

Comments on the Charles County Draft Comprehensive Plan

Maryland Department of Natural Resources

The following comments have been prepared by Maryland DNR based on the Department's review of the draft Charles County Comprehensive Plan, dated November, 2012. These comments reflect a number of concerns regarding the apparent inconsistency between many of the key provisions within the draft plan document and the legal requirements and intent of Maryland law for planning, including but not limited to key provisions as set forth in Article 66B of the Maryland Code and The Sustainable Growth & Agricultural Preservation Act of 2012.

Across the state of Maryland, Charles County ranks 3rd, among all counties, for overall ecological value based on assessment of its GreenPrint resources (see GreenPrint TEA map). Only Garrett and Dorchester counties support more acres of GreenPrint Targeted Ecological Areas than does Charles County. GreenPrint Targeted Ecological Areas are designated as Maryland's most ecologically important lands and waters on a statewide basis. The land use policies outlined in the 2012 Draft Comprehensive Plan that encourage large lot rural development will result in significant and permanent degradation of these important resources and the ecosystem services they provide.

It is difficult to understand how these land use policies will achieve the natural resource goals identified on page 5-3. The plan does a reasonable job identifying the rich and ecologically sensitive natural resources of the county, but falls very short in demonstrating how these resources will be protected.

DNR is especially disappointed with the draft plan product since our Department, in conjunction with a number of other State and Federal agency representatives invested a great deal of time and effort to identify threats to the Mattawoman watershed over the past year. We also proposed a number of specific recommendations for incorporation in the County Comprehensive Plan update that could afford greater protection to the many important resources within the Mattawoman Watershed. Our recommendations were documented in the report "*The Case for the Protection of the Watershed Resources of the Mattawoman Creek*" which we submitted to County Planning Staff in March, 2012. We also met with the County Commissioners to overview these recommendations on July 10, 2012. We believe many of our recommendations were well received by County Planning staff and therefore disappointed that most, if not all, of these recommendations failed to be considered and/or were dismissed out of hand by the Planning Commission.

Review of the draft plan document by DNR results in the following more specific findings:

- **Plan is inconsistent with 12 visions adopted by the Maryland General Assembly in 2012**

Pages 1-1 and 1-2 of the Draft Plan identify the 12 visions adopted by the Maryland General Assembly in 2012. The discussion does not indicate the County Plan draft can demonstrate consistency with the Visions. In particular the draft plan document demonstrates inconsistency with over ½ of the visions, and as such violates the legal requirements for local government implementation of the Visions as set forth in Article 66 B of the Annotated Code of Maryland. Specific Visions with which the plan is inconsistent include the following:

(1) Quality of life and sustainability: a high quality of life is achieved through universal stewardship of the land, water, and air resulting in sustainable communities and protection of the environment;

(3) Growth areas: growth is concentrated in existing population and business centers, growth areas adjacent to these centers, or strategically selected new centers;

(4) Community design: compact, mixed-use, walkable design consistent with existing community character and located near available or planned transit options is encouraged to ensure efficient use of land and transportation resources and preservation and enhancement of natural systems, open spaces, recreational areas, and historical, cultural, and archeological resources;

(5) Infrastructure: growth areas have the water resources and infrastructure to accommodate population and business expansion in an orderly, efficient, and environmentally sustainable manner; Introduction

(9) Environmental protection: land and water resources, including the Chesapeake and coastal bays, are carefully managed to restore and maintain healthy air and water, natural systems, and living resources;

(10) Resource conservation: waterways, forests, agricultural areas, open space, natural systems, and scenic areas are conserved;

(11) Stewardship: government, business entities, and residents are responsible for the creation of sustainable communities by collaborating to balance efficient growth with resource protection;

Article 66B says; “In addition to the requirements of § 3.05(c) of this article, a commission **shall** implement the following visions through the plan described in § 3.05 of this article:” [emphasis added].

■ **Plan is inconsistent with PlanMaryland**

Page 1-2: The final paragraph in the section regarding the “Legal Context for the Comprehensive Plan” notes:

“This Comprehensive Plan has also been prepared with due consideration to PlanMaryland, a plan developed by the Maryland Department of Planning (MDP) and accepted by Governor O’Malley in December 2011. PlanMaryland is the State’s first comprehensive plan for sustainable growth and development and is intended to improve the way in which state agencies and local governments work together to accomplish common goals and objectives for growth, development and preservation”.

