



WHERE DO WE GROW FROM HERE?

A REPORT OF THE TASK FORCE ON
THE FUTURE FOR GROWTH AND
DEVELOPMENT IN MARYLAND

DECEMBER 1, 2008

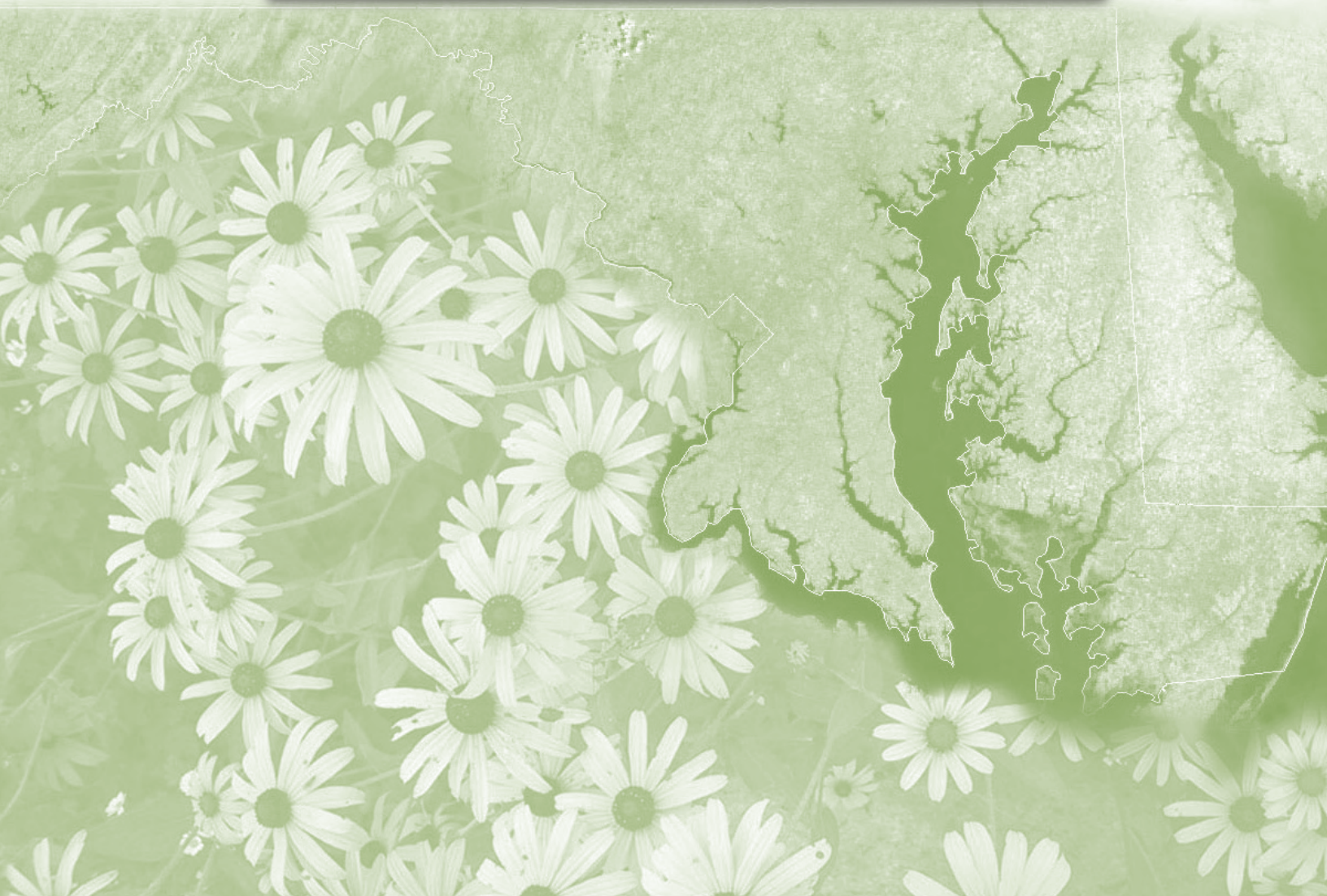


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December 1, 2008

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Honorable Joan Carter Conway
Chair
Senate Education, Health &
Environmental Affairs Committee

Honorable Thomas V. Mike Miller, Jr
President
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Honorable Maggie McIntosh
Chair
House Environmental Matters Committee

Honorable Michael E. Busch
Speaker
Maryland House of Delegates

On behalf of the Task Force on the Future for Growth and Development in Maryland, I am pleased to submit this Report to you.

It has been an honor and privilege to chair this diverse and hard-working Task Force. Its 21 members, representing a wide array of constituencies, have studied a broad range of critical land use, growth, and development issues facing our State. In the following pages, you will find an assessment of current conditions and an overview of Maryland's recent land use policies. As requested, you will also find recommendations for legislation in the upcoming General Assembly session, along with many other recommendations for immediate action not requiring legislation. Further, we have identified a number of topics for additional study by the Task Force or other stakeholders, each with stated timeframes for supplemental reports and an expectation of further recommendations. The Task Force continues in existence until December 2010, during which time it is also expected to provide regular advice to the Governor's Smart Growth Subcabinet.

Maryland has long been a national leader in progressive land use policy, from the creation of the first state planning commission in 1933 through the well-known Smart Growth legislation of 1997. More than a decade after the advent of Smart Growth, however, we continue to face significant land use challenges. Maryland is a wonderful place to live, but expected population growth promises increasing pressure on farmlands, forests, and waterways, including the precious Chesapeake Bay, and our window of opportunity to confront and solve these challenges is shrinking.

As always, with such challenges come opportunities for visionary leadership. Elected and appointed officials, educational and advocacy groups, for-profit enterprises, and even individual citizens have critical roles to play as Maryland strives to achieve smart and sustainable growth. Our State and local governments, in particular, must continue seeking common ground to resolve thorny questions about their respective roles in land use matters, and reconcile their views where necessary to achieve favorable land use outcomes for their shared constituents throughout the State.

We look forward to working with each other, and with you, on behalf of Maryland's citizens.

