopment as part of regular taxes. While the TIF is in place, the jurisdiction benefits from other increased tax and fee revenues not subject to TIF, including income, personal property, utility and hotel taxes as well as permit and other fees.

TIF in Maryland

The annual TIF issuance in Maryland varies dramatically from one year to the next based on market conditions and local priorities. For example, in 2004 there was more than $120 million in tax increment financing in Maryland. However between 2000 and 2003 the annual amount averaged below $20 million. In 2010 total Maryland TIF issuance was just over $40 million.

Maryland TIF Experience, 2000-2010

- $273 million in TIF bonds
- 15 bond issues



Source: Partners for Economic Solutions, “Tax Increment Financing” presentation, January 17, 2011.

Legal Basis/Statutory Authority

Local authority for Tax Increment Financing in Maryland is derived from the Maryland Tax Increment Financing Act (Economic Development Article §§12-201 to 12-213) (1980): Article 41, Title 14, Subtitle 2. The Act authorized counties to issue TIF bonds to finance redevelopment of industrial, commercial and residential areas.

In 2009, House Bill 300 enhanced the TIF authority of counties to finance costs associated with transit oriented development (TOD). Article - 23A Corporations - Municipal (§44A , 44A) Economic Development Article (§§12-201 , 12-201 , 12-201 , 12-201 , 12-209 , and 12-210) Article - 24 Political Subdivisions - Miscellaneous Provisions (§ 9-1301 , 9-1301 , 9-1301) Transportation Article (§7-101).

For BRAC-impacted areas (BRAC Zones) the State reimburses the local government for 50 percent of the property taxes devoted to a BRAC-related TIF project, up to a total of $5 million statewide over a 10 year period.

Local Examples

Examples of projects financed by TIFs in Maryland include National Harbor in Prince George's County, East Baltimore Research Park in Baltimore City, Park Place in Annapolis, and the Mondawmin Mall renovation in Baltimore City.

Nationally, only 5 in approximately 2000 TIFs defaulted in 2010, one of the toughest years for assessed property values. No Maryland TIF bonds have gone into default.

Next Steps

Tax increment financing is a valuable tool for targeted investment in economic development. Maryland's TIF authority could be enhanced by technical changes and applying models from other states. In particular, TIFs can be a valuable resource for catalyzing improvements in areas targeted by state and local governments for revitalization. Historically, TIFs in Maryland have been project-based and without regard for whether the location of the project contributed to smart growth. Enhancing local authority to create TIFs for smart growth geographies such as designated Sustainable Communities, rather than specific projects, can provide flexibility to support state and local revitalization strategies while responding to development opportunities as they arise. Examples include: Historic preservation or rehabilitation; site preparation, including environmental remediation; parking facilities; highways or transit service; schools; affordable or mixed income-housing.

In the 2012 General Assembly session, HB1467 was introduced late in the session to address the promise of using TIF in older communities. Time did not allow a full discussion of the bill, and no action was taken on the bill during the session. The bill was eventually withdrawn. The Commission has been working with MDP on an update of this bill with the following features:

- Creates the possibility for new local revenue streams to fund TIFs in Sustainable Communities (SC), such as amusement, entertainment, hotel/motel or any other alternative local tax revenues generated within the Sustainable Community. This is similar to the authority to use other revenue streams granted to MDOT-designated TODs in 2009.
- Allows and clarifies new uses for TIF funds that include historic preservation, environmental remediation, demolition, site preparation, parking lots, facilities, highways or transit that support Sustainable Communities, schools, and affordable or mixed-income housing.
- Prioritizes State funding for a Sustainable Community when a political subdivision issues bonds to support or revitalize that Sustainable Community.

- Allows Sustainable Communities the same bonding authority via the Maryland Economic Development Authority (MEDCO) as MDOT-designated TODs.

CASE STUDY TWO:
FINANCING TOOL: INFRASTRUCTURE BANKS AND FUNDS

The Maryland Department of Transportation's Blue Ribbon Commission on transportation funding recognized the opportunity afforded by infrastructure banks in its final report, issued in November 2011. The report included a recommendation that Maryland should "prepare to take advantage of any national infrastructure bank legislation." In other words, if a national infrastructure bank is enacted, Maryland should be ready with projects that would be candidates for such loans.

Overview

Many states have established federally and state-funded infrastructure banks and/or funds to support local transportation and infrastructure improvements. While most banks are established with federal funds from the U.S. Department of Transportation Federal Highway Administration and used solely for transportation projects, some states have capitalized their banks with state revenues, thus providing more flexibility to establish loan rules and regulations, and determine which projects are financed. Essentially, these banks are revolving loan funds that offer both loans and credit enhancements, and they vary widely in loan capacity, from under $1 million to more than $100 million.

