Maryland Sustainable Growth Commission

Rural Economies Workgroup

To: Jon Laria, Chairman, Maryland Sustainable Growth Commission

From: Greg Bowen, Rural Economies Workgroup Chair

Subj: Status Report on Rural Economies Workgroup Activities

Date: July 27, 2015

The Rural Economies Workgroup met on July 10th to review the progress reports and recommendations from the Workgroup's subcommittees (Sustainable Food and Food Production, Sustainable Forestry, Land Preservation and Protected Open Space, Rural Development and Recreation, and Sustainable Fisheries). The Land Preservation & Open Space and the Sustainable Forestry Subcommittees presented specific recommendations (see attached) that Rural Economies Workgroup voted to endorse and transmit to the full Growth Commission for consideration. Please refer to the attached reports. Staff will be at the meeting to answer any technical questions the Commission may have.

In addition to the recommendations of the Land Preservation and Sustainable Forestry Subcommittees, the Rural Development and the Sustainable Food & Food Production Subcommittees continue to meet and develop policy recommendations.

The Rural Development Subcommittee met on June 2nd and July 10th to explore rural growth concerns. At the June 2nd meeting, Les Knapp highlighted the ten rural growth issues identified by the MACO Planning Directors that the Subcommittee may want to investigate (see attached). The follow-up meeting on July 10, the MACo Planning Directors and Rural Development Subcommittee members participated in a conference call discussing in more detail how the PFA law is believed to impede growth in rural areas. Much of the discussion focused on MDP's "PFA Comment Area" process and whether modifications or flexibility could be incorporated into the process for other state agencies use the "PFA Comment Area" determination differently as it applied to state funding and assistance. MDP will be following up with state agencies on this issue.

The Sustainable Food and Food Products Subcommittee held a meeting on June 4th to begin discussing food production, aggregation and distribution in the hope helping Maryland farmers gain more access to local institutional, restaurant and retail markets. Subcommittee members visited the Coastal Sunbelt facility in Savage Maryland to learn more about plans to scale up farm food aggregation and distribution. The subsequent discussion revolved around the nuts and bolts needed to turn the dream of a more complete local food movement into a reality. The subcommittee will be working to identify regulations that impact food production and distribution - and make recommendations to streamline and/or remove regulatory barriers.

The next meeting of the full Workgroup is September 11.

POSITION ON RURAL ECONOMICS AND RURAL LAND

Introduction

What do you see in the picture at left?

A. Attractive rural scenery.

B. An example of the local agricultural economy.

C. Open space that remains undeveloped forever.

D. All of the above.

The correct answer is D! That's why Maryland residents overwhelmingly support state funding of land preservation.

But this photograph shows one more important thing: Economic development.

Farms are businesses, and agriculture is Maryland's biggest business sector. Therefore, in addition to its other benefits, land preservation—for agriculture and other purposes —is good for the rural economy.

This report examines the funding and effectiveness of Maryland's land preservation efforts, an important effort that is undermined by the further spread of sprawl development. We put the recommendations for state action below and the supporting details on the pages following.

Recommendations

- Recognize that land preservation is economic development and makes fiscal sense. Governor Hogan and the General Assembly can support this recommendation with a perspective that land preservation funding is not just good policy but essential to rural resource-based economic development and fiscal responsibility. Preservation costs less than servicing rural land after it is developed.
  - Stop diverting revenue that is dedicated to land preservation, recreation, and heritage areas. (i.e., the real estate transfer tax and agricultural land transfer tax). This can be done permanently through a legislative commitment to a "lockbox" for land preservation funds or a constitutional amendment to prohibit diversion of the funds.
  - Change the law (Article - Tax – General §10–723) to raise the annual state income tax deduction cap for donated easements or discounted sales, and expand eligibility to a surviving spouse, head of household, or a pass–through entity with more than one member. Make the tax credit transferable.

The Maryland Agricultural Land Preservation Foundation: Created by the General Assembly in 1977, MALPF purchases agricultural preservation easements on prime farmland and woodland. The program operates in all of Maryland's 23 counties. Through FY 2014, a public investment of over $645 million purchased MALPF easements on 2,154 properties, perma-nently preserving over 292,000 acres.

Rural Legacy: Enacted by the General Assembly in 1997, Maryland's Rural Legacy program has dedicated over $275 million to preserve over 80,000 acres of valuable farmland, forests, and natural

- Ensure that any modification to existing state land preservation and recreation programs creates more effective means of land and easement acquisition and does NOT reallocate existing funds as an excuse for reducing them.
- Consider a number of actions to improve the performance of county TDR programs (see state TDR enabling law in Appendix):
  - Expedited state funding and approvals for infrastructure in TDR receiving areas.
  - A state-sponsored interjurisdictional TDR pilot project for which a county and one of its incorporated municipalities can volunteer.
  - MDP assistance in holding charrettes and creating form-based codes for the design of TDR receiving areas.
  - Explore other ways to incentivize TDRs in slow growing areas without jeopardizing denser development in receiving areas.

