

**2nd Joint meeting between the Task Force on Sustainable Growth and Wastewater Disposal
and the Maryland Sustainable Growth Commission
10/25/2011**

Delegate McIntosh welcomed everyone and said that we are going to start with areas where the Workgroups (WGs) have reached consensus. She asked Jay Prager to give the first presentation.

Infrastructure WG

Jay Prager said that he served as staff for the Infrastructure WG. The areas of consensus that were reached were comprised of the following items. MDE should be supported in putting forth regulations for operation and maintenance of best available technology (BAT). That is already codified in statute. There must be certification and registration of service providers.

Homeowners should be able to become certified to service their own systems. There needs to be 100% nutrient offsets for shared systems. There should be an incentive to have clustered small lot development. The WG felt that there were issues that all septics are being treated the same, where as, they are not the same. Septic systems that produce less nitrogen should have a smaller offset. We need to qualify where in the process grandfathering provisions for subdivision requirements would apply.

The following areas are where the Infrastructure WG did not meet consensus. We agreed that we need to revise the legislation limiting the number of new subdivision lots that can be created on individual septic systems, but there was no number that everyone agreed on. We also looked at varying the lots in proportion to the lot size. Senator Brinkley asked did you address the fact that some counties don't allow a shared system as of right now. Jay Prager said yes, some counties do not allow them now because they have an option of septics. If that option is removed we think that they will change their mind. MES is willing to take over responsibility as a controlling authority, but only under certain conditions. Being the controlling authority is difficult and they may have to charge the users or whole counties to maintain the systems. There needs to be a balance for it to be economically feasible. We want to incentivize making the lots as small as possible; if we increase the number of lots and have a max acreage we can thereby preserve as much land as possible. As a compromise we can increase the lots and decrease the acreage per lot. Brian Hammock said did you look at any particular targeted areas outside the Critical Area (CA)? Jay Prager said we looked at two things: the area where the septic system is located and how that impacts the Bay and 2. how the design of the septic system can affect the nutrient loading of that system. A sand mound system contributes less nitrogen than a deep

system. In Maryland we blended it all together to get to the proximity of surface water. That is a little better refined than the Bay program uses for other states and we could consider going even further for other systems. We did not come to agreement on how to do this or what the numbers should be.

Delegate McIntosh asked what the maintenance cost is on a shared system. Secretary Summers said that the maintenance and operation cost depends on the complexity of the system and the lots served. For a conventional system it will cost \$500 per year per household. For a shared system serving 109 homes it could cost as much as \$2,500 a year per household. If we have fewer homes on the small system it will cost \$6,000 a year per household. There is a lot of variability. Bob Mitchell said if these systems are for upper end housing, they will be limited to expensive homes.

Agriculture Workgroup

Secretary Hance thanked the Agriculture WG members. He said that the WG looked at the industry as a whole and agriculture as a whole as a viable industry. We segregated our recommendations to those that directly relate to HB 1107 and other peripheral issues. The areas that the WG reached consensus were the following points. The state should require BAT for all new septic systems and counties should have the option to require BAT for replacement systems. The major/minor subdivision should be eliminated. The sub-division should be limited to 8 systems. The issue is the major/minor requirements. There is talk about setting the number at a maximum of 7 or 8 units, where some counties only use 3-5, that might incentivize those counties to increase the number. Maybe there should not be a specific number listed. State review should be required for sub-divisions. They should not make a landowner decide all at once on whether they want to commit to a major or minor subdivision. Other areas of consensus that were not related to HB 1107 are the following items. The state should work with EPA to allow landowners who voluntarily retire development rights to qualify for selling nutrient trading credits. There is a need to work for state tax reform to help farms transitioning from one generation to the next. This would reduce the burden on farmers to sell for cash because often farmers are land rich and cash poor. The state should consider sponsoring a transferable development rights (TDR) pilot project for which a county can volunteer. The state can help the areas that have struggled. The state should study the effect on prime farmland of re-forestation, mitigation for habitat and wetland loss, BMPs, etc. The 2020 deadline should be extended to EPA's deadline of 2025 or even 2030. We are not trying to relieve ourselves of the burden of meeting the TMDL, but we are trying to be realistic to meet our goals. Funding for cover crops