The original federal program was established in 1995 by U.S. Congress under Title XXIII, Eligible Highway and Transit Projects. SIBs have been authorized by the U.S. Department of Transportation for more than 15 years. The Transportation Equity Act for the 21st Century, passed in 1998, continued the program until the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) expanded the option so that all states and the District of Columbia could transfer a limited amount of the state's Highway Trust Fund allocations to SIBs (generally, 10 percent)."[2]

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[2] Source: National Employment Law Project. State Infrastructure Banks: Old Idea Yields New Opportunities for Job Creation. Briefing Paper, December 2011. Accessed from:
http://www.nelp.org/index.php/content/content_issues/category/job_creation_and_economic_recovery/

Examples:

Virginia Resources Authority (VRA).

VRA makes loans to counties, cities, towns, and authorities with the advantage of below-market rates or credit enhancement.

Source of funds: Primarily through tax-exempt bonds..

Amount financed since inception: Since inception in 2003, 57 different cities, towns, counties, and service authorities utilized this program to finance over $718 million. The program operates under a Master Indenture. The State of Virginia provides a key component of support that takes the form of a "Moral Obligation" Pledge – a form of credit enhancement and security pledge backing bond debt issued by VRA. This pledge enables VRA to secure very favorable bond credit ratings, and thus lower cost of capital than would otherwise be available to VRA or its local government participants. VRA's statutory moral obligation debt limit currently stands at $1.5 billion.[3]

Types of projects financed: Project areas include: public safety, transportation, wastewater, solid waste, water, brownfield remediation and redevelopment, airports, land conservation and preservation, parks and recreation, local government buildings, and energy.

Ohio's State Infrastructure Bank (SIB).

The Ohio SIB is a state entity created for the purpose of developing transportation facilities throughout Ohio.

Source of funds: The Ohio SIB "was capitalized with a $40 million authorization of state general revenue funds (GRF) from the Ohio State Legislature, $10 million in state motor fuel tax funds, and $87 million in Federal Title XXIII Highway Funds."[4] The SIB always maintains a $5 million reserve and only loans to public entities.

Amount financed since inception: As of March 2011, 96 loans with federal dollars had been made in the amount of $297,516,125, and 45 loans with State dollars were made in the amount of $62,041,232.

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[3] Source, "Research on Alternative Financing Mechanisms," DHCD staff analysis, November 2008.
[4] Source: Ohio Department of Transportation website: http://www.dot.state.oh.us/Divisions/Finance/Pages/StateInfrastructureBank.aspx

Types of projects financed: Federal, state, and local transportation projects, as well as aviation, rail, port facilities, and other intermodal transportation facilities, including Rails to Trails.

Revolving Loan Funds. The Water Quality Revolving Loan Fund (WQRLF) administered by the Maryland Department of the Environment provides financial assistance for a wide variety of projects to protect or improve the quality of Maryland's rivers, streams, lakes, the Chesapeake Bay and other water resources. As part of its financial assistance package, MDE's Water Quality Financing Administration (WQFA) can provide financial advisory services that assist applicants in determining affordable user rate structures and model the fiscal impact the proposed loan will have on financial capacity.[5]

WQRLF assistance is available for:

Point Source Pollution Prevention (Public Entities/Local Governments Only):

- Wastewater Treatment Plant Improvements/Expansion including State Grant Match for Biological Nutrient Removal (BNR) Facilities
- Sewerage Collection/Conveyance Systems including New/Replacement Sewers
- Correction of Excess Sewerage Infiltration/Inflow (I/I) and/or Combined Sewer Overflow
- Sludge Handling Facilities at Wastewater Treatment Plants
- Landfill Leachate Pretreatment Facilities
- Back Wash Facilities at Drinking Water Treatment Plants

Nonpoint Source Pollution Prevention Public and Private Entities:

- Wellhead Protection (Drinking Water Source)
- Landfill Closure
- Stream Corridor Restoration/Protection
- Hazardous Waste Clean-up (Brownfields)
- Shoreline Erosion Control
- Agricultural Nutrient Management Plans and Water Soil Conservation Plan

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[5] Source: Maryland Department of the Environment website.

Next Steps

More analysis gauging the strengths and challenges of establishing a Maryland infrastructure bank is a prerequisite to moving forward. Next steps include investing in a research paper on the costs and benefits of an infrastructure bank establishment, perhaps conducted by a consultant to the Sustainable Growth Commission.