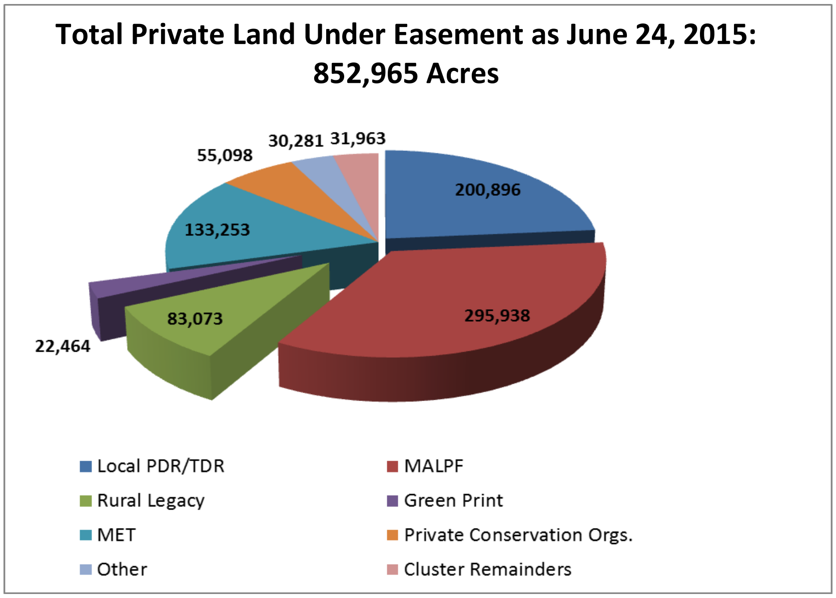
The Business of Agriculture, Forestry, and Recreation in Maryland

According to the U.S. Census of Agriculture, almost $2.3 BILLION worth of agricultural products was sold in Maryland in 2012. When the state buys land preservation easements, through programs such as the Maryland Agricultural Land Preservation Foundation (MALPF) or Rural Legacy, it pays landowners to limit their right to build on the land. Farmers, more often than not, reinvest much of that money into their farms. That money circulates in the local economy, ending up in the hands of farm employees; seed, fertilizer, and equipment dealers; local mechanics and veterinarians; local processors; etc. Maryland land owners can also sell an easement to federal programs or donate an easement to local land trusts or the Maryland Environmental Trust. Some counties run their own purchase of development rights (PDR) or transfer of development rights (TDR) programs. The land protected in Maryland by easement programs of all kinds totals almost 853,000 acres.

Farming is a risky business; easement funding helps reassure young farmers that agriculture has a long-term future in Maryland.

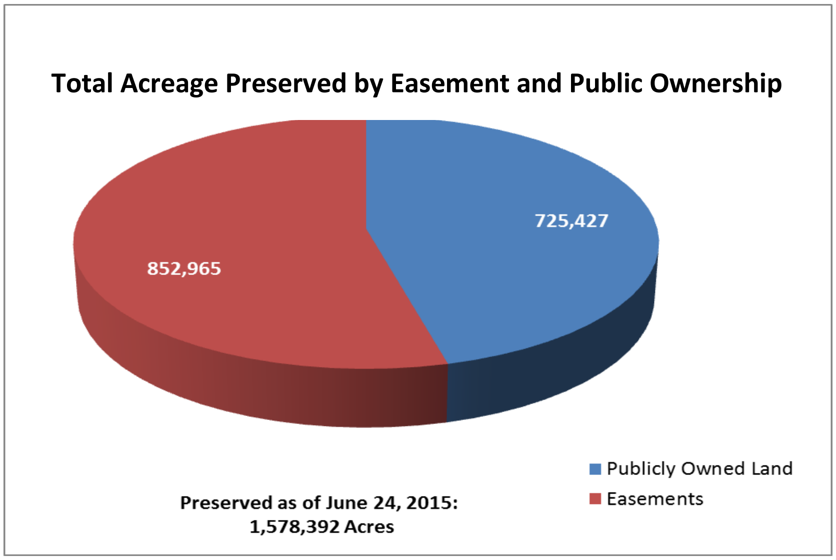
Maryland is also home to over 1,300 businesses that depend on trees. The forestry sector accounts for over $760 million in direct output and over 10,000 direct jobs, and indirect and induced impacts of another $4 billion to the Maryland economy, including $26 million of taxes paid to the state. [Maryland Forest Service, 2012.] Land preservation programs such as MALPF and Rural Legacy protect forested land as well as farmland.

In addition to their contribution to the economy, preserved farms and forests provide valuable "ecological services": protecting the water supply, cleaning the air and filtering stormwater runoff, and providing habitat for wildlife. By remaining farms and forests instead of converting to development, they also contain the expansion of expensive public services such as roads and schools. (Perhaps you've heard the adage that "Cows Don't Go to School.")



Another kind of preserved land is owned by the local, state, or federal government, which bought it from private landowners for the benefit of the public. This land comprises parks, trails, wildlife refuges, state forests, and the like. They preserve natural resources but also provide opportunities to hunt, fish, hike, bike, camp, launch a boat, etc. According to Maryland's *Land Preservation and Recreation Plan 2014-2018*, "[i]n Maryland, the outdoor economy generates $9.5 billion in consumer spending, 85,000 jobs, and $686 million in state and local tax revenue, according to the Outdoor Industry Association."

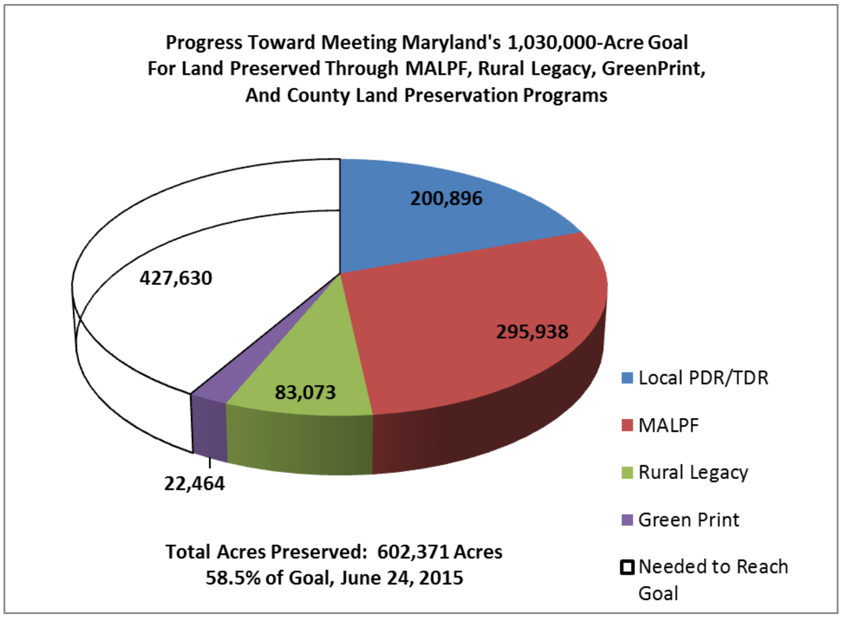
Publicly owned land in Maryland totals over 725,000 acres. Publicly owned land plus privately owned land covered by preservation easements add up to over 1,578,000 acres, or about 25.5% of Maryland's land outside of Baltimore City. Developed land, according to MDP's 2007 land use/land cover analysis, totals almost 1,617,000 acres, or 26.1% of state land outside of Baltimore City. For every acre developed, .97 of an acre has been preserved.