Sincerely,



Jon M. Laria
Chairman

A MESSAGE FROM THE CHAIR

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Appendices – The following appendices are contained on the CD-ROM affixed to the back cover of this report

Note: Open the file named “Start.pdf” on this CD-ROM to view contents

- A. Growth Scenario Explanation
- B. Task Force Meeting Summaries
- C. MACo Planners Survey
- D. MML Planners Survey
- E. MDP, MACo and MML Question Responses
- F. Smart Growth Listening Session Questions Summary
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 - Terrapin Run
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 - Priority Funding Areas (PFA)
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- K. Recommendations Matrix
- L. HB 773
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- N. HB 366
- O. Article 66B



Which Maryland Do We Want?

Maryland is growing rapidly and we have choices to make.

Between 1970 and 2000, Maryland's population increased 35%, from 3.9 million to 5.3 million. By 2030, the State projects another 27% increase – 1.4 million more Marylanders, bringing our total population to 6.7 million. Where will they live? Where will they work?

If we choose wisely and act responsibly, even with continued population growth, more and more Marylanders will live in connected, walkable communities in close proximity to grocery stores and other shopping. More workers will live within walking or biking distance, or a short commute, of their jobs. Many of us will live in transit-oriented developments where nearby mass transit is convenient and efficient. Maryland's farms will thrive as farmland is preserved and farmers find local markets for their varied products. Less nitrogen, phosphorous and sediment runoff will lead to better water quality in the Chesapeake Bay, helping to stem the decline in fish, oyster, and crab populations and leading to a revitalization of our commercial and recreational fishing, crabbing, and oyster harvesting industries. Our drinking water will be clear and clean.

If we are less thoughtful and deliberate, we face the very real prospect of a very different Maryland. Workers unable to find housing near their jobs will drive greater distances, increasing commuting time between home and work, and spending increasing amounts of money on fuel. Large lot subdivisions will occupy fragmented farm land, and farmers will struggle to keep their farms viable amid increasing development pressures. The Chesapeake Bay will be in further jeopardy as byproducts of sprawl including septic systems, impervious surface runoff, and air pollution continue to degrade our waterways. Opportunities for commercial and recreational fishing, crabbing, and oyster harvesting will be diminished. Water sources will be compromised by run-off from development.

Choices made now by State and local government, business and industry, and individual citizens will decide which Maryland is more likely to become a reality. Our choices will determine which Maryland we will see in the decades ahead and, ultimately, which Maryland we will leave to our children and grandchildren.

The trends are troublesome.

To accommodate our population growth, the amount of developed acres – for residential, industrial or commercial use doubled between 1973 and 2002. That meant the loss of over 650,000 acres of agricultural and forested land to development.¹

Figures 1 and 2 show the geographic dispersion of developed acres in 1973 and in 2002, respectively. The areas shown in red represent developed lands, which by 2002 had extended into many of the State’s previously rural areas.

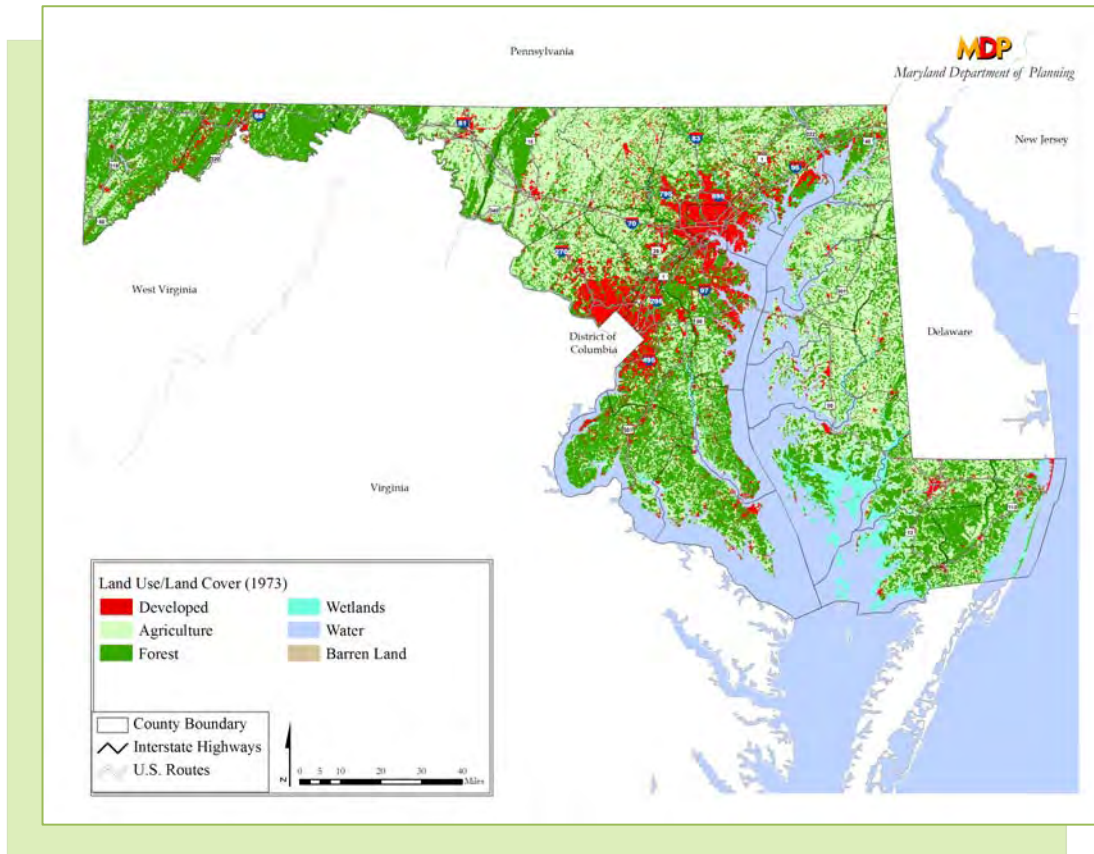


Figure 1 1973 Land Use for Maryland
Source: Maryland Department of Planning

¹ The Maryland Department of Planning will be revising these figures to reflect 2007 datasets and are anticipated for release in early 2009.