In addition, enhancements to the existing DHCD Local Government Infrastructure Financing program (LGIF) should be considered. As the VRA case study above notes, the VRA bond issuances are greatly credit enhanced by a pledge of Virginia's "moral obligation pledge" to repay bond holders. Such a credit enhancement could similarly benefit the affordability of bond financing through LGIF, allowing more cash strapped jurisdictions to afford infrastructure investments.

CASE STUDY THREE: FINANCING TOOL—STATE CDFI FUND

Overview

Community Development Financial Institutions (CDFIs) are financial institutions that provide financial products and services to people and communities that are underserved by the traditional banking sector. The current national network of more than 1000 CDFIs (950 are certified by the CDFI Fund) had its beginnings with community development credit unions in the 1930s. That network expanded in the 1960s as part of the "War on Poverty." In the 1970s CDFIs expanded by reaching out to private organizations for funding, particularly religious organizations. Community Development Credit Unions such as South Shore Bank in Chicago and the Santa Cruz Community Credit Union had their beginnings in the 1970s. Several changes in the 1990s led to rapid expansion of the CDFI network, including creation of the CDFI Fund at U.S. Treasury and an updating of CRA regulations to recognize loans to CDFIs as an eligible activity.

While the volume of lending by CDFIs is small relative to traditional banking institutions, CDFIs play a critical role in reaching borrowers not served by the traditional banking sector. While CDFIs have been successful in securing support from federal sources such as the New Markets Tax Credits (NMTCs) and the CDFI Fund, federal support only accounts for 7 percent of all CDFI capital.

As community lenders, CDFIs have special knowledge of the communities and borrowers they serve. A key ingredient in the success of CDFIs is their ability to provide individualized service and direct technical support. In spite of making loans that may be considered too small or too risky by the traditional banking sector, loans originated by CDFIs have a lower default rate than traditional lenders. Successful CDFI borrowers eventually "graduate" to borrowing larger amounts from traditional lenders.

Source and amount of funding vary state to state. CDFIs may also receive grants from the CDFI Fund. The CDFI Fund awarded more than $186 million nationally in 2012. The CDFI Fund has awarded more than $1.7 billion since 1994.[6] The CDFI Act of 1994 was signed into law by President Clinton on September 24, 1994. CDFIs are chartered by the U.S. Treasury Department.[7]

Successful CDFI models across the country vary in terms of the type and level of state support. Successful models include strong statewide networks providing advocacy, technical support and knowledge sharing.

Examples:

Pennsylvania Community Development Bank (PCDB).

Established in 1994, the bank makes loans to exclusively CDFIs. To receive loan funds, the CDFIs must be accredited by the State – which is handled within their office, within the Pennsylvania Department of Community and Economic Development. Pennsylvania currently has 16-17 CDFIs that are accredited by the PCDB, however only 8 or 9 are really active. The bank is overseen by an operational committee of the board of directors of the PA Economic Development Financing Authority, which created the Community Development Bank Operation Committee (CDBOC). Any new loans made to CDFIs are approved by the CDBOC.

Source of funds: The bank was established around 1994 and received an initial appropriation around $17 million. It received only one appropriation. With consistent CDFI repayment of loans, infused with fee income from the state's bond financing program, the PA Community Development Bank loan programs are self-sustaining. The bank used to make both loans and grants, but in the past 3 to 4 years, it has only been able to make loans.

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[6] Source: CDFI Fund press release: "Treasury Announces More Than $186 Million in Awards to Organizations Serving Low-Income and Native Communities," August 6, 2012.
[7] Ibid.

Amount financed since inception: 43 CDFIs have lent nearly $52 million since 1996. The fund lends $6 to 7 million annually. CDFI technical assistance grants have been paramount to a strong repayment record with no defaults to date.

Types of projects financed: Loan capital and operating support to CDFIs. At last report the PCDB had a prefect perfect repayment record. Program administrators credit the initial technical assistance grants as vital to the success of administering the loan program.

New York CDFI Fund.

111 CDFIs have lent nearly $180 million since 1996. New York's CDFI Fund was established by Assembly Bill 6681-A in 2007, but not yet capitalized. Even without the fund, New York has a strong network of 81 CDFIs supported by a regional coalition of community development credit unions that supports dialogue, advocacy and capacity building. The New York coalition is currently focused on financing response to the damage caused by Hurricane Sandy, potentially affecting its 2013 proposal.