While this report focuses on increasing the amount of preserved land, we should remember that development will also continue in the future. In a report called *Presto! The Plan for Regional Sustainability Tomorrow*,[1] the National Center for Smart Growth Research & Education projects that nearly 140,000 acres of farmland and 225,000 acres of forest will be developed between 2007 and 2030.

[1] The PRESTO project started in 2014.

How Much Preserved Land Is Enough?



Maryland has an official agricultural-land preservation goal. It was established by a Joint Resolution of the Maryland legislature—SJ 10 and HJ 22—in 2002, which stated, "RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That the statewide goal is to triple the existing number of acres of productive agricultural land preserved by the Maryland Agricultural Land Preservation Foundation, GreenPrint, Rural Legacy, and Local Preservation programs by the year 2022…." What is the rationale for the goal? According to page twelve of the *Interim Report of Task Force to Study the Maryland Agricultural Land Preservation Foundation* (January 2003), 1,030,000 acres "is roughly the number of acres estimated by the Task Force (1.2 million) as needed to support production of a fairly wide range of agricultural products in Maryland."

In the thirteen years since the goal was created, over 324,000 acres more have been preserved through the four participating programs, bringing the preservation total to over 602,000 acres. This is less than 60% of the 1,030,000-acres goal. It is virtually impossible to preserve the 428,000 remaining acres needed to reach the goal by 2022. (During the first 12 years that the goal was in existence, 118,819 acres were converted to development (i.e., subject to agricultural land transfer tax). This is about 37% of the amount of acreage preserved. (Data for FY 2015 are not yet available.)

Even so, the 1,030,000-acre goal seems arbitrary and too low. The counties themselves have farmland preservation goals, which are found in their comprehensive plans (except as noted in the table below). The sum of these individual county goals is almost 1.7 million acres. Even though this goal comprises all easement programs—not just the four programs of the state's goal—we are only halfway toward achieving it. This goal does not include the further public acquisition of land for recreation and environmental purposes.

County Acreage Goals for Agricultural Land Preservation

	Goal	Under Easement, All Types	% of Goal Achieved
Allegany	10,400	4,008	38.5%
Anne Arundel	40,000	18,082	45.2%
Baltimore	80,000	62,386	78.0%
Calvert	40,000	32,276	80.7%
Caroline	135,000	48,907	36.2%
Carroll	100,000	63,539	63.5%
Cecil	80,000	26,687	33.4%
Charles	97,800	40,680	41.6%
Dorchester	100,000	42,475	42.5%
Frederick	100,000	57,558	57.6%
Garrett	20,000	14,894	74.5%
Harford	55,000	49,154	89.4%
Howard	40,000	31,041	77.6%
Kent	114,340	37,319	32.6%
Montgomery	70,000	72,996	104.3%
Prince George's	46,000	22,939	49.9%
Queen Anne's	100,000	67,848	67.8%

Public Funding Is Essential

Land preservation is popular: a 2003 statewide survey commissioned by MDP and DNR showed that government actions to acquire more parkland (90.8%), protect lands for wildlife, water quality, and the environment (97.1%), preserve farmland (91.9%), and provide public access to waterways (88.6%) are either "very" or "somewhat" important. Marylanders strongly support a variety of governmental actions to conserve land and manage growth and development. Eighty to 92% of respondents agreed strongly or somewhat that governments should "limit growth through …land use regulation, require developers to preserve more natural …open space, buy more land for parks, and provide more economic incentives to landowners for conservation."

However, after passage of The Sustainable Growth & Agricultural Preservation Act of 2012 ("the septics law")—which limits development on septic systems in rural areas designated by the counties as "Tier IV"—some people surmised that the purchase of land preservation easements was no longer necessary. After all, by curtailing development the septics law saves farmland, right?

Well…no. Laws can change, but easements are permanent. Also, some counties—such as Baltimore, Frederick, Kent, Montgomery, and Worcester—have zoning that was already more protective than the septics law, yet the state and local governments nonetheless recognized the importance of removing development rights by purchasing easements there. Finally, land preservation is economic development. If farmers could realize the equity in their land only by selling off a piece for a minor subdivision instead of selling an easement, they would undermine their own operations and would not have the confidence that the state and local governments were committed to agriculture. The development of rural land, even for just minor subdivisions, is not rural economic development, it's urbanization.

Most of the state's funding for easements and land acquisition comes from the 0.5 percent tax on real estate transfers that is dedicated to Program Open Space (POS). POS funds State Side POS, Local Side POS, MALPF, and Rural Legacy. Revenues also fund the Heritage Conservation Fund and Heritage Areas Authority, and a portion of state park operating expenses. A separate agricultural land transfer tax, which is levied when farmland no longer qualifies for agricultural assessment because it is converting to development, provides a much smaller funding stream to MALPF and local land preservation programs.

The Maryland Heritage Areas Program

Created by the General Assembly in 1996, the Maryland Heritage Areas Program (MHAP) preserves and enhances Maryland's historic sites and towns, unspoiled natural landscapes, and cultural traditions.