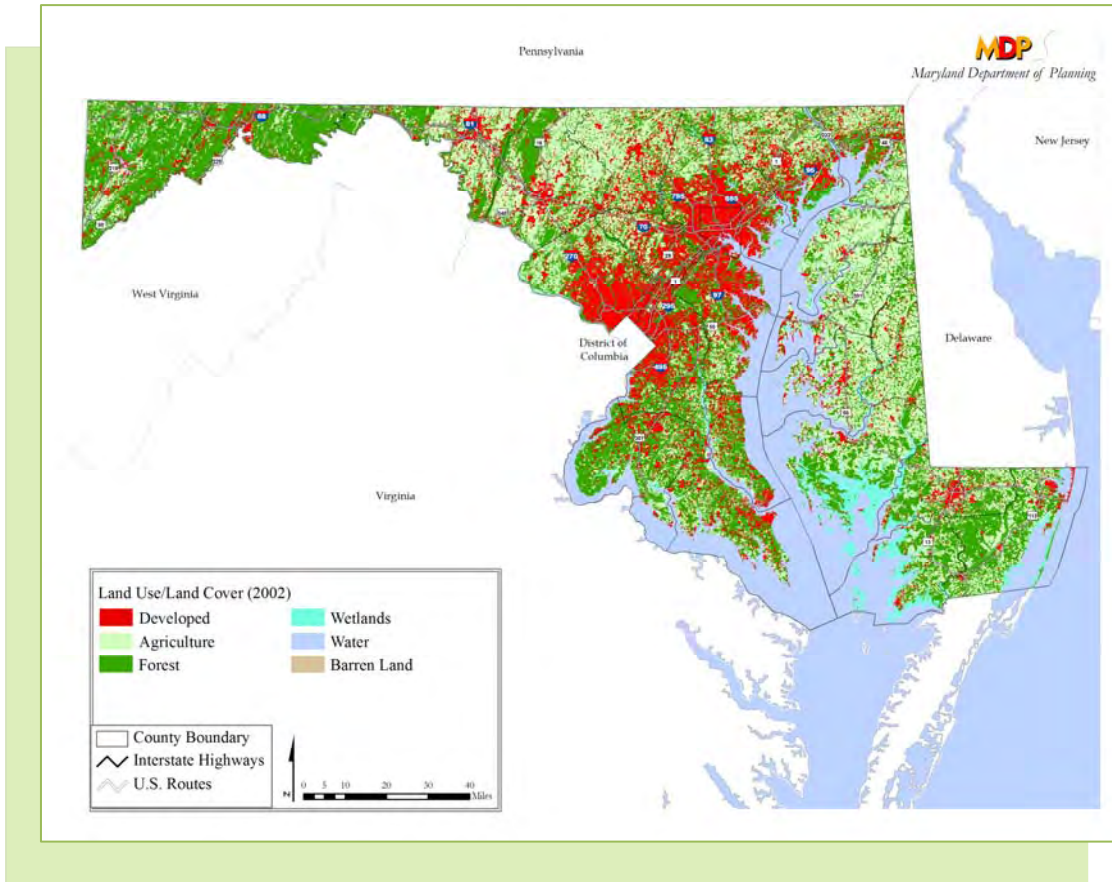


Figure 2 2002 Land Use for Maryland

Source: Maryland Department of Planning

As we look forward to 2030, depending on the choices we make and the policies we implement, we face two different outcomes. According to the Maryland Department of Planning (MDP), a choice to let current trends continue by maintaining current policies yields the development patterns shown in **Figure 3**.² It assumes population growth of 1.1 million people between 2005 and 2030 and that land will continue to be developed according to the programs and policies (e.g. zoning, sewer service areas, etc.) that are currently in place. This scenario shows an additional 650,000 acres being converted from rural uses to urban development by 2030. Forests and farms would be replaced by houses and highways stretching from the head of the Chesapeake Bay to southern Maryland.

² A more detailed explanation of the Scenario assumptions can be found in **Appendix A**.