Next Steps

Early operating and technical support are key to CDFI and borrower success. Statewide coalitions can provide capacity building, advocacy and shared knowledge. Maryland CDFIs vary greatly in terms of size, capacity and geographic focus. Maryland's CDFI network is well positioned to grow in size and capacity, but it lacks a strong network needed for advocacy, knowledge sharing and resource development.

The possibility of creating a state CDFI fund that can provide both capital and operating (technical assistance) support should be explored. Detailed information on models from other states is needed, particularly regarding dedicated sources of funding for ongoing support. There should be continued dialogue with state, local and regional partners to build consensus on next steps. Additionally, there should be a convening of CDFIs in conjunction with public and private partners to discuss models and challenges and build consensus from key stakeholders on next steps, and on how to strengthen the CDFI network statewide.

Chapter Three

Recommendations to the Sustainable Growth Commission from its Concentrating Growth Workgroup

CHAPTER THREE: RECOMMENDATIONS TO THE SUSTAINABLE GROWTH COMMISSION FROM ITS CONCENTRATING GROWTH WORKGROUP

PRIORITY 1:

Establishment of a renewable funding mechanism for specified Smart Growth programs, with the aim of raising at least $35 million annually.

Recommendation: Identify a sustainable funding source to support key smart growth programs that catalyze private investment in existing communities in need of revitalization. Advocate for at least $35 million in annually funding for specified Smart Growth programs whether or not a sustainable funding source is established.

PRIORITY 2:

Enhancement of legislative authority for Tax Increment Financing (TIF) such that substantial new investment can be made in older existing communities and with State incentives.

Recommendation: Enhance local authority to create TIFs for Smart Growth geographies such as designated Sustainable Communities. Expand eligible uses for TIF generated revenue in Sustainable Communities to address needs of older communities. Examples include: Historic preservation or rehabilitation; site preparation, including environmental remediation; parking facilities; highways or transit service; schools; affordable or mixed income housing.

PRIORITY 3:

Enhancement of local infrastructure financing in older communities via the Local Government Finance program (LGIF) or a more formal Infrastructure Bank.

Recommendation: Explore the potential to establish a "Maryland Infrastructure Bank", or strengthen the existing Local Government Infrastructure Finance program to address critical infrastructure needs in Maryland's older communities. If needed, fund consulting support to the Sustainable Growth Commission for this purpose. In addition, explore enhancements to LGIF authority in order to expand access for local government participation.

PRIORITY 4:

Strengthen nonprofit community investors – Community Development Financial Institutions (CDFIs) – through a State capacity-building program.

Recommendation: Explore the potential to establish a "Maryland CDFI Fund" to provide loan capital, capacity-building grants to Maryland CDFIs. In particular operating support is needed to expand effective CDFIs in existing communities or seed new CDFIs where there are none. If needed, fund consulting support to the Sustainable Growth Commission for this purpose.

Appendices

APPENDIX A

SUSTAINABLE MARYLAND 1.0 RECOMMENDATIONS

In January of 2010, the Revitalization Incentives Workgroup of the Task Force on the Future for Growth and Development in Maryland issued the report, "Sustainable Maryland: Accelerating Investment in the Revitalization and Livability of Maryland's Neighborhoods". That report identified four overarching goals for reinvestment in Maryland's existing and historic neighborhoods; the report also identified 14 specific recommendations to meet the four main goals, and more than 50 specific action steps for achieving the 14 recommendations. The report is available at the website of the Maryland Department of Planning.

The recommendations identify effective programs in Maryland's existing revitalization toolbox while also recommending new tools and strategies. In many cases, existing programs are working well, but are not funded sufficiently or targeted effectively to maximize revitalization. *In every case, the recommendations recognize that strong public and private partners are essential for revitalization initiatives to be effectively implemented and sustained.*

Vision: Sustainable and Livable Neighborhoods for Maryland Families.

Goal 1: Attract and sustain private investment in revitalization areas and projects.

Goal 2: Preserve the authentic "sense of place" and historic character of Maryland communities.

Goal 3: Advance green and sustainable development practices in tandem with revitalization investment.

Goal 4: Connect Maryland families to economic opportunity in improving communities.

Goal 1: Attract and sustain private investment in revitalization areas and projects.

Recommendation 1: Better align Maryland's revitalization target areas and agency programs in order to focus and leverage increased private investment.

Recommendation 2: Sustain Maryland's core community reinvestment and revitalization programs and local workforce. When economic conditions allow, expand resources for core programs such as Community Legacy, Neighborhood BusinessWorks, and the Heritage Structure Rehabilitation Tax Credit.