should remain with the Bay Restoration Fund (BRF) and the payout to the cover crop program should remain the same and not be reduced. The areas lacking consensus were the following issues. The equity issue is one area of non-consensus. Various aspects of the industry know that they are a part of land issues, but there are various pressures on them. We did not feel like we could come to consensus on reducing the lot size of landowners, when an assessment is made of property, that value is used against loan security. If the development pressure was reduced we could not find what the impact was on land value.

Delegate McIntosh asked the Agriculture WG to please add in slides on the areas of non-consensus. Jon Laria said the summary does not include the non-consensus items, so what is the A and B distinction. Secretary Hance said it is just the order in which the WG thought that the issues should be presented to the TF. Russ Brinsfield said one way to offset the equity issue is to have an effective TDR program and consider a cross county/statewide TDR. There are models, like NJ, that have it. Secretary Hance said we had that discussion; there was some concern on the value of the TDR when you start crossing county lines. Senator Pinsky said in terms of the 8 units, was there any discussion on lot size? Secretary Hance said no, we did not get into it. Senator Pinsky said the discussion of state tax reform and a limit on lot rights, what went into that? Secretary Hance said that there was some communication about a trade off and elimination of the estate tax. These are the areas where the Agriculture WG reached consensus, the TF can do whatever it wants. Delegate Lafferty said if we are only talking about new septic systems, we are only keeping the pollution where it is. Replacement systems contribute pollution too, why don't you want BAT requirements from the state. Secretary Hance said I believe the conversation revolved around funding. Russ Brinsfield said that was a compromise to get something on the table, we couldn't get consensus on replacement systems. Senator Brinkley said the WG also felt that the counties are receiving the complaints, so let them have some discretion on whether or not to make it BAT; as a whole the workgroup worked very hard. Alan Girard said on the second page the WG report references the TMDL deadline extension it says "the agriculture community is not alone in thinking the deadline needs to be extended." How would the extension help state resources to meet the goal?

Secretary Hance said the issue regarding the extension, is that if we don't meet the goal, the state will be seen as a failure, the task of meeting the goal is increasingly hard to achieve, at least if we extend to the EPA deadline of 2025 it will be better. In agriculture we depend on our federal partners and there is a concern of a pullback of federal funding. Alan Girard said even with federal funding, there is not much certainty of meeting the goal by 2020 or 2025. Secretary Hance said the WG felt 2025 is a better goal. Erik Fisher said the state is not going to stop

building houses in 2025, there will still be development occurring, this was an attempt to curb sprawl development and impervious surfaces. Rob Etgen asked for a little more background on the 8 lots and the subdivisions. Secretary Hance said that 8 lots triggered the major/minor subdivision. If the state sets a numerical limit, the WG is concerned that the people with 3 lots triggering the subdivision would move the number to 8. Rob Etgen said so it is not related to equity. Secretary Hance said no, it is not. Russ Brinsfield said there is going to be a lot of blowback from the counties. Secretary Hance said that the idea of giving the counties a range is that they will stay where they are now. Richard Hutchison said if you don't go above the 8 lots, some counties will want to go to 8, but the statute shouldn't have an impact on the final decision. The county zoning overrides the statute. Secretary Hance said I want to thank all that participated in the Agriculture WG.

Growth Workgroup

Secretary Hall gave a summary on the Growth WG. He said the WG was less focused on specific actions because that is the nature of our reality. How we move from where we are today to where we need to go the whole TF can decide. The first issue we looked at is Priority Funding Areas (PFAs). We want to direct growth to the PFAs; we want to have them ready for growth. We need to ensure that essential infrastructure is there to accept the growth like central sewer lines, roads, etc. We need to streamline the state building code to further encourage smart growth. We should allow regulatory advantages for areas of designated growth areas and replace designated growth areas with PFAs. We should look at package plants and shared systems, where do they make sense?