Given the treatment recommended for the Mattawoman Watershed to maintain substantial land area as part of the “Development District” and/or Deferred Development “District and the sizable land area and densities permitted in the new “Rural Residential Land Use District (1 unit per 3 acres), there is a clear indication that the County has not joined the State “to improve the way in which state agencies and local governments work together to accomplish common goals and objectives for growth, development and preservation”(see page 1-2 last sentence before new section titled Purpose and Consistency of the Comprehensive Plan).

The changes to the Plans language on page 3-5 further clarify this inconsistency between State and Local objectives. Here the plan notes a key change from the 2006 plan as follows: “*Rural Conservation land uses to be more accurately described as Rural Residential Land Use (1 unit per 3 acres) to correspond with the Planning Commission’s direction to designate this area as “Tier III” on the Tier Map such that the future vision for the land use will no longer be dominated by agriculture or forestry, but predominantly residential large lot uses of 3 acres or greater.*

In effect it would appear the County has turned its back on all efforts to preserve farmland or treat farming as a preferred land use in any district.

- **Draft Plan inconsistency with County Plan goals established in the 1990 plan**

Table 1-1 on page 1-6 of the draft plan identifies three plan goals that originated in the 1990 County Comprehensive Plan and implies that they are still viable. These goals include,

“Limit sprawl development”

“Protect the agricultural industry and the land base necessary to support the industry”, and

“Develop greater control and management by County Government over the rate, location, quality and cost of future development”

Review of the substantive changes identified in the draft plan indicate that these goals are no longer valid and that retaining them as if they are still valid is disingenuous and misleading. Such an assumption is particularly misleading to County residents and State agencies reviewing the plan. The document should be revised, either to note that these goals established in 1990 are no longer applicable or to reflect substantive changes on the proposed land use plan map to demonstrate the County continues to support them. Two key changes would include elimination of the Deferred Development District in the Mattawoman watershed and substantially downzoning the proposed “Rural Residential Land Classification” to one residential unit per 20 acres and maintaining its current classification as “Rural Conservation”

- **Assumptions driving the plans population projections are questionable.**

Table 2-2 located on page 2-4 of the draft plan indicates that from 2010 to 2040 the County projection for growth in the Deferred Development district is limited to an estimated 416 residential units. Does this figure assume that density in this district will remain one unit per 10 acres and that no change in classification will occur over the 30 year period? If not, then the case for a more realistic and higher projection for growth in this district should be re-evaluated.

- **Assumptions concerning projected changes in land cover are not well supported in light of past trends.**

Table 2-3 located on page 2-7 notes that from 1997 to 2009 some 22, 600 acres land cover were converted to low density residential development while only 2,300 acres were converted to both medium and high density development during the same period. Assumptions listed on page 2-6 in support of Comprehensive Plan population projections indicate that *“Growth control mechanisms, especially zoning, water and sewer policies, and adequate public facility regulations, will continue to result in 70 to 75 percent of new growth occurring in the Development District and the towns.”*

If low density development has changed land cover tenfold over land cover changes for higher densities it would seem unlikely that 75% of all future growth would occur in the Development District or Towns. What is expected to change that pattern since few, if any, new growth control mechanisms are proposed to support this 70 to 75% assumption?

- **Purposes of the Deferred Development District are misleading**

Page 3-9 notes the purposes of the Deferred Development District as shown on the Land Use Plan Map are *“to preserve the rural environment, natural features and established character of the area and to maintain low-density residential development”*. This offers a very misleading expectation for long term protection of land identified for future development.

Since there is a provision within *“Ordinance Number 00-93 is for the County Commissioners to reconsider all RC(D) zoning on a not less than five-year basis as part of, or concurrent with, the update of the Comprehensive Plan”* which could commit some of these lands to development, what assurance is there that the purposes stated for this district would be achieved over a 30 year time frame? If the County intends development in this area at any future point in time, the purpose for this district should not misrepresent that expectation. If the County intends to *“preserve the rural environment”* in this location it should not be characterized as a development district.