Recommendation 3: Increase the investment power of nonprofit Community Development Financial Institutions (CDFI) in Maryland and focus investment in revitalization target areas.

Recommendation 4: Reduce barriers and increase incentives for private–sector development and investment in revitalization target areas.

Recommendation 5: Expand use of local Tax Increment Financing (TIF) and the federal New Markets Tax Credit (NMTC) program for transformative Smart Growth projects in revitalization target areas.

Goal 2: Preserve the authentic "sense of place" and historic character of Maryland communities.

Recommendation 6: Support economic development and sustainable design in Maryland's existing communities by strengthening incentives for the rehabilitation of historic commercial and residential properties.

Recommendation 7: Develop consumer---friendly financing strategies for rehabilitation of older homes in revitalization target areas.

Recommendation 8: Promote use of the Maryland Building Rehabilitation Code (formerly known as "Smart Codes")

Goal 3: Advance green and sustainable development practices in tandem with neighborhood investment.

Recommendation 9: Provide incentives for green and sustainable development in revitalization target areas.

Recommendation 10: Encourage private investment in the redevelopment and reuse of vacant or poorly performing commercial properties, also known as “greyfields” – into mixed us developments that better serve their surrounding neighborhoods.

Recommendation 11: Align federal, state and local agency investment in mixed income Transit Oriented Developments (TOD), creating compact, livable communities.

Goal 4: Connect Maryland families to economic opportunity in improving communities.

Recommendation 12: Preserve and create affordable and workforce housing options in revitalization target areas, particularly near jobs, transit and good schools.

Recommendation 13: Sustain and increase job opportunities in revitalization target areas.

Recommendation 14: Help families and neighborhoods recover from the foreclosure crisis.

APPENDIX B

MARYLAND SUSTAINABLE GROWTH COMMISSION CONCENTRATING GROWTH WORKGROUP MEMBERS

Derick Berlage, *Chair*
Russ Brinsfield, *Vice-Chair*
Rob Merrit, *Vice-Chair*
Karl Brendle
Cheryl Cort
Candace Donohoe
Carol Gilbert
Alan Girard
Matt Power
Don Halligan
Sam Parker
Dru Schmidt-Perkins
Les Knapp
Steve Foren
Sean Davis
Kate Sylvester
Duane Yoder
Bob Youngentob

Staff to the Workgroup:

Department of Business & Economic Development: Timothy Doyle
Department of Housing & Community Development: Kevin Baynes, John Papagni, Mary Kendal, and Olivia Cecciarelli
Department of Planning: Arabia Davis, Richard Josephson, Graham Petto and Ryan Sigworth

November 27, 2012

Indicators Workgroup Final Report

Executive Summary

Maryland as a smart growth frontrunner needs to regularly assess its progress. The State has established its twelve visions, and the ten smart growth principles are well accepted. The Maryland Department of Planning (MDP) has produced a strong argument through *PlanMaryland* that development trends need adjustment if the visions and principles above are to become Maryland's future. Determining whether the Maryland Department of Planning's residential growth trend maps foretell the future or reflect past policies' legacy development is however an open question. Indicators or performance measures are one tool that can meet the assessment need and answer this question.

Maryland's commitment to indicators was reinforced in 2009 with the passage of the *Smart, Green and Growing – Annual Report Act* by the General Assembly.

The *Smart, Green, and Growing – Annual Report Act* provided:

> "the Task Force on the Future for Growth and Development. . .shall make recommendations on the efficacy of additional measures and indictors that the State, the national Center or a local jurisdiction should be required to collect in the following categories of information:
>
> 1. Housing choices, including affordability;
> 2. The impact of growth on the environment, including land, air, and water;
> 3. The fiscal cost of growth;
> 4. The job and housing balance;
> 5. The impact of transportation on growth;
> 6. The impact of growth on business, including job creation, fiscal impact, agribusiness, tourism, and forestry; and
> 7. The impact of growth on cultural and historic resources."

In the spring of 2009, the Task Force for the Future of Growth and Development in Maryland (now Sustainable Growth Commission) formed an Indicators Workgroup to address the legislation's smart growth measures and indicators directive to the Task Force.

The Workgroup evaluated the indicators literature, individual metrics and indicators for their relevance to smart growth, data availability, and the ability of local and State organizations to regularly collect and analyze them. The Workgroup issued a list of available and potential indicators with a preliminary value assessment.