- MHAP improves public access to these resources and fosters economic development through heritage tourism. Funding of up to $3 million annually comes from the state property transfer tax/POS.
- Every Maryland county and Baltimore City have at least part of one of the thirteen State-certified Heritage Areas within their boundaries.
- Each Heritage Area is *locally managed* and state-certified. The state funds matching grants, loans, and tax incentives. State and local technical assistance is available to non-profits, governments, businesses, and individuals for heritage tourism projects.

MHAP provides funds for the acquisition of heritage sites, preservation of land in historic towns, and land for trails and parks development by local governments. These heritage tourism enhancements—public access and interpretation at parks, trails, historic sites, and along Scenic Byways—along with assistance for marketing and outreach, play a critical role in making publicly accessible lands that acquired with public funds.

Studies show that heritage tourists stay longer and spend more money than other visitors. Since 1996, MHAP has awarded grants totaling almost $35.2 million for heritage tourism projects, leveraging $103.7 million in non-State matching support for 732 projects statewide—almost a 3:1 match. Capital grants are directed to *Targeted Investment Projects* with a high potential for leveraging non-state funds and encouraging tourism-related development.

These dedicated funds are insufficient for Maryland's land preservation needs. The Task Force to Study the Maryland Agricultural Land Preservation Foundation used optimistic revenue projections and still concluded that full, dedicated funding for all state and local rural land preservation programs would fall about $800 million short of the amount needed to achieve the state's goal of preserving 1.03 million acres of productive agricultural land through MALPF, Rural Legacy, local PDR/TDR programs, and the (now sunsetted) GreenPrint program by 2022. Imagine how much larger the funding shortfall would be to preserve another 800,000-plus acres to meet county farmland preservation goals that total almost 1.7 million acres and to buy additional acres for recreation and resource conservation. Local governments estimated that their needs-based priorities for recreational land acquisition and facility development for 2005 to 2020 totaled $2.27 billion—far less than will be provided through local side POS under the distribution formula established in the November 2007 Special Session of the General Assembly.[2]

To make matters worse, the transfer taxes that are dedicated to buying land and easements have been routinely diverted to the general fund during economic downturns. Partners for Open Space reports that since the creation of POS, over $1 billion have been diverted to other budget items. A law passed during the administration of Governor Robert Ehrlich called for the repayment of diverted funds; however, it has been suspended by the legislature's Budget Reconciliation and Financing Acts. Every year a "lockbox" bill to shield land preservation funds is introduced but doesn't pass.

Other Dormant Programs

Next Generation Farmland Acquisition Program (NGFAP)—The Maryland General Assembly created this program of the Maryland Agricultural and Resource-Based Industry Development Corporation (MARBIDCO) to help young farmers who have trouble entering the profession because of high land costs. Under the law, which is based on the recommendations of the Agricultural Stewardship Commission, commercial lenders would qualify young or beginning farmers for this program by granting a mortgage, then bringing forward an NGFAP

[2] No estimate is available for the amount of funds needed to preserve the state's priority natural resource lands identified in the Department of Natural Resources' latest inventory and evaluation. But the cost of protecting hundreds of thousands of acres through in-fee acquisition by Stateside POS will far exceed the funding available for that program.

application to MARBIDCO. With the lender's tentative agreement to finance the purchase of the farm property, MARBIDCO would then purchase an easement option for the development rights at 51% of fair market value, with those monies being made available to the young farmer at the settlement table.

The young farmer who sold the easement option to MARBIDCO has up to seven years to sell an easement to a Maryland land conservation program of his or her choosing (e.g., MALPF, Rural Legacy, a county program, or a private land trust). After seven years, if the sale of a permanent easement on the property has not been executed, MARBIDCO would exercise its easement purchase option and convey that easement to MALPF. If the young farmer is able to sell an easement, then the monies MARBIDCO provided at settlement would be returned in full, going back into the Next Generation program to be used in making future easement option purchases.

In 2008, Senate Bill 662, *Agricultural Land Transfer Tax - Rates and Distribution of Revenue*, imposed a 25% surcharge on the existing agricultural land transfer tax. Up to $4 million from the state's share of the revenue, including the 25% surcharge, were to be distributed to MARBIDCO after the first $2.5 million in revenues is distributed to MALPF. Because of the recession, however, since FY 2009 the state's share of agricultural land transfer tax revenue each year has not exceeded about $1.7 million. As a result, all of the agricultural land transfer tax revenues collected since then, including all the "new" surcharge monies, has been distributed to MALPF, with no funds left for NGFAP.

Maryland Critical Farms Program—This program was enacted in 2005 and amended in 2011. It assists young and beginning farmers by providing emergency financing for the acquisition of farms that are on the verge of being sold for nonagricultural uses. The program pays either the seller or the buyer for an easement option; this money, combined with other funds that the buyer has, allows him or her to afford the farm. The buyer then sells an easement to MALPF, if possible. "After a final easement sale, the Foundation shall be reimbursed by the Critical Farms Program participant for the amount that was paid by the Foundation for the easement option…. The Foundation shall deposit the reimbursement in the Critical Farms Fund" (Department of Agriculture Article, § 2-517(c)(3)(4)).

The law also allows MALPF to buy, in fee, farms that are under immediate threat of development and then resell the land with an easement attached. The land must meet state and county criteria for importance based on its size, highly productive soils, and strategic location.

Funding has not been available for this program either, and regulations have not been drafted. The Foundation is unable to administer a new program in the foreseeable future due to the necessity of focusing on the stewardship of existing easements. Auditors have criticized the Foundation for timeliness in resolving stewardship issues.

State Income Tax Credits on Donated or Discounted Easements

With funding for land preservation so scarce, alternative easement acquisition tools are crucial. One important tool is tax credits for landowners who donate easements or sell them at a discount.