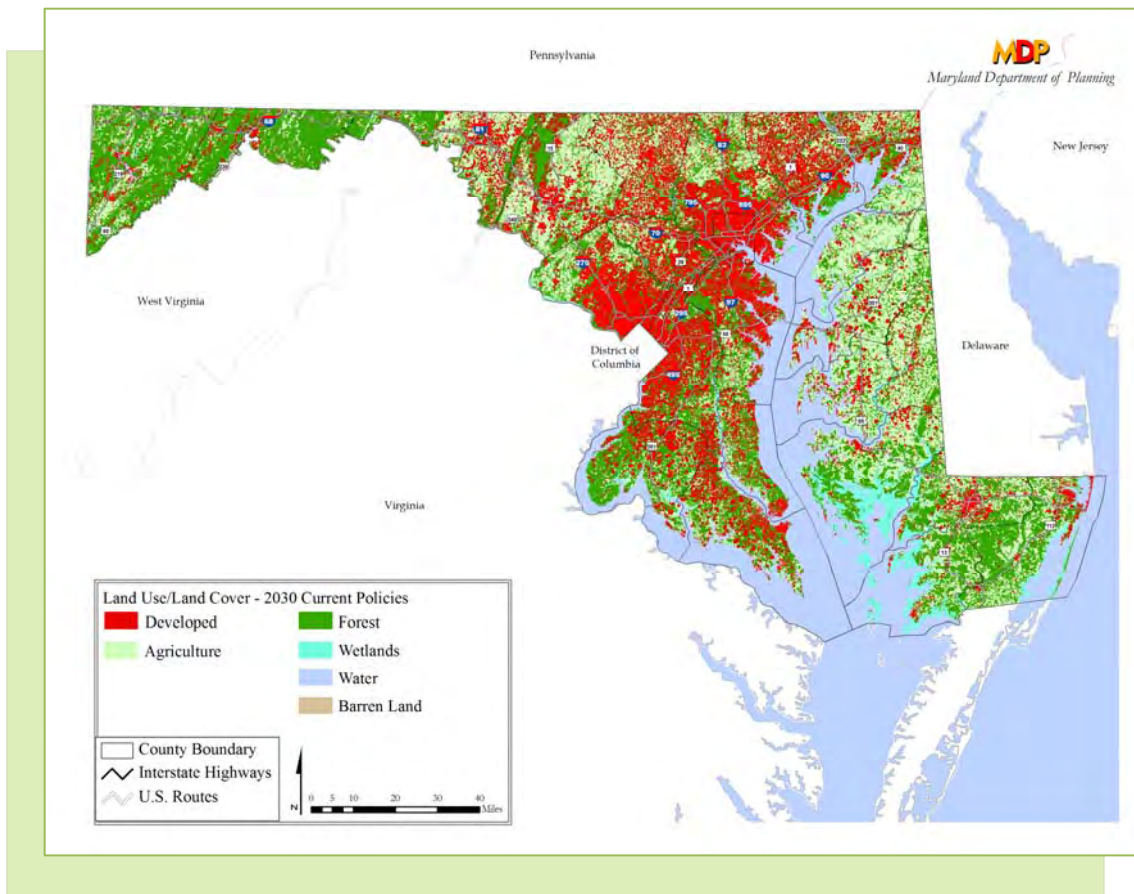


Figure 3 2030 Land Use for Maryland, Current Trends

Source: Maryland Department of Planning

An alternative scenario, illustrated in **Figure 4**, shows how Maryland could look if smart and sustainable growth principles are applied. Using MDP's Growth Simulation Model, this scenario assumes a population growth of 1.1 million people. It assumes growth in targeted areas (Priority Funding Areas) where development already exists, at a minimum of four units per acre, and protects agricultural land and forests protected with more restrictive rural zoning, at a minimum of 1 unit per 20 acres. It also assumes that 80% of the projected population growth between 2000 and 2030 will be located in Priority Funding Areas where capacity for growth currently exists.

This scenario shows only 150,000 acres being developed – and 500,000 acres of forested and agricultural land being preserved for productive and recreational uses. While there are different expectations about whether and when every jurisdiction can implement the policy changes inherent in MDP's 2030 Smart Growth scenario, the scenario exercise demonstrates the significantly different outcomes resulting from potential land use policy and funding choices at the State and local levels.³

³ The Maryland Association of Counties and the Maryland Municipal League question the methodology used by the Maryland Department of Planning in the creation of its 2030 Smart Growth scenario.

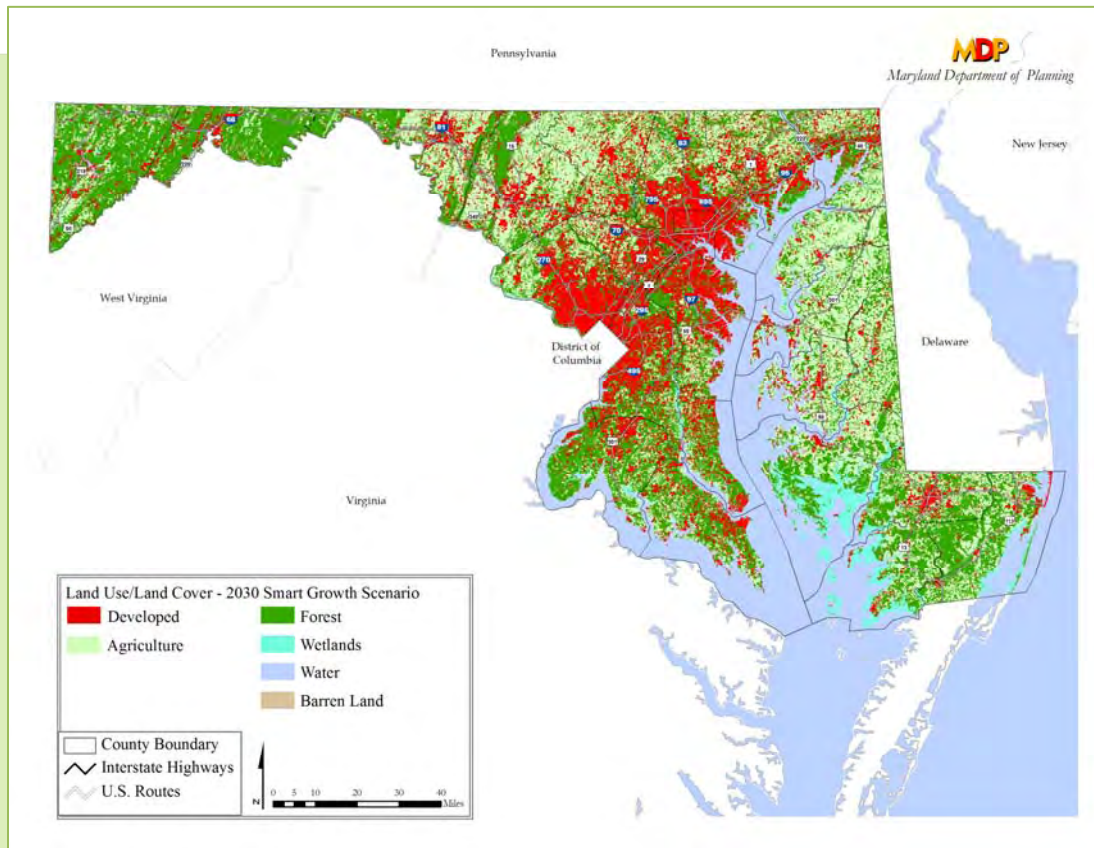


Figure 4 2030 Land Use for Maryland , Smart Growth Scenario

Source: Maryland Department of Planning

As Maryland heads deeper into the 21st Century, those with the power to choose have an important choice to make between these two outcomes, with an essential question in mind:

Which Maryland do we want?

The choice is ours...

The Task Force

Chapter 381 of the 2006 Laws of Maryland established the Task Force on the Future for Growth and Development in Maryland. Chapter 626 of the 2007 Laws of Maryland broadened the Task Force's membership, tasks and goals.