In November of 2009 the Task Force, based on the Workgroup's recommendation, advised the Maryland General Assembly to cautiously approach additional mandatory indicators. At that time, it was clear smart growth indicators needed more study and vetting before thoughtful legislation could be proposed. The Workgroup spent 2010 and 2011 evaluating, vetting, and collecting information about the list of indicators. Several progress reports issued by the Workgroup to the Task Force and now Sustainable Growth Commission are available on the Growth Commission's website.

After three years examining smart growth indicators, the Workgroup concluded that no additional local jurisdiction indicators should be mandated at this time. The Workgroup recommends that the existing required indicators be judged on their usefulness before other mandatory indicators are added. Additionally, the Workgroup recommends the State for its purposes should pursue, in cooperation with local governments, any of the reviewed indicators it deems important for State policy development. This would be undertaken using State resources for implementing *PlanMaryland* and other State initiatives.

Observations

The Workgroup's investigations into the field of indicators require an extensive literature review, examination of other jurisdictions' indicator use, and the indicator beta testing. Based on this work the group can make several observations. To begin, the logic of indicators is obvious, what you measure, you can tend to manage. However, the resources needed to gather data and analyze indicators must be weighed against their value added.

Several indicators have an obvious relationship to smart growth, e.g., the number of dwellings located in designated and appropriate locations, the number of dwellings using public sanitary services, and the acreage of agricultural land permanently preserved. Others while related to smart growth are difficult to define logically; the best example is the jobs-housing balance. Still others, while providing important information about what they measure, tell us little about progress toward achieving smart growth. In this last group, economic indicators give the observer an accurate read on the unit of analysis, i.e., commercial and income generating activity, but provide little information about whether economic change relates to more livable settings (smart growth) or would have occurred regardless of the physical environment.

Some indicators have strong smart growth relationship but are collected infrequently or not at all. This lack of data, at a minimum, eliminates such indicators from consideration. Also current economic conditions and the resulting dearth of staff and fiscal resources would need to change before new initiatives can be accommodated at the local level.

In addition to considering the indicators' workability and value, resource requirements must be assessed. In these times of fiscal austerity, additional required activities are simply beyond many jurisdictions' resources. For many small jurisdictions, this has always been the case, while for others recent staff and budget losses are causing local governments to focus on core responsibilities. This situation makes meeting current fundamental obligations a serious challenge. For both situations, additional activities can only come at the expense of either declining service quality or reduced existing services.

The Workgroup undertook beta testing in four jurisdictions to further refine its observations. This process, conducted in 2011, revealed that several of the workable indicators' data resides with the Maryland Department of Planning's State Data Center or are based on the Census or the American Community Survey. Of the 15 indicators tested, six indicators were completed by the beta jurisdictions; the Maryland Department of Planning collected an additional six. Two indicators were deleted due to data collection issues, and one is already required in local annual reports.

The beta testing was completed in a short period of time, which indicates that a portion of the data and ability to produce indicators exists at the State level either at the Department of Planning or the National Center for Smart Growth at the University of Maryland. That said, the collection of such data and indicators cannot and should not rest solely with the State. Local data, input and review is essential in verifying indicators' usefulness as smart growth measures. For example, the Maryland Department of Planning or the Nation Center for Smart Growth need to periodically collect local water and sewer plan data to determine the number of dwelling units served by public sewer vs. septic. Local jurisdictions should also verify the resulting indicator information prepared by the State agencies.

Recommendations

Tracking Maryland's smart growth progress will aid the development of local and State growth policy. Indicators are the prime candidate for assessing the direction and character of growth. The Indicators Workgroup's efforts over the last three years along with current resource constraints indicate that a new mandatory indicator initiative for local jurisdictions is not necessary to address the majority of the Legislature's directive to the then Task Force and now Sustainable Growth Commission. State level organizations, specifically the Department of Planning and the University of Maryland's National Center for Smart Growth, in cooperation with other State agencies and local governments, have access to much of the data necessary to create a comprehensive indicators set that will allow all involved to track progress toward achieving the smart growth goals.

PlanMaryland is the State's first statewide long-range plan for sustainable growth. *PlanMaryland* as an executive policy plan provides a coordinated State strategy for State smart growth efforts, while promoting greater collaboration with local governments._ Indicators will be integral to monitoring the Plan's implementation and goal achievement. Working with local and state level stakeholders to collect data and analyze growth trends, the State will use indicators of smart growth results as part of *PlanMaryland* implementation. These indicators will include

information about land use, housing, transportation, economic, and environmental conditions. The information collected will be from State agencies, with MDP acting as the coordinator and the distribution point. As *PlanMaryland* planning area maps are developed and finalized, indicators can be tailored to each planning area. For instance, an indicator related of redevelopment potential would be most useful to look at within “Targeted Growth and Revitalization Areas” and an indicator related to productivity of farmland would be most useful to look at in the context of “Rural Resource Areas”.