In Maryland, an individual can claim a credit against state income tax of up to $5,000 per year, for up to 15 years, for the value of a donated or discounted easement. For example, if an easement is valued at $500,000 and the landowner accepts $425,000, he or she can take a credit against state income tax for the $75,000 donation—$5,000 per year for 15 years—but only if the tax burden is higher. The credit cannot exceed the amount of income tax due. This credit isn't much, given the value of easements, but does provide some incentive for donating or discounting an easement to MALPF or MET.

HB 002—*Income Tax Credit - Preservation and Conservation Easements*—was introduced in the Maryland House of Delegates in 2015. This bill would have raised the credit to $10,000 for a couple filing jointly, a surviving spouse, "or a pass-through [business] entity with more than one member." The latter includes S corporations (a definition of which is included below).[3] The bill placed a cap on 35 credits per year.

Even though the improvements to the tax credit bill were modest, it died in the house committee.

An important provision of the bill would have made the tax credit transferable: a farmer who does not have a high state income tax liability could offer his or her easement at a discount—thereby increasing the likelihood of selling an easement—and sell the tax credit (at a discount) to someone who needs one.

For example, Virginia acquires most of its easements through a transferable tax credit program that allows an income tax credit for 40% of the value of donated land or conservation easements. Taxpayers may take a credit of up to $100,000 per year for the year of sale and the ten subsequent tax years. Unused credits may be sold, allowing individuals with little or no Virginia income tax burden to take advantage of this benefit.

Breaking the Covenant with Landowners

Even when funding is plentiful, easements alone cannot sustain agriculture and forestry; effective local zoning and other land use management tools are also needed to reduce the fragmentation of the rural land on which resource-based businesses depend. However, public acceptance of land use regulation depends upon preservation funding. In the past, whenever state action such as the septics law or local improvements to rural zoning caused a (real or perceived) fall in land values, local and state governments highlighted

[3] An S corporation is a corporation that elects to be treated as a pass-through entity (like a sole proprietorship or partnership) for tax purposes. Since all corporate income is "passed through" directly to the shareholders who include the income on their individual tax returns, S corporations are not subject to double taxation. Moreover, the accounting for an S corporation is generally easier than for a C corporation. It must not have more than 100 shareholders, and each of them must consent. (A married couple is treated as one shareholder).

Maryland's easement programs: money was always available to buy development rights, which allowed landowners to realize much of the equity in their land while retaining ownership. By repeatedly diverting dedicated preservation funds to the general fund, the state has broken its covenant with farmers and other landowners.

The damage this does to land preservation in Maryland cannot be overstated.

Stable, reliable funding is needed to ensure that landowners feel confident in the state's land preservation programs. Otherwise, they may feel compelled to sell their land and give up farming. The roller-coaster funding strains credibility.

Programs that Complement Public Funding

Transfer of Development Rights (TDR) programs are another useful tool for preserving land. They do not require public funds because developers pay rural landowners for their development rights. In this era of diminished funding for PDRs, TDR programs become an attractive alternative.

Here is an official definition:

> A Transfer of Development Rights program is a procedure, prescribed by local ordinance, whereby the owner of a parcel in a "sending area"—i.e., rural or environmentally sensitive land that is planned for preservation—may convey development rights to the owner of a parcel in the receiving district—i.e., where developed is desired and planned for—so that the development rights are extinguished on the sending parcel and may be exercised on the receiving parcel in addition to the development rights already existing.[4]

For TDR programs to be successful, incentives must exist for sellers to sell development rights and for buyers to buy. About a dozen counties in Maryland have TDR programs on the books. All but Montgomery's and Calvert's have seen limited or little success. In some places, development demand is met by existing zoning or bonus density options, and there is no demand for TDRs. Sometimes TDR programs don't work because the political will to make them truly effective is lacking, and the county makes it too easy not to buy TDRs.

Another obstacle to successful TDR programs is that residents often oppose increased density in receiving areas; they don't like the development they already get, so of course they don't want even more of it. Public involvement in creating receiving areas—for example, through a public charrette process—can make residents feel like partners in rather than victims of the development process. The result can create not mere subdivisions but desirable places: high quality, mixed use, amenity-filled neighborhoods. Higher density stops being an issue.

[4] Adapted from a definition provided in the American Planning Association's Model Transfer of Development Rights Ordinance. Model Smart Land Development Regulations, Interim PAS Report, © American Planning Association, March 2006.

The state can help local TDR programs by expediting infrastructure funding and permitting in a county that is serious about TDRs, especially if the county can partner with a municipality willing to be a receiving area as part of an interjurisdictional TDR demonstration project.

Another way the state can help is to run the charrettes and develop the form-based codes that make extra density an amenity instead of an eyesore.

http://www.jamescitycountyva.gov/jccplans/tdr.html

Recommendations for State Action

- Recognize that land preservation is economic development and makes fiscal sense. Governor Hogan and the General Assembly can support this recommendation with a perspective that land preservation funding is not just good policy but essential to rural resource-based economic development and fiscal responsibility. Preservation costs less than servicing rural land after it is developed.
  - Stop diverting revenue that is dedicated to land preservation, recreation, and heritage areas (i.e., the real estate transfer tax and agricultural land transfer tax). This can be done permanently through a legislative commitment to a "lockbox" for land preservation funds or a constitutional amendment to prohibit diversion of the funds.
  - Change the law (Article - Tax – General §10–723) to raise the annual state income tax deduction cap for donated easements or discounted sales, and expand eligibility to a surviving spouse, head of household, or a pass–through entity with more than one member. Make the tax credit transferable.