According to the law, the Task Force shall:

- Study current land use policies and their impact on growth in the State;
- Study current trends and challenges for municipal corporations and counties as they relate to growth, including population and demographic changes;
- Analyze the capabilities of municipal corporations and counties to plan for future growth and development;
- Analyze the impacts of county development proximate to municipal corporate limits on municipal infrastructure, water resources, and sensitive areas;
- Analyze the impacts of municipal growth and development on county infrastructure, water resources, and sensitive areas;
- Identify regional growth and development issues;
- Study mechanisms to facilitate joint planning to coordinate growth and development between municipal corporations and counties;
- Examine the impact of § 1.03(e) and § 3.05(f) of Article 66B of the Code on a local government's ability to establish a floating zone on a property or grant piecemeal rezoning of a specific property⁴;
- Determine methods to assess the cumulative impacts of proposed development on infrastructure, including water, sewer, roads, and utilities, and on transportation, fire and safety resources, health systems, educational systems, and environmental resources on a regional scale;
- Determine the parameters for a state development plan, state transportation plan, state housing plan and determine how these plans work together with local land use plans;
- Identify infrastructure needed for smart growth development consistent with population growth;
- Assess mechanisms to fund the construction and maintenance of smart growth infrastructure;
- Make recommendations to implement law or regulations that further best management practices as they relate to future growth and development in the State; and

⁴ The Task Force studied the impacts related to this part of their statutory charge and determined to monitor these impacts. Please refer to the February 25, 2008 meeting summary in **Appendix B**.

- Serve as an advisory board to the Governor's Smart Growth Subcabinet, providing advice and guidance at least twice annually through December 31, 2010.

The full Task Force met monthly and sometimes more frequently from January 2008 through November 2008 to fulfill its charge. Five topic-specific groups were formed to address issues deemed to merit more focused attention and analysis:

- “Eight Visions” Workgroup;
- Infrastructure Assessment Workgroup;
- Adequate Public Facilities Ordinance (APFO) Workgroup;
- Priority Funding Areas (PFA) Workgroup; and
- *Terrapin Run* Workgroup.

The Task Force considered data derived from a survey of county and municipal planning officials, which is attached as **Appendices C and D**.

The Task Force also reviewed responses to questions posed by the Task Force to the Maryland Association of Counties (MACo), the Maryland Municipal League (MML), and MDP. The questions and responses are attached as **Appendix E**.

The Task Force also sought citizen input on its work via nine “Smart Growth Listening Sessions” in Salisbury, Centreville, Silver Spring, Hughesville, Woodlawn, Hagerstown, Bladensburg, and Aberdeen, and Frostburg. More than 550 citizens across the State attended these town-hall style sessions, moderated by local community leaders. A summary of these Listening Sessions is attached as **Appendix F**.

The Task Force is required to report on its work by December 1, 2008 to the Speaker of the House, the President of the Senate, the House Environmental Matters Committee, the Senate Education, Health, and Environmental Affairs Committee, and the Governor. This Report fulfills that initial statutory mandate, though the Task Force will continue its work as an advisory board to the Governor's Smart Growth Subcabinet through December 31, 2010, and as otherwise described throughout the Report.

Executive Summary

In the 1970s, citizens and public officials in Maryland became concerned about the health of the Chesapeake Bay, which plays an integral role in the lives of so many Marylanders. More people and more development throughout the Chesapeake watershed created more pollution in the waterways feeding the Bay, with noticeable impacts on vegetation, animal habitats, and the annual harvests of crabs and oysters. This concern led Maryland to enact major environmental protections, including the Land Use Act of 1974 and (in conjunction with Pennsylvania, Virginia, the District of Columbia and the U.S.



Environmental Protection Agency) the Chesapeake Bay Agreement of 1987. The concern for the Bay also led state officials to look for ways to bring more order to growth and development.

The rapid development of Maryland helps explain the change in the Bay's fortunes. Between 1973

and 2000, 600,000 acres that had been Maryland forests or agricultural land were swallowed up by housing, schools, roads, and other development. In those three decades, the amount of developed land in Maryland doubled.

Development tended to spread or "sprawl" outward from heavily urbanized areas into adjoining rural counties, as people sought out attractive housing prices. This has also led to increases in commuting, which has placed additional strains on the state's transportation infrastructure. It has also placed additional burdens on counties and municipalities to provide such vital services as schools, drinking water and sewerage systems. Citizens, elected leaders and appointed officials became increasingly concerned in the 1980s and 1990s that a continuation of current trends would endanger not only the Chesapeake Bay but the State's agricultural base, its forests, and the quality of life that had made Maryland appealing to new and long-time residents.

In 1997 the Governor and the General Assembly authorized "Smart Growth" policies, in an attempt to put Maryland on an alternative course of growth management and development.

Because Maryland has traditionally delegated land use and zoning decisions to county and municipal governments, the Smart Growth legislation sought to

change development patterns through incentives rather than regulations. The State designated Priority Funding Areas (PFAs) – areas already developed or where development was currently planned – and committed to funding growth-related infrastructure projects only inside PFAs. It also established initiatives to conserve and preserve undeveloped land. By limiting new growth to the PFAs, MDP projects that Maryland’s population growth by 2030 could be accommodated in only 150,000 acres of currently undeveloped land. If sprawl development continues unabated, MDP projects by 2030 the state’s growing population will have consumed another 650,000 acres of undeveloped land.

In **Section I, Maryland Development Patterns and Trends**, this Report reviews briefly the demographic and economic trends driving our current patterns of growth and development. Where residents choose to live, where they work, how much they drive, and where their jobs will be in the future, all have major impacts on where housing, schools, and highways are built.

Maryland’s population is projected to continue growing, partly from natural increase and partly from domestic migration and foreign immigration. The state’s population is expected to increase from 5.3 million to 6.7 million by 2030. Maryland will need to house 671,000 more households than in 2000, with population shifting from the older suburban counties to newer suburban counties.

Maryland’s labor force is projected to grow far more slowly than the overall population through 2030. The overwhelming share of job growth will occur in Central Maryland, but in a number of counties jobs will increase twice as fast as the available workforce. By 2030, Maryland will experience a jobs/housing imbalance, which means there will be more available jobs than available workers overall. The growth of Maryland jobs will likely result in fewer Maryland residents commuting to jobs out of state, and/or more residents from other states commuting into Maryland for work. However, Maryland’s population is migrating away from the counties where job growth will be greatest. This is driven in large part by a search for lower-priced housing, as housing price increases since 2002 have far outstripped increases in income. Between 2002 and 2007, it became increasingly difficult to purchase a home for less than \$300,000. Housing prices have greatly exceeded increases in household income: median household income for 2002-2007 increased 16.7%, median sales value for the same period increased 73.6%. Admittedly, during the fourth quarter of 2007, housing prices decreased and are likely to continue to decrease in 2008, but the net effect of such decrease is unlikely to make housing dramatically more affordable, especially with the ongoing credit crisis.