- **Density permitted in the proposed “Rural Conservation District” is too high to permit protection of such an ecologically sensitive area.**

Page 3-12 characterizes the proposed “Rural Conservation District.” The plan document notes that although zoning here will continue to permit *“1 unit per 3 acres, any development in this ecologically sensitive area should be designed to minimize impacts to the Zekiah watershed, drainage and environmentally sensitive resources”*. The plan also proposes a Tier IV designation for this area.

In this particular area of the County, requiring development to “minimize impacts to the the Zekiah Watershed” is not enough. A permitted zoning density of 1 unit per 3 acres, is not consistent with the proposed Tier IV designation for this area and in fact does not distinguish it from Tier 3 designated areas. We are not aware of any scientific evidence indicating that ecological conservation can be achieved at this development density. In fact, the scientific studies DNR has reviewed indicate that regardless of the protection strategies implemented (e.g., stormwater ponds, riparian buffers, rain gardens, wetland creation, etc.), this density is consistent with ecologically degraded aquatic ecosystems (in both freshwater and estuarine systems). Furthermore, once this level of development has occurred, ecological restoration has so far also proven to be unsuccessful, according to recent scientific studies. Therefore, we would encourage greater development limitations in this, the only area identified for focus on protection of environmentally sensitive resources.

- **Rural Residential District and Tier III designation renders too much rural land area a candidate for sprawl development that will place a long term burden on delivery of public services.**

Page 3-13 of the Draft Plan notes:

“The designation of this area (Rural Residential District) as Tier III, contradicts the previous land use designation of Agricultural Conservation (AC). The legislation requires that areas planned or zoned for agriculture, resource protection or conservation be placed in a Tier IV designation, with further limitations on the use of septic systems.

The decision to designate this as a Tier III area means that the expectation for the long range future land uses in these rural lands will not be dominated by agricultural uses, or for resource protection, preservation or conservation.

While farming can and is expected to continue in the near future, the long-range land use over time can be replaced by rural residential housing on large lots as the dominant use. Therefore,

the designation of Tier III is appropriate and the change in land use designation from Agricultural Conservation (AC) to Rural Residential (RR) is provided to match this policy. Future comprehensive rezoning of this area will be required to better match the land use designation”.

DNR believes this designation moves the ball backwards in Charles County indicating little, if any, commitment to farmland protection or preservation and will result in a sprawl development pattern that will increase the cost of public service delivery systems over the long term. It will also result in a distributed growth pattern that will weaken objectives to support transit-oriented development over time.

- **Proposed Suburban Large Lot (SL) zoning of one unit per acre will intensify sprawl development pattern.**

Table 3-2 of the Comprehensive Plan draft proposes that the new SL zone to be created change the density of areas surrounding the Towns from one unit per three acres to one unit per one acre. This will further intensify sprawl patterns of development and add additional septic loads that will work at cross purposes with the County Watershed Implementation Plan efforts to reduce nutrient loads. Development occurring in these areas will virtually preclude opportunities for the Towns’ of Indian Head and La Plata to annex additional lands for Town growth. Landowners in this district will have little or no incentive to request annexation to foster “Town-scale” additions to development since the pattern of development will preclude a more town appropriate development form. Area proposed for SL zone treatment should remain at lower densities to create incentives to encourage landowner or developers to seek extension of Town infrastructure and to secure higher densities through annexation.

- **Water Resources Plan element (Chapter 4) fails to account for increase in nutrient loads that will result with the Preferred Land Use Plan.**

Under the preferred land use scenario, vast areas of the County are delineated as Tier III Septic areas. The county can expect to see a large increase in non-point source pollution as a result of greater development in these areas on septic systems. The plan references the need to achieve nutrient reduction targets through offsets, as required by the State’s Growth Offset policy, but provides no accountability for estimating what the anticipated increase in loads might be and how these offsets might be achieved. The county should provide more detail related to increased loads and offset capacity for non-point source pollution.