- Ensure that any modification to existing state land preservation and recreation programs creates more effective means of land and easement acquisition and does NOT reallocate existing funds as an excuse for reducing them.
- Consider a number of actions to improve the performance of county TDR programs (see state TDR enabling law in Appendix):
  - Expedited state funding and approvals for infrastructure in TDR receiving areas.
  - A state-sponsored interjurisdictional TDR pilot project for which a county and one of its incorporated municipalities can volunteer.
  - MDP assistance in holding charrettes and creating form-based codes for the design of TDR receiving areas.
  - Explore other ways to incentivize TDRs in slow growing areas without jeopardizing denser development in receiving areas.

Appendix: State of Maryland TDR Enabling Legislation

Land Use Article, Division i. Single-jurisdiction planning and zoning. Title 7. Other development management tools. Subtitle 2. Transfer of development rights.

§ 7-201. Local authority.

A legislative body that exercises authority granted by this division may establish a program for the transfer of development rights to:

(1) encourage the preservation of natural resources; and

(2) facilitate orderly growth and development in the State in conjunction with programs for preservation of open space and agricultural land and other development management programs and techniques.

HISTORY: An. Code 1957, art. 66B, § 11.01(a); 2012, ch. 426, § 2; 2013, ch. 674.

§ 7-202. Priority funding areas.

(a) "Public facility" defined. -- In this section, "public facility" includes:

(1) recreational facilities;

(2) transportation facilities and transit-oriented development; and

(3) schools and educational facilities.

(b) Authority. -- A legislative body that exercises authority granted by this division may establish a program for the transfer of development rights within a priority funding area to assist a local jurisdiction in the acquisition of land for the construction of a public facility within a priority funding area.

(c) Use of proceeds. –

(1) Except as provided in paragraph (2) of this subsection, proceeds of the sale of development rights shall be used to assist in:

(i) the acquisition of the public site; or

(ii) the construction of the public facility.

(2) For schools and educational facilities, proceeds of the sale of development rights may only be used to assist in the acquisition of the land on which the school or educational facility will be located.

(d) Limitations on sale. –

(1) Any development rights sold under this section may only be transferred within a priority funding area.

(2) Development rights associated with existing public land that is owned by a local jurisdiction on October 1, 2009, may not be sold or transferred under this section.

HISTORY: An. Code 1957, art. 66B, § 11.01(1)(i), (iii), (b)(2)-(5); 2012, ch. 66, § 6; ch. 426, § 2.

Report of Priority Action Items with Recommended Paths Forward

The Sustainable Forestry Subcommittee of the Rural Economies Workgroup has identified several impediments to an economically and environmentally healthy forestry sector in Maryland, along with action items that would help in addressing them.

In each case below, as we move forward the Rural Economies Workgroup will periodically report to the Maryland Sustainable Growth Commission on the progress of each "path forward" and will indicate whether any problems arise that would require a different approach.

1. Integration of sediment and erosion control plans into forest management plans

   Forest management plans allow forest landowners to lay out the expected activities on their land over a 15 year period through the guidance of a Maryland licensed professional forester. Currently, a primary incentive for landowners to seek the development of a forest management plan is they can receive tax benefits based on the expectation that the land will be kept as well-managed forest. In the future, the prospect of eliminating a significant bureaucratic barrier to the timely marketing of products by incorporating planned harvesting activities in the overall forest management plan guidance is expected to greatly increase the acreage of forests benefiting from professional planning. . The subcommittee identified that more landowners would engage in forest planning if a sediment and erosion control plan, required for all forest harvests, could be integrated into a forest management plan. This would bring regulations guiding silviculture more into line with those applying to agriculture in the state. Essentially, any harvesting expected to occur during the planning horizon would be thoroughly integrated into the forest management plan, and all of the required approvals would be obtained during the preparation of the forest management plan, e.g. review by Maryland DNR's Wildlife and Heritage Service. This is exactly parallel to Soil & Water Quality Plans (i.e., "farm plans"). This change may not need to be legislated, but would require regulatory collaboration between MDE (responsible for erosion and sediment control plans), DNR (responsible for establishing the standards of forest management plans and also happens to prepare the majority of forest management plans), county governments, and the Maryland Association of Soil Conservation Districts (MASCD)(review harvest applications).   Numerous landowner and industry surveys dating back since at least the past decade have consistently ranked this issue as a primary issue to address. It would improve business efficiency while simultaneously increase the amount of forested land being cared for with professional guidance.

   Path forward: pursue regulatory collaboration between DNR, MDE, county governments, and soil conservation districts to implement this measure.

2. Standardize the application procedure for harvesting across the state.

   Currently, the process to apply for a harvesting permit is not consistent across the state. It varies county to county, as detailed by the Maryland Green Book, put out by UM Extension. The lack of a consistent process was identified by the industry, foresters and landowners as a major impediment to harvesting and continued commitment to keeping forest as forest, particularly in counties where the wait for a completed application was exceptionally long, costly, or cumbersome. We propose creating standard guidelines for applying for and obtaining a forest harvesting permit. The exact standardized process is to be determined but would likely build off of similar efforts partially attempted in the 1990s but failed to be completed due to staffing reductions at DNR and MDE.

Path forward: pursue MACo, DNR and MDE collaboration to create a standard guideline for forest harvest applications to be recommended for all Maryland counties. This would be a non-regulatory, non-legislative approach.

3. Expand the market for local wood through the following means: (a) make local wood the preferred building material for state construction projects (this might require working with the Maryland Green Building Council); (b) establish a "Buy Local" campaign by partnering with wood marketing programs (e.g. SUSTA) in a formal, deliberate, sustained and committed fashion to promote and market Maryland made wood products; (c) add an addendum to the state's building code allowing the appropriate use of local lumber.

   Path forward: DNR and MDP will conduct research to determine the best approach for implementing this recommendation, including discussions with DHCD and the Maryland Green Building Council, and will bring that approach forward to the Growth Commission for its endorsement.

4. Provide incentives, such as tax credits, cost-share and/or technical assistance to developers or builders who install pellet stoves or wood chip boilers in new residential or commercial construction.