The areas of non-consensus were: where is the capacity for growth and where is it going; is there sufficient supply for growth; do we have the capacity and where we do have it; what are some things that we can do to better direct growth. There were some good conversations, but no clear recommendations were reached. There needs to be an analysis on where the growth can occur, we did not settle on that. We talked about major/minor subdivisions, we did not come up with a magic number. We also talked about limits for smart growth.

Delegate McIntosh said so there was no consensus on the definition of a major/minor subdivision. There are a lot of good ideas floating to the top; it was a hot issue of HB 1107. Do PFAs factor into the way we fund roads and schools? Secretary Hall said yes, the school construction money is targeted in the PFAs. There is a need for roads to connect communities and that is recognized, but we still target transportation growth areas. Delegate McIntosh asked did any WG look at PFAs as they are today or how they should be reconfigured. Can counties

look at what they currently have in an area that should be redefined? Secretary Hall said that the growth WG looked at how a package plant could service those areas. Senator Brinkley said in regards to regulatory relief within growth areas, there is a problem with regulations that advance things, so the WG is acknowledging that there is a problem but only providing relief in growth areas. Secretary Hall said if we want smart growth we need to look first at the regulations in the growth areas. One reason that we get growth outside the growth areas is because it is easier to build outside of them. Senator Brinkley said why is the WG using regulations as a weapon, not a tool? Secretary Hall said we are taking a triage approach on some existing regulations. We are not talking about public safety, just public services. Senator Brinkley said we have a tacit problem in the state; creating two different tiers of regulations in the state is absurd. Delegate Lafferty asked is there currently a statewide infrastructure assessment and who does it? Secretary Hall said that the previous incarnation of the Sustainable Growth Commission did a survey on infrastructure, the project took a long time and did not have funding. Other analyses have looked at the issue generally. We have our concept of building analyses, other agencies have their own ways of looking at some of this. It is important to know the answer to where is growth projected and where it goes. If there is no cap in a fast growth county, it will be an issue. Delegate Lafferty said if you are talking about a community that may have capacity and the growth is directed there, would the state direct the counties to only allow growth in those areas or is there another strategy? Secretary Hall said prescribing how that works out is in the text provisions from last year's bill. If you are giving a way out every time you are not allowing incentives for growth.

Brian Hammock said is it correct that there are different regulations that apply to PFAs? Secretary Hall said things just get tighter and more compacted the closer the growth is together. That is a national issue. Depending on the infrastructure and density, the regulations could be a lot different. Brian Hammock said so is it fair to say that the focus is not a weapon on growth outside the PFAs, but an incentive for growth inside the PFAs? Secretary Hall said yes. Sandy Coyman said we need to look at the local jurisdictions and where they think the growth is going. Did the WG look at why infill is not occurring at the desired rate? In our county we have a small village on sewer and there is a lot of resistance to infill amongst communities, so it is important to identify what those issues are, if any. Secretary Hall said instead of just putting caps on zoning, we also need to talk about floors. The goal is trying to get the yields in zoning. That is not unique to MD. We should also come up with a local zoning tool. We designed mixed use development, but it is hard to get it built on the ground. Erik Fisher said that it seems like the Growth WGs only areas of consensus were to facilitate additional development. While incentivizing in areas we want development to occur is important, it's not the total picture. Can

you speak more about rural protection? Secretary Hall said we did not talk as much about the rural zoning, we thought that we should limit rural growth on septic systems.

