



Maryland Department of Planning

Sustainable _____ Attainable

January 24, 2013

The Honorable Michael W. McKay
President
Allegany County Commissioners
Allegany County Office Building
701 Kelly Road
Cumberland, MD 21502-2803

Re: MDP's Review of Adopted Tier Map

Dear Commissioner McKay:

On December 21, 2012, the Maryland Department of Planning (MDP) received a copy of the Allegany County Tier Map, adopted by the Board of County Commissioners on December 20, 2012. This action establishes growth tiers under Title 1, Subtitle 5 of the Land Use Article ("LU") of the Annotated Code of Maryland for Allegany County.

Upon review of the adopted Tier map, MDP finds that the Allegany County map does not conform to the statutory requirements of LU §1-508. The adopted Tier map violates LU §1-508 because it maps the proposed Terrapin Run area as a Tier II planned growth area. As you may know, the Maryland Department of Environment denied approval of the Terrapin Run area as a planned sewerage area within the *2007 Update to the 2002 Allegany County Water and Sewerage Plan* (see attached November 14, 2007 letter), and within the *2011 Allegany County Water and Sewerage Plan* (see attached February 7, 2012 letter). As a result of this denial, the Terrapin Run area is "not planned for sewerage service". The Terrapin Run area does not meet the requirements of a Tier II area under LU §1-508(a)(2)(i) and (ii). Since the Terrapin Run area is "not planned for sewerage service" it can only be considered as a Tier III or Tier IV area. Tier III areas are areas **not** "dominated by agricultural or forest land" (LU §1-508(a)(3)). Because the Terrapin Run area is dominated by agricultural or forest land, Allegany County is required to designate this area as Tier IV in the adopted map (LU §1-508(a)(4)).¹

As was noted in our pre-adoption letter to the County dated November 9, 2012, if MDP, as part of its statutory responsibilities stemming from LU §1-505, comments on a tier or an area within a tier, the local legislative body or planning board must hold at least one public hearing on MDP's comments and review the tiers adopted by the jurisdiction in light of the Department's comments. After the hearing and consideration of MDP's comments, a recommendation must be made whether the tier or area within a tier should be changed. The recommendation is to be forwarded to the jurisdiction's decision making body for a final decision (LU §1-507).

Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

Richard Eberhart Hall, AICP, Secretary
Matthew J. Power, Deputy Secretary

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Although the law does not set a timeline for the public hearing on MDP's comments or the review of the mapped growth tiers adopted by the jurisdiction in light of MDP's comments, MDP recommends that Allegany County complete this process no later than 60 days after the date of this letter. We are happy to meet with you in advance and discuss our comments with you and your staff in more detail.

Please be advised that the law requires that the growth tiers are to be incorporated into the County's comprehensive plan or an element of the plan when the county conducts its six year review of the plan. If the growth tiers are not incorporated into the comprehensive plan or an element of the plan during the 6-year review, the law indicates that the growth tiers may not be considered as adopted and the restrictions on major subdivisions outside sewerred areas shall apply.

To date, all municipalities with planning and zoning authority in Allegany County have submitted adopted tier maps to MDP for review. None of the municipal adopted tier maps appear to be in conflict with the county adopted tier map designations.

Should you have any questions, please don't hesitate to contact me at 410-767-0901.

Sincerely,



Richard Josephson
Director of Planning Services

Attachments

cc: Commissioner Creade V. Brodie, Jr.
Commissioner William R. Valentine
David A. Dorsey, Acting Planning Coordinator, Department of Community Services
Richard E. Hall, Secretary, Maryland Department of Planning
Jay Sakai, Director, Water Management Administration, MDE

¹ LU §1-508(a)(4) provides:

(4) Tier IV areas are areas that **are not planned for sewerage service and are:**

(i) areas planned or zoned by a local jurisdiction for land, agricultural, or resource protection, preservation, or conservation;

(ii) areas dominated by agricultural lands, forest lands, or other natural areas; or

(iii) rural legacy areas, priority preservation areas, or areas subject to covenants, restrictions, conditions, or Conservation easements for the benefit of, or held by a State agency, as defined in § 9-206 of the Environment Article, or a local jurisdiction for the purpose of conserving natural resources or agricultural land.(emphasis added).