   Path forward: DNR will initiate discussions with the Maryland Energy Administration and stakeholders to identify a legislative approach that all parties can agree to.

5. Expand the Maryland Forests Products Utilization and Marketing Program in support of private forest landowners and develop a robust plan addressing emerging opportunities such a biofuels and ecosystem services. To make this a success, ensure that Maryland's annual budget provides for both the University of Maryland Extension and DNR Forest Service to have a full-time employee dedicated to forestry (language from the Sustainable Forestry Act of 2008 could be referenced to support this).

   Path forward: DNR and the University of Maryland Extension will develop a budget proposal, supported at the top executive level in each organization, for consideration by the Governor's Office in their annual budget.

6. Establish a policy for forest cooperatives in Maryland.

Maryland does not currently have a policy to govern potential forest cooperatives in the State. This was brought to light with the recent formation of a group of forest landowners in the Prettyboy Reservoir area of Baltimore Co. Forest cooperatives are advantageous to landowners as they allow small landowners to aggregate their resources (or needs) to capture economies of scale for management activities and harvests, and in some cases, marketing. Forest cooperatives have been successfully established in states like Massachusetts, Virginia, Florida, and Wisconsin, to name a few. The Mountain Loggers Cooperative Association is a long-lived successful “buyer’s cooperative” serving logging business members in western Maryland, West Virginia and Pennsylvania. The proposed policy would encourage the voluntary creation of forestry cooperatives among landowners and allow them to apply jointly for forest harvest permits, grants, cost-share funds, and formulate a group forest management plan. This would expand access to timber products otherwise “locked up” in land tracts too small to efficiently operate, and would allow small landowners to collaborate with neighbors to achieve common forest improvements (e.g., thinning overcrowded woods to improve growth and quality or salvage harvesting due to insects and disease).

Path forward: DNR will collaborate with MDE to rewrite state policy governing applications for harvest permits, grants, cost-share funds, and forest management plans to allow for applications by a state sanctioned forest landowner cooperative. This will not require a regulatory or legislative approach.

7. Provide a zero property tax for landowners enrolling 10 acres or more in an easement that requires generating forest products on a 30-year term. Only properties in specific "working landscape" districts would qualify.

   Path forward: DNR will initiate discussions with the Comptroller's Office and stakeholders to identify a legislative approach that all parties can agree to.

8. Support markets for products using wood residues/by-products/waste (e.g. wood plastic composites, structural lumber, fenestration components, signage, wood stove or boiler fuel pellets, feedstock for cellulosic ethanol production, wood waste from urban wood maintenance) and provide incentives to builders who use building materials made from locally sourced wood residue. To accomplish this, expand the Maryland Forests Products Utilization and Marketing Program to allow additional resources to be dedicated to market development for waste wood material, and provide a tax incentive to manufacturers and builders that use a certain percentage of waste wood materials in their operations.

   Path forward: DNR, in collaboration with the Maryland Wood Energy Coalition, will pursue the same actions as under action items 5 and 7.

Maryland Sustainable Growth Commission – Rural Economies Workgroup Agenda and Notes Document Rural Development and Recreation Subcommittee	
Meeting Notes For:	**Subcommittee on Rural Development & Recreation**
Date and time:	June 2, 2015
Called by: Chuck Boyd	Facilitator's Name: Chuck Boyd
Attendance:	Chuck Boyd, Elliot Campbell, Deborah Carpenter, Colby Ferguson, Les Knapp, Charlotte Lawson Davis, John Leocha, Jim Mullin, David Umling
Notes Taken By:	Chuck Boyd

Agenda and Notes:

1. **Review and comment on "Rural Economies Workgroup Draft Statement of Responsibilities, Goal, & Objectives"**
   General agreement of draft statement and no comments or revisions proposed.
2. **Review and discussion on Les Knapp's report on County Planning Directors recommended strategies to be investigated by the Subcommittee.**
   Les Knapp highlighted the ten rural growth issues identified by the MACO Planning Directors that the Subcommittee may want to investigate. There was general agreement by the participants that these were all good issues to consider. David Umling had suggested (and Les agreed) that the "Acknowledgement of Urban and Rural Differences in Maryland's Smart Growth Model (Item #1 on his list) be expanded to specifically include municipalities in rural areas. The group consensus was that differences in smart growth between urban and rural parts of the state applied to both municipalities and counties, and not just counties. The participants noted that several of the identified rural growth issues relate to the PFA law. This matter was discussed in greater detail in agenda item #4 below. To help prioritize the Subcommittee's investigation of the issues, Chuck Boyd suggested that each member of the Subcommittee identify and email to him their top three rural growth issues to investigate.
3. **Review and discussion on follow-up efforts and areas of investigation related to STAR Report.**
   There was general agreement from the participants that the STAR report provided a good overview of the economic development concerns and priorities of western Maryland counties. Participants noted that the STAR report serves as a good template for similar reports on rural economic development issues in southern Maryland and the eastern shore. Chuck Boyd noted this may be something MDP could consider as a future work program effort, if the National Center for Smart Growth wasn't able to

pursue similar reports in other rural parts of the state.

4. **Review existing Priority Funding Area Law and discuss areas of possible investigation related to "improving Maryland's smart growth model to better address rural land use and economic development needs."**
The general agreement from the Subcommittee was that in rural parts of the Maryland the PFA law is perceived to impede growth from occurring. It was discussed that this perception may not be backed up by specific examples of where the PFA law precluded economic development, but the perception still exists. It was pointed out that more education about the PFA law is needed to improve understanding and address the mistrust that that exist in rural areas on how the law negatively impacts them. Also, further investigation is need on how the PFA law is administered to see if changes to law should be considered. Les Knapp offered to have a discussion of the PFA law at the next MACO Planning Directors meeting on July 10 at 11 am. Accommodations would be made for Subcommittee participants to call in to the meeting. Chuck Boyd will work with Les on organizing this meeting.