The average full-time Maryland worker spends 255 hours per year commuting to and from work – the second longest commute in the nation. Most large jurisdictions have more workers commuting out than commuting in. About 17% of working Maryland residents commute to jobs outside of Maryland.

Marylanders also depend more on their automobiles each year. The total vehicle miles driven in Maryland increased 23% between 1996 and 2006, while population grew only 9.6%. Transit ridership has been increasing gradually since 2004, but increased reliance on cars creates more pressure for road maintenance and highway improvements.

In **Section II, Growth Management in Maryland, Past and Present**, this Report reviews the history of growth management legislation and policy in Maryland.

Maryland historically has been a leader in planning for growth, beginning in 1933 with the creation of the nation's first statewide planning commission.

Concerns about the health of the Chesapeake Bay caused the General Assembly to pass the Land Use Act of 1974, which gave MDP authority to designate areas of critical state concern and to intervene in local land use, development and construction issues. Maryland and Virginia formed the Chesapeake Bay Commission in 1980, and Maryland signed the Chesapeake Bay Agreement in 1987, committing the State to meet specific goals for restoring the health of the Bay.

In 1988, the Year 2020 Panel of Experts issued a report that documented the impact on the Bay of growth and development. Maryland's governor appointed



a task force known as the Barnes Commission to recommend ways to limit the impact of growth on the Bay. The commission proposed giving the State power to zone some areas for growth and others for protection, but the General Assembly did not enact those recommendations.

The Planning Act of 1992, however, required local governments to prepare comprehensive local land-use plans based on seven visions (later expanded to eight) first expressed in the Year 2020 report. These plans are reviewed every six years at the local level, with input from a number of State agencies.

In 1997, the General Assembly passed the Smart Growth Package, which took the approach of creating incentives rather than regulations to affect growth. The Smart Growth Act created "Priority Funding Areas" (PFAs), where growth should occur, and declared the State would only spend funds on growth-related infrastructure (water and sewer, highways and transit) inside PFAs. The Rural

Legacy program set aside funds to purchase large tracts of undeveloped land for preservation. This “inside-outside” strategy thus provided incentives for growth inside PFAs, and incentives for rural conservation outside the PFAs. Control of land-use decisions, such as zoning and subdivision, remained the responsibility of county and municipal governments.

Smart Growth has brought a number of successes in individual jurisdictions. After many decades of population decline, Baltimore City’s population has stabilized, and new investments, including \$4 billion worth of projects underway in the downtown area, testify to a growing interest in city living. Cumberland, one of Maryland’s first Main Street Communities, has revitalized its downtown core, highlighted its historic architecture, and developed a thriving arts and entertainment district. Baltimore County has employed several tools, including an urban-rural demarcation line, to preserve open space and farmland. Easton has become a thriving commercial center on the Eastern Shore, with an historic town center, an arts and cultural center, and vibrant shopping. Montgomery County’s 90,000-acre Agricultural Reserve, created by combining restrictive rural zoning with an innovative transfer-of-development-rights program, demonstrates that working farms can thrive near urban and suburban areas.

There is broad support for the principles of Smart Growth at both the State and local levels and Smart Growth has had many successes, including the specific examples noted above. However, Smart Growth still faces significant challenges in stopping or slowing a trend toward sprawl development in the State. State incentives have proved to be insufficient to counteract tremendous pressures for growth and cost advantages for developers to build on undeveloped land. Lower-than-anticipated State funding for infrastructure and land preservation programs have hampered Smart Growth’s effectiveness; consequently, many local governments have not strengthened local zoning ordinances to slow the development of land zoned for rural uses, believing that additional State funding must come before local action.

The limited impact of Smart Growth can be seen from a number of perspectives:

- **Housing patterns** – the percentage of housing units built inside PFAs has dropped since Smart Growth was adopted, and the percentage of residential acres being developed outside PFAs has increased slightly.
- **Transportation investments** – only an average 60% of transportation spending, the largest component of State infrastructure investment, has been invested in projects inside PFAs. For highway projects specifically, 89% of funds have gone to projects inside or partially inside PFAs.
- **School construction** – exempted from the Smart Growth Act, the percentage of school construction spending inside PFAs peaked at 86% in FY2000 and was only 60% in FY 2008. From FY 1998-2008 25% of school project funding for additional seating capacity occurred outside of PFAs.
- **Water and sewer** – some communities facing growth pressure are approaching the limits of their capacity because of water quality regulations that restrict wastewater discharge. In undeveloped areas, meanwhile, septic

tanks discharge proportionately more nitrogen into the environment than treatment plants. Some areas of Maryland are also facing water supply shortages.

- **Land preservation** – Much of Maryland’s rurally zoned land is already being developed. As a result, relatively few large tracts of undeveloped land are available for preservation.



Smart Growth is also facing an additional challenge arising from one of the State’s great successes. Maryland is expected to gain 43,000 new jobs, beginning in 2009, through the U.S. Defense Department’s Base Realignment and Closure (BRAC). The influx of new residents will place additional development pressures on several jurisdictions that are already experiencing high growth rates.

Smart Growth has been successful in changing thinking about growth and development. As overall policy, it has the support of citizens, political

leaders and planners. Individual projects, such as transit-oriented developments in urbanized jurisdictions, have been successful. However, additional concerted and cooperative action by the State and local governments is essential in order to counter the trend toward sprawl, which is leading Maryland to an undesirable and unsustainable outcome.