Funding Workgroup

Secretary Griffin said he is pleased to present the report. We had a diverse Funding WG and the Funding WG had several additional meetings. There was a wide spectrum of very knowledgeable folks. I would like to especially thank Delegate Lafferty, Dave Goshorn and Helen Stewart from DNR, Heather Barthel, Jag Khuman and the MDE staff that provided support, and Dan Nees of the environmental finance center. I'll start with the areas of consensus. In general the Funding WG was guided by two overarching goals: to increase one fee, not multiple fees and to match the supposed increase in revenue with the funding that was necessary to meet the TMDL. We explored a whole variety of ways to reach the deadline by 2020 and 2025. There were some qualifications and modifiers to try and get all the decisions of the WG into a report that was distributed late Friday afternoon. We recommend extending the deadline to meet the TMDL to 2025. From a funding standpoint we could not figure out a way to meet the funding capacity by 2020. We had to go to 2025 to meet the deadline. Most WG members went along with extending the deadline with the understanding that we need to continue the sense of urgency and treat the 2020 deadline as the deadline for implementation purposes. In regards to the BRF fee, we proposed a phased increase to finish the original 67 WWTPs and close the funding gap for other areas. These areas include upgrading 10 major/minor WWTPs and upgrading sewer systems. To close the gap we recommended increasing the annual residential rate to \$60 per year in 2013 and to \$90 a year in 2015. We would increase the commercial rates accordingly. We also recommended indexing the rates to the consumer price index starting in 2016 then indexing to the progressive rate by 2017 and sunset the rate increases in 2030 if the TMDL has been met or there is no longer a need for the BRF.

The Funding WG also recommended moving cover crops to the Trust Fund. We should move the cover crops out of the BRF and amend the Trust Fund statute. We also recommended amending the BRF to allow for stormwater retrofits. Another recommendation is that we should maximize the value of each dollar generated to get the most cost efficient nitrogen reduction we can. We have to start targeting and phasing. The BRF should be used in the competitive process and in stormwater/ septic areas we should use a scientific basis to target the watershed with the highest nitrogen load. This is not to say the funds will not be available to all areas, but we need to target it. Similarly for the upgrade of 10 major/minors, the WG recommended 10 because we

were looking at targeting areas outside of urban areas. We also looked at cost competitiveness in terms of the schedule. Delegate McIntosh said New Windsor did the WWTP upgrades without funding because they could not qualify for it. Jay Sakai said that is true, and they report that the resident's sewer bills doubled. Delegate McIntosh said so this would help those areas. Secretary Griffin said we should look at offsets and trading. There was a discussion on the tension between targeting and allowing the local governments to keep some of the money. The next recommendation tries to stretch available revenue to cover more of the cost. Outside the critical area (CA) MDE uses an income based scale for BAT upgrades. In the CA the statute says that MDE will pay 100% of the cost of BAT upgrades. We should harmonize those two standards. The recommendations are that failing septic in the CA get money based on income, the state pays 50% of the stormwater retrofits as well as 10% of the BRF for operation and maintenance costs associated with upgrades. We can keep the operation and maintenance support, but cap it at \$5 million a year. The next recommendation is to look at the restrictions on septic connections to sewer and possibly modify them. The current restrictions are thought by the WG to be a bit too restrictive. We are trying to balance that on the one hand with areas that are developed and on failing septic that could be connected. We want to spend a little more time on that. In the BRF fee structure there is authority to exempt certain people based on income, the WG supported the authority to have local government make the fee progressive based on water use. Don't make it mandatory. The following items are areas that need further review: more specific revisions on the connection of failing septic areas to ENR; further refinement of the qualifications for major/minor WWTPs upgrades; private capital incentivized trading; developing stewardship standards for property owners; exploring the possibilities with Maryland Environmental Service (MES) to help local governments meet their goals.