Key Actions (and who has agreed take on)	Describe action and indicate when action is due
1. Chuck Boyd	Send an email asking each Subcommittee members to identify their top three rural growth issues to investigate, using the MACO list.
2. Les Knapp	Coordinate with Chuck on the follow-up PFA discussion at the July 10 MACO Planning Directors' meeting
3. Subcommittee	Send top three rural growth issues to Chuck Boyd by June 5
4.	
Resource Materials used and draft documents	- Agenda, draft Rural Economies Statement; MACO letter on Rural Growth Issues

Rural Development & Recreation Subcommittee Participant's Top Priorities based on MACO's Planning Directors' List of Rural Growth Issues and Concerns

1. Acknowledgment of Urban and Rural Differences In Maryland's Smart Growth Model

The largest failing of Maryland's Smart Growth model has been the increasing perception that the policy is designed to benefit urban areas of the state at the expense of rural areas. Actions taken under the prior Administration intentionally or unintentionally reinforced that perception.

Maryland's Smart Growth model can and should support all regions of the state. While the remaining nine issues in this letter focus on specific policy changes, it is critical that the Smart Growth "brand" clearly acknowledge the different needs between urban and rural regions and incorporate flexible policies to address those differences. The Commission is very aware that "one size does not fit all" but this needs to be better expressed in the state's Smart Growth laws, regulations, and policies.

One of Three Top Priorities listed by 3

2. Disconnect between Priority Funding Areas (PFAs) and Locally Designated Growth Areas

One of the most significant concerns raised by rural jurisdictions is the disconnect between PFAs and locally designated growth areas. When PFAs were created in 1997, they were primarily addressed where the State would focus its fiscal resources. However, over time the role of PFAs has expanded to become de facto growth areas.

This expansion did not cause major problems for urban counties as locally designated growth areas and PFAs largely overlapped. However, PFAs did not cleanly overlay with locally designated growth areas in most rural counties, creating significant long term growth and planning challenges.

While all counties should concentrate their growth, the Commission should review whether locally designated growth areas should be allowed in addition to or as a substitute for PFAs. Such areas should be developed in accordance with established planning processes and reflect a long-term commitment of the designating county.

One of Three Top Priorities listed by 3

3. Handling Growth on Well and Septic Systems

While most growth in the State will (and should) take place on public water and sewer, there needs to be an acknowledgment that some growth in rural areas will continue to occur on well and septic systems. While PFAs require public water and sewer as a baseline, there are some rural PFAs that do not have water and sewer and will likely never have it.

While the controversial septic tier requirements from SB 236 of 2012 limit the amount of growth that can occur on septic systems, the Commission should consider how Smart Growth can better foster growth in PFAs/growth areas where water and sewer are not viable options.

One of Three Top Priorities listed by 2

4. Density and Mixed-Use Development Standards

The current PFA density standard is an average of 3.5 residential units/acre. This standard is fine for more densely developed urban areas but may not always be appropriate for rural areas. The Commission should study whether a lower density might be acceptable in certain rural PFAs/growth areas.

Additionally, the Commission should develop policy standards for mixed-use development in rural areas. Many of the current policies/guidelines assume a densely populated urban setting and outside of small "main street" type applications, are not very applicable to rural communities.

One of Three Top Priorities listed by 1

5. Roads As Primary Transportation Mode

Maryland's Smart Growth policies assume a multi-modal transportation system (roads, mass transit, hiking trails, bike paths) but the reality of most rural areas is that roads are and will remain the primary transportation mode. While some alternative transportation modes, such as hiking or bike trail linkages may be possible, the Commission should review and recommend changes to existing Smart Growth policies on road projects and transportation planning in rural areas.

Not listed as top priority

6. Rural Mass Transit and Transit Oriented Development (TOD) Options

While roads are the primary transportation mode and connection modality in rural areas, rural mass transit should not be neglected. The Commission should examine rural mass transit options (such as trolley and local bus lines) and TOD models (such as commercial development around freight rail hubs).

One of Three Top Priorities listed by 1

7. Connections Between PFAs/Growth Areas

Connections between PFAs/growth areas are important in any region; however they are particularly important in rural areas, where certain amenities or businesses may only be available in one of several proximate PFAs/growth areas.

Road projects designed to connect or strengthen connections between PFAs/growth areas should not have to be subject to PFA exception processes. Instead, such projects should be viewed as fostering concentrated growth.

Not listed as top priority

8. Centralization of Key Facilities Between Multiple PFAs/Growth Areas

While it often makes sense to locate a key facility such as school or recreation center inside of a PFA/growth area in an urban jurisdiction, this is not the most efficient decision in a rural area. Sometimes it is better to centrally locate such a facility between multiple PFA/growth areas, although it is important to make sure the facility does not create unwanted growth around it. The current process for considering such requests is cumbersome and should be reviewed and potentially simplified.

Not listed as top priority

9. Simplifying the Sustainable Communities Designation Process

The consolidation of many local aid programs under the umbrella of the Sustainable Communities Program has resulted in programmatic simplification and cost efficiencies. However, the complicated application process to be designated a Sustainable Community has created challenges for small rural jurisdictions that may just want to access a very specific portion of the program's available resources (such as to repair a sidewalk).

The Commission should work with the Department of Housing and Community Development to simplify the designation process so that smaller rural communities that may not have significant staff or program capacity can still take advantage of Sustainable Community resources.

One of Three Top Priorities listed by 1

10. Building Code Issues

Some recent changes to State and local building codes have created challenges for rural areas of the state. Building code mandates on energy efficiency and sprinkler systems have negatively affected the ability of some rural counties to provide affordable housing (such as manufactured homes). The Commission, in conjunction with the Department of Housing and Community Development, should undertake a review of the Maryland Building Performance Standards and make recommendations regarding building code changes that would better serve rural areas.

Not listed as top priority