In **Section III, Recommendations**, the Task Force makes detailed recommendations for action at various levels of State and local government, organized generally under the following fifteen headings:

1. Modernize the State’s Planning Visions to Achieve Smart and Sustainable Growth by Updating the “Eight Visions”
2. Strengthen Comprehensive Plans
 - The General Assembly Should Respond to the Recent Terrapin Run Case with Corrective Legislation
 - Provide Earlier Opportunities for State Agency Comment on Local Comprehensive Plans

- Increase Technical and Financial Support for Local Comprehensive Planning, Particularly in Smaller Communities with Limited Capacity
- 3. Collect Good Information for Good Planning
- 4. Sharpen the Focus of Priority Funding Areas (PFAs)
- 5. Emphasize Transit-Oriented Development (TOD)
- 6. Preserve Land for Resource Production and Protection
 - Protect Funding for Maryland's Land Protection Programs and Also Ensure That Their Sources are Not Diverted to Other Uses
 - Target Land Preservation Programs
 - Support Agricultural Land Preservation Initiatives That Protect Resource-Based Industries
 - Explore Expansion of Transfer of Development Rights (TDR) Programs
- 7. Assess and Address Critical Infrastructure Needs
 - Require the Maryland Department of Planning to Update the 2004 Infrastructure Survey and Local Government Cooperation with the Survey
 - Complete a Ten-to-Twenty Year Historical Survey of State and Local Infrastructure Investment for Schools; Land Preservation Including Agricultural and Open Space Protection; and Transportation Improvements
 - Expand the Department of Housing and Community Development's Local Government Infrastructure Finance Program
 - Maximize Local Government Authority to Fund Local Infrastructure Needs
 - Improve the Effectiveness of Adequate Public Facilities Ordinances
- 8. Address Maryland's Housing Challenges
 - Increase Resources and Activities to Support Affordable/Workforce Housing
 - Expand Housing Information and Policies in Local Comprehensive Plans
 - Evaluate the Benefits of Creating Community Land Trusts
- 9. Stimulate Revitalization of Existing Communities
 - Encourage Growth Through Reinvestment and/or Tax Credits in Older, Existing Communities, Particularly in Greyfields/Brownfields, Areas Near Transit Stations, and Other Specially Designated Areas Such As BRAC Zones, Enterprise Zones And Community Legacy Areas

- Find Creative Solutions to Incentivize and Encourage Small Business Growth in Existing Communities
 - Reauthorize the Maryland Heritage Structure Rehabilitation Tax Credit and Remove Caps
10. Ensure Adequate Water and Sewer for Smart Growth
 - Fund Hydrologic Studies and an Expanded Monitoring Network
 - Develop Nutrient Trading for Non-point Sources
 - Level the Playing Field Between Development Served by Onsite Sewage Disposal Systems and Development Served by a Wastewater Treatment Plant
 - Convene a Stakeholder Group to Discuss Ways to Give Priority in Allocations of Ground Water to Municipalities that Need Additional Water to Support the Desired Densities
 - Convene Stakeholder Groups to Discuss Ways to Reuse Water
 11. Incorporate Climate Change into Growth Planning
 12. Promote Preparation and Adoption of State Development Plan, State Housing Plan, and State Transportation Plan
 13. Identify Inconsistent and/or Conflicting Laws, Regulations, and Policies
 14. Promote Smart Growth Education and Outreach
 - Create a Broad-Based Educational and Outreach Program About Smart Growth, Developed Collaboratively by State and Local Government, Including Preparation of a Smart Growth Curriculum
 - Encourage the Reinvigoration of the Maryland Planning Commissioners Association and Link to the Maryland American Planning Association
 15. Establish a Statewide Planning Advisory Committee

Some of these recommendations are calls for immediate legislative or other action, while others call for additional study by the Task Force, State agencies, or workgroups combining various stakeholders with an interest in the relevant issue. Most items for further study have specific deadlines for the preparation of interim or final reports to ensure that they are pursued actively and deliberately. The Task Force expects to play an active role in studying or monitoring these items until its scheduled termination in December 2010. During that time, the Task Force will also serve as an advisory board to the Governor's Smart Growth Subcabinet, providing recommendations to the Subcabinet and responding to requests for assistance initiated by the Subcabinet.



Maryland Development Patterns and Trends

Development and population trends give a more complete picture of Maryland's residents and show the impact of our current patterns of growth and development. Characteristics like where residents choose to live, where they work, how much they drive, and where the jobs will be in the future have major impacts on where schools, housing and highways are built. Ultimately they help shape which scenario for Maryland is more likely to occur in 2030.

More Households

According to MDP projections, Maryland will grow from a population of 5.3 million in 2000 to 6.7 million in 2030. At the same time, average household size is projected to decrease from 2.61 persons per household in 2000 to 2.46 persons per household in 2030. That means the number of households will grow faster (34%) over the next 30 years than the number of people (27%). By 2030, Maryland is expected to have 2,652,000 households, an increase of 671,400 from 2000. Although this 2030 increase will be smaller than the 806,000 increase that occurred over the 1970-2000 time period, it will nonetheless result in more households and a greater demand for housing.

Domestic Migration and Foreign Immigration

Some of Maryland's growth will be the result of natural increase (births minus deaths) in the current population. The remaining growth will come from people moving into Maryland from other states or other countries. Beginning in the 1990s, Maryland began losing more residents to other states than it gained, but foreign immigration has increased significantly. Much of the foreign immigration settled in the four older suburban counties of Montgomery, Prince George's, Baltimore, and Anne Arundel Counties.

County-to-County Migration

At the same time, the last several decades saw significant outmigration from these older suburban counties to newer suburban counties – from Montgomery to Frederick and Howard; from Prince George's to Howard, Calvert and Charles; from Baltimore to Carroll and Harford; and from Anne Arundel to Queen Anne's. At the same time that there was outmigration from older to newer suburban jurisdictions, there were also net outflows between some of the older suburban jurisdictions, for example from Prince George's to Montgomery and Anne Arundel Counties.

In the current decade, a new wave of outward migration into exurban counties is evident – for example, from Frederick County to Washington County, and from Harford County to Cecil County. There is a significant increase in migration from Maryland into Pennsylvania, particularly from Baltimore, Carroll and Frederick Counties.

Labor Force

Maryland's labor force is projected to grow far more slowly than the overall population through 2030. (Figure 5). With a greater proportion of retirees (the Baby Boomers) and children in the population, the share of the working-age population (ages 16 plus) involved in the labor force will decrease from 67.8% in 2000 to 64.3% in 2030.