Erik Fisher said the WG actually looked at six scenarios, including the impact of a \$10 a month (\$120 a year) fee. Those scenarios were important to move the deadline to 2025. The recommendation to move the deadline to 2025 was to get the job done. There are a lot of different estimates on stormwater costs and we know that there are other credible scenarios. There are significant doubts that we can achieve what we are going to achieve with a \$60-\$90 a year plan. The \$10 a month scenario would possibly raise the assurance to get the job done, the public trust demands a plan that will reach the goal. Alan Girard said there is a great deal of concern on pushing the deadline back 5 years. What kind of accountability is the state going to have? Secretary Griffin said we looked at this from a standpoint of the possible funding scenarios. We looked at how we can make it work. The idea was to present something that did not have funding gaps. There is a reasonable amount of discussion on what the improvements will cost and they can't be done by 2020. The vast majority of WG members felt that on balance

that was what needed to occur. You have to balance 2020 vs. 2025. What we know at this point is that we want to be candid with the public. To suggest that we will meet the TMDL deadline by 2020 goes away from the idea of being candid with the public. Alan Girard said what is the accountability of the state to meet the deadlines? How do we ramp up to meet the results that we are promising the public. Secretary Griffin said Maryland is the only Chesapeake Bay TMDL state that has the 2 year milestones on the public website. We are open to thoughts on how to improve because all of this speaks to accountability. Alan Girard said you put a lot of effort into this and accounting is important. In section 2C you are trying to address it when you say “in 2017 we can restructure the fee accordingly if the 2025 goal is not close to being met” why wait until 2017 to do the evaluation? Secretary Griffin said it is one concrete example of a progress check and accountability. The EPA is supposed to have a model update in 2017 and also that is when 60% of progress has to be made on the Bay TMDL. If we are not making progress we might need more revenue, so we can check in at that point

Chris Trumbauer said that Secretary Griffin did a great job capturing the diverse discussion points the Funding WG had. We did come to consensus on the fact that what we need is a dramatic increase in the BRF fee. The WG looked at other options and we came to the conclusion that this is something we are comfortable with, and it may be optimistic, but it is where we thought we could reach our goals. Delegate McIntosh said the TF will have the discussion about raising the fees. Chris Trumbauer said regarding the stormwater component, we would not see stormwater retrofits until the out years. There was discussion on whether to give the money to the state or to the local governments. Secretary Griffin said we want to put all the net revenue into a pool and use the targeting/phasing plan to allocate funds to the local government. We are not saying that the funds will not be available until later, the state will phase in the funds. Pat Langenfelder said that there are a few concerns with moving the cover crop program to the Trust Fund. The BRF currently allocates 40% to cover crops. So if the rate increases, the money going to the cover crop program would also increase. If we did move the cover crops program to the Trust Fund we would not have a definitive portion and we might not be so secure in the future. The cover crops program is the most successful program that we have right now. Secretary Griffin said I understand that, we acknowledge that we will need to amend the Trust Fund to secure the amount. Sandy Coyman said are you looking at a 50-50 match between locals and the state for all the costs? Secretary Griffin said no it varies. The only 50-50 match was for states and locals on BMPs. In the CA the state is currently funding 100% of upgrades and the state is also funding 100% of the ENR portion of upgrades for major WWTPs. Bob Mitchell said there is no difference between the public/private BRF. Targeting penalizes the outside counties. Delegate McIntosh said another issue is whether or not the major areas of dual

tract stormwater will be upgraded. Secretary Summers said we have consent decrees in place and this funding is not part of those consent decrees. Jay Sakai said we do have the communities under consent orders and all are under long term remedial programs. The issue is very prevalent in western MD. Delegate McIntosh asked how many communities it affects, 10-15? Jay Sakai said there are 8 communities with that problem and other communities with sanitary sewer overflows. Delegate McIntosh asked if she could get a list of those communities.

Delegate McIntosh said that the TF now has areas of consensus laid out. We need to look at areas of non-consensus, such as, what is a major subdivision and what is a minor subdivision. The next two meetings will be constructed to find out what areas the TF is in agreement on and discuss areas of non-consensus. At the next meeting we will work on coming up with the list of recommendations for the Governor.