



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.



Planning.Maryland.gov
(410) 767-4500 Telephone • (410) 767-4480 Fax
(800) 767-6272 Toll Free • TTY Users: Maryland Relay

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,

A handwritten signature in black ink, appearing to read "Jon Laria", written over a horizontal line.

Jon Laria

Chairman
Maryland Sustainable Growth Commission

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