- **Deferred Development District designation for public water and sewer service is not consistent with stated purpose.**

Figures 4-2 and 4-3 located on pages 4-8 and 4-18 identify the Deferred Development District as planned for public Sewer and public Water supply services. As noted previously, Page 3-9 notes the purposes of the Deferred Development District as shown on the Land Use Plan Map are *“to preserve the rural environment, natural features and established character of the area and to maintain low-density residential development”*.

Planning for provision of public water and sewer services in this area is clearly not in keeping with preserving the rural environment, natural features and established character of the area or in maintaining low-density residential development. The intent or purpose for this district should be clarified and plan maps or provisions regarding Deferred Development District treatment should consistently support this purpose.

▪ **Impervious surface projections make a compelling argument for selection of the “Merged Scenario” as the preferred plan**

Page 4-27 provides a discussion of impervious surface projections in the County by Watershed. Language on page 4-27 notes:

“The amount of impervious surface in a watershed—particularly impervious surfaces that are not treated by stormwater management facilities—can be a key indicator of water quality. All other factors being equal, water quality in streams tends to decline as impervious coverage increases in a watershed”.

DNR agrees that impervious surface in a watershed is indeed a key indicator of water quality and that water quality in streams declines as impervious coverage increases in a watershed. However, increases in impervious surface cannot simply be offset by application of best management practices in stormwater management and sediment and erosion control or any number of measures to mitigate the impacts of development. Mitigation can reduce the degree of impact, but the limits of technology will nevertheless result in sustained adverse impacts to the watershed. Therefore we recommend the portion of the sentence in italics above between hyphens be deleted.

The first two paragraphs at the top of page 4-28 of the draft Comprehensive Plan state:

“Under the Preferred Land Use Plan, total impervious surface would increase to 7.1 percent of land area, and would reach 15 percent in the Mattawoman watershed. Under the Merged Scenario, overall impervious surface would increase to 6.0 percent, and nearly 11 percent in the Mattawoman watershed.

Under the Preferred Land Use Plan, total impervious surface would increase by approximately 7,000 acres. By comparison, the Merged Scenario would result in approximately 3,500 acres of new impervious surface, approximately half of the increase under the Preferred Land Use Plan.”

DNR would submit that these two paragraphs make a compelling water quality and ecosystem conservation argument for selection of the “Merged Scenario” as the preferred plan alternative

rather than the alternative selected. Review of Table 4-8 reinforces this finding that the Merged Scenario would result in reductions in the growth of impervious surface, particularly within the Mattawoman Watershed.

DNR's Fisheries Services Fish Habitat and Ecosystem's Program has concerns with the projected growth in impervious surface that would be generated by the "Preferred Plan". The Fisheries Service, based on experience and monitoring have found a 5% impervious surface or less to support habitat conditions conducive to productive fisheries and that 10% or greater impervious surface in a watershed creates conditions where habitat problems prevail and deterioration of fisheries and fish production follow. Fisheries Service analysis indicates that the County's current estimates and projections for impervious surface in various watersheds as shown in Table 4-8 may be low. Appendix A provides our Fisheries Services estimates and projections and identifies the methodology they utilized to conduct their analysis.

- **Projected losses in Forest Cover indicate that the "Preferred Plan" alternative is the wrong choice.**

Pages 4-28 and 4-29 note *"changes in forest cover over time are good indicators of changes in water quality. All other factors being equal, water quality in streams tends to decline as forest coverage decreases in a watershed."* DNR agrees with these statements. Therefore we fail to understand the County's selection of the "Preferred Plan" since Table 4-9 indicates the expected losses in forest cover (5,500 acres) more than double the 2,600 acres of loss expected under the Merged Scenario. (See top of page 4-29).

Review of Table 4-9 indicates that the impacts in loss of forest cover with the "Preferred Plan" are even greater within the Mattawoman Watershed since only an estimated 400 acres of forest loss would be sustained under the merged scenario as compared to approximately 2000 acres under the preferred scenario.

- **Draft Plan fails to assure commitment to Natural Resource Protection.**

The Actions identified on pages 5-22 and 5-33, if enacted, would provide important and effective measures for natural resource protection. However, the vague wording inherent in the intent to implement these actions leaves a great deal of uncertainty that these actions would ever be executed. The county should provide a greater level of commitment that goes beyond "consideration" to ensure these actions are developed and implemented.