With this in mind, the Workgroup offers the following recommendations to the Commission for their consideration:

1. There is a growing lack of local resources for new initiatives. The State has some ability to produce many of the proposed indicators with local cooperation and input. This leads the Workgroup to its primary recommendation, which is: in cooperation with local jurisdictions, the State should pursue the reviewed indicators it deems important for State policy purposes with its resources. This should be done in the context of *PlanMaryland* with input from appropriate State agencies, as well as local governments.
2. Local governments and the State shall work to develop a formal data collaboration process. It should provide for data collection and verification of any State selected indicators needed for *PlanMaryland* implementation and other State initiatives. If new information becomes available to assess an aspect of smart growth, new indicators could be developed to address those issues. Conversely, if information shows certainindicators to be irrelevant or whose collection effort out weights their value, those indicators should be discontinued. Local jurisdictions shall commit to providing basic information to State agencies that will assist the agencies in developing the indicators.
3. If additional indicators are deemed useful for State policy analysis, State agencies and local governments should work together to add this information to the Department of Planning’s annual report. These should not be limited to the indicators considered by this Workgroup and could be information that is more qualitative in nature.
4. It is recommended that the Maryland Sustainable Growth Commission’s Concentrating Growth Workgroup pursue an assessment of current local government plans and their implementation measures. This assessment should focus on the ability of current measures to produce smart growth. Along with the smart growth assessment, a characterization of current policies’ departure from past practice if earlier policies resulted in sprawl development should be prepared.
5. The *Smart, Green, and Growing-Annual Report- Act* required local jurisdictions’ annual reports to the Maryland Department of Planning to include five measures and indicators of smart growth progress by July 1, 2011. If a jurisdiction processed more than 50 new dwelling building permits, it must calculate:

    a. Amount and share of growth located inside and outside priority funding areas
    b. Net density of growth inside and outside priority funding areas
    c. New lots and number of residential and commercial building permits issued inside and outside of priority funding areas
    d. Updated development capacity analysis every three years

e. Acres of locally funded agricultural land preserved

The Indicators Workgroup offers the following recommendations to the Maryland Department of Planning about this section of the law:

1) The current mandatory annual indicators report submitted by local governments should be analyzed for:
    i. The value gained by State and local decision-makers from the data received.
    ii. The inherit inconsistencies and inaccuracies of the data received —what were they and how can they be addressed
    iii. The usefulness of the data in judging Statewide and local smart growth trends
    iv. The meaningful trends that are discernible for the State's smart growth efforts

2) State Law requires that several mandatory indicators be reported by inside and outside of the priority funding areas. In addition to this requirement, the Workgroup recommends that indicators should also be reported relative to locally designated growth areas and potential *PlanMaryland* Planning areas.

Next Steps

Indicators will continue to be an important aspect of Maryland's smart growth efforts. The Sustainable Growth Commission should remain active in the process of reviewing the use and modification of smart growth indicators. Specifically, the Growth Commission should undertake the following steps in the short term, as well as longer term, to advance progress on the of smart growth efforts.

The indicators legislation from the 2009 General Assembly Session (*Senate Bill 276 and House Bill 295 – Smart, Green, and Growing–Annual Report*) requires the Growth Commission to report to the General Assembly on whether to add additional indicators to the list of required locally generated indicators for local annual reports. The Workgroup recommends that the Growth Commission use this report as a basis for its recommendations to the Maryland legislature by December 31, 2012.

The Growth Commission should set a sunset date for the Indicators Workgroup of December 31, 2012. For the future, the Commission should focus on measures and indicators in the context of other Workgroups. The Concentrating Growth Workgroup is currently working on an effort to collect key indicators to create a "Smart Growth Report Card" that will be issued by the Commission annually, beginning with the February 5, 2013 awards program.

Longer term efforts by the Commission on indicators should be related to *PlanMaryland*. There are goals set forth in the plan related to development, environmental protection, land conservation, transportation, etc. MDP, in consultation with the National Center for Smart

Growth, local governments and other stakeholders, should work to track progress toward meeting policy directives in *PlanMaryland*.