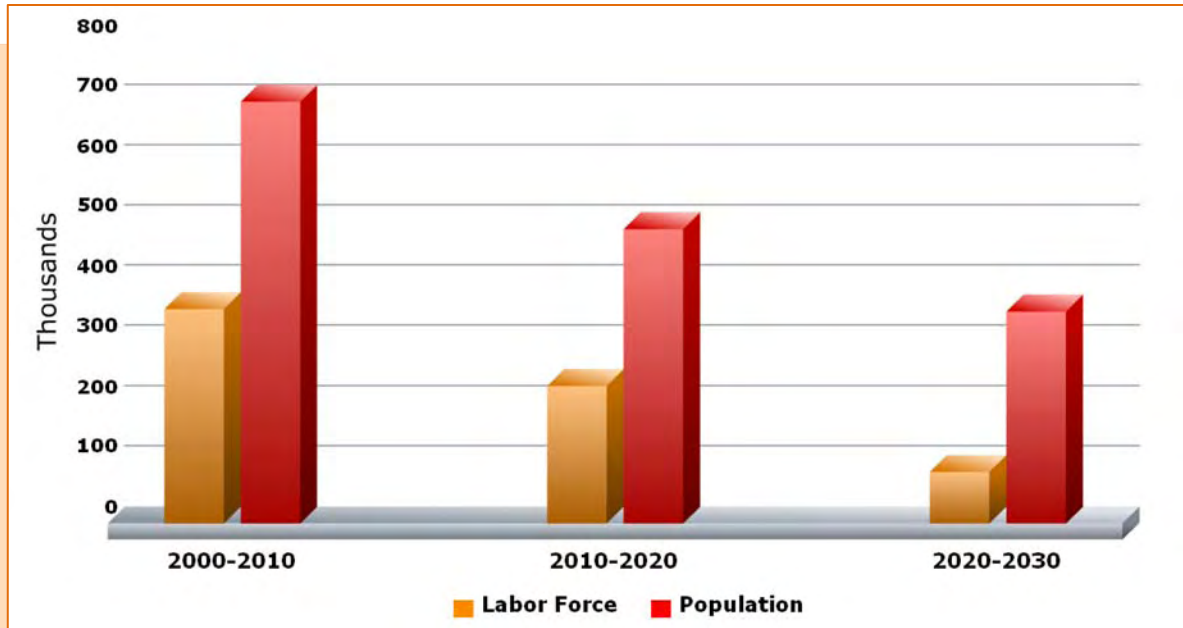


Figure 5 Projected Labor Force and Population Growth in Maryland

Source: Maryland Department of Planning

Job Growth “Imbalance”

The overwhelming bulk of the projected job growth from 2000 to 2030 will be in Central Maryland, particularly the four inner suburban counties of Anne Arundel, Baltimore, Prince George’s and Montgomery. Secondarily, total job growth will be greatest in Harford, Howard and Frederick counties. (Figure 6).

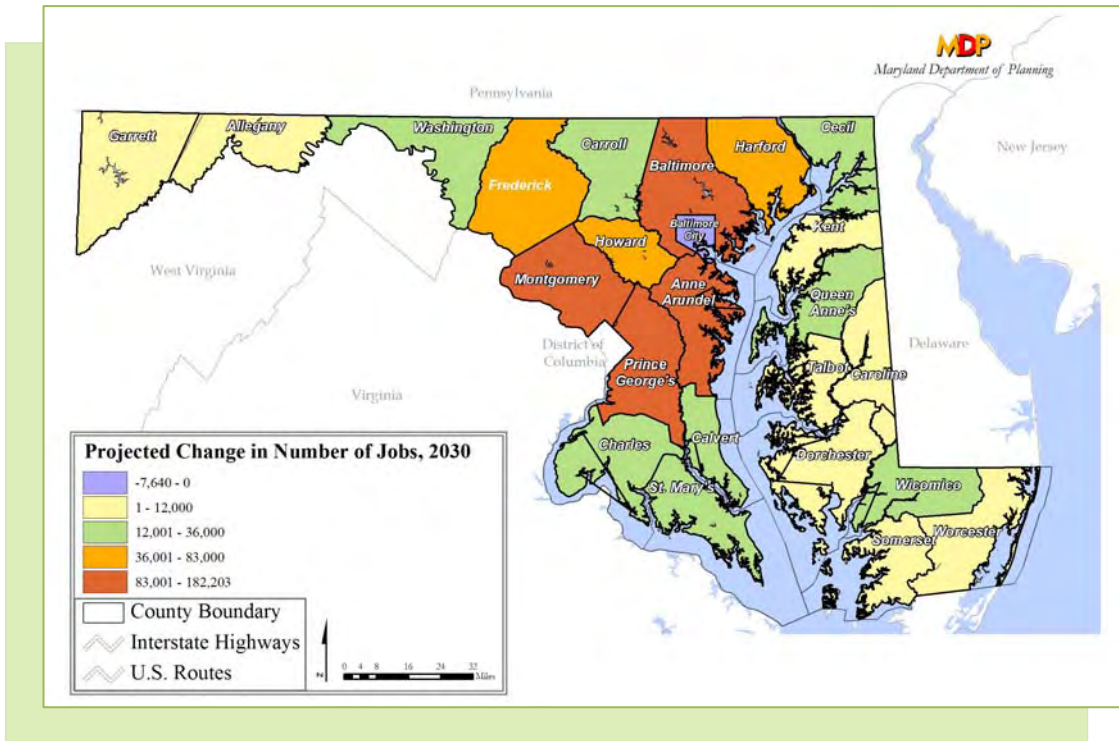


Figure 6 Projected Change in Jobs for Maryland’s Jurisdictions, 2000 - 2030

Source: Maryland Department of Planning

If current projections hold, however, eight jurisdictions will experience twice as much job growth as labor force growth between 2000 and 2030. (These counties are shown in dark green in Figure 7 on the map below.) This “imbalance” will be most severe in the Baltimore Region, including Anne Arundel, Baltimore, Harford and Howard counties. While displaying a more moderate imbalance, Montgomery and Prince George’s counties are also projected to have more job growth than labor force growth. Greater job than labor force growth is also expected on parts of the Eastern Shore and Garrett County but the absolute differences here are not as great as they are in Central Maryland.