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

November 27, 2012

The Honorable Joan Carter Conway
Maryland Senate
Chair, Education, Health & Environmental Affairs Committee
Miller Senate Office Building, 2 West Wing
11 Bladen St., Annapolis, MD 21401 - 1991

The Honorable Maggie McIntosh
Maryland House of Delegates
Chair, Environmental Matters Committee
House Office Building, Room 251
6 Bladen St., Annapolis, MD 21401

RE: Maryland Watershed Implementation Plan --Accounting for Growth Policy

Dear Senator Conway and Delegate McIntosh:

Throughout 2012, the Maryland Sustainable Growth Commission has been actively engaged in evaluating the State's Watershed Implementation Plan's (WIP) "accounting for growth" (AfG) policy framework. Our discussions have included the SB 236 requirement that, by December 31, 2012, the Department of Environment (MDE) propose regulations to establish nutrient offset requirements for new residential major subdivisions within Tier III areas that are to be served by on-site sewage disposal systems or shared systems. In this effort, we have been well-served by the efforts of our WIP Workgroup (WWG), which includes both Commission members and other interested and expert stakeholders. The WWG has also served in an advisory capacity to the State's Bay Cabinet on AfG and the WIP in general.

As you know, the AfG policy is intended to satisfy both EPA's requirements under the Chesapeake Bay Total Maximum Daily Load (TMDL) and those of the Sustainable Growth and Agricultural Preservation Act of 2012 (SB 236). Under the Bay TMDL, Maryland is expected to mitigate pollution from many sources, including population growth and related new development. Pursuant to its statutory charge to make recommendations for changes in state law, regulations, policies, and procedures it believes are necessary to achieve smart and sustainable growth in Maryland, the Commission is both empowered and expected to comment on the AfG policy.

To date, the Commission has not taken a formal position on the AfG policy or its many elements, which will be the subject of ongoing discussion throughout 2012 and into 2013. However, on November 8, 2012, *the Commission voted to support the simultaneous development of a uniform strategy for implementing offset requirements and trading policies throughout Maryland, even if this delays the proposal of the Tier III regulations beyond the end of 2012*.

As background for this recommendation, the State has been considering whether to develop the AfG Policy only for new residential subdivisions in Tier III (as defined and required in SB 236) through regulations by the end of 2012 with the expectation that the complete AfG and trading regulations that affect development beyond Tier III (the rest of the state) would be developed during the remainder of 2013. MDE indicates that additional work is needed to develop the policy fully with respect to trading and the regulation of aggregators. It also indicates that it is awaiting further guidance from the EPA. However, MDE has not yet clarified what other issues remain unresolved with the generally applicable policy beyond Tier III areas, except to note that redevelopment and infill would not be involved in Tier III.

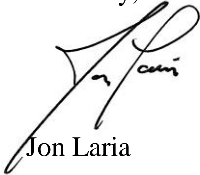
Although some members of the WWG oppose delaying the proposal of the Tier III regulations, there is consensus that a piecemeal approach is undesirable. Accordingly, the WWG recommended, and the full Commission agreed, that the Commission not support separating Tier III from the rest of the policy and instead support the development of a single, complete strategy for implementing AfG offset requirements and trading policies throughout all of Maryland. A single proposal would relieve uncertainty as to how policy elements for each area of the state (Tier III and everywhere else) would interact. It would still provide additional time to address and resolve the remaining issues necessary for effective implementation of the AfG effort, including reporting, verification, and enforcement requirements and possible fee-in-lieu alternatives. Separation of the two initiatives could undermine each one and compromise overall results in the long run.

In supporting simultaneous development of a single strategy for the AfG Policy, the Commission underscores the importance of expediting development of the entire policy despite near term challenges. Pollution caused by new growth that is not accounted for burdens Maryland's citizens and state and local governments with the responsibility to bear all associated costs of offsetting the new load. Accordingly, *the Commission recommends that MDE, in its November presentation to the General Assembly (required by SB236), commit to actions and a timetable that are expected to resolve issues with the current draft AfG Policy and the trading policies. The actions and timetable should commit the State to finalize the regulation so that the program is in place by December 31, 2013, as set forth in Maryland's Phase II WIP*.

The Commission expects to remain actively involved in further development of the AfG policy and other elements of the WIP, and looks forward to making further recommendations.

Please do not hesitate to contact me with any further questions, and thank you for your consideration of this recommendation.

Sincerely,



Jon Laria

Chairman
Maryland Sustainable Growth Commission

cc: Secretary Robert M. Summers, Ph. D, Maryland Department of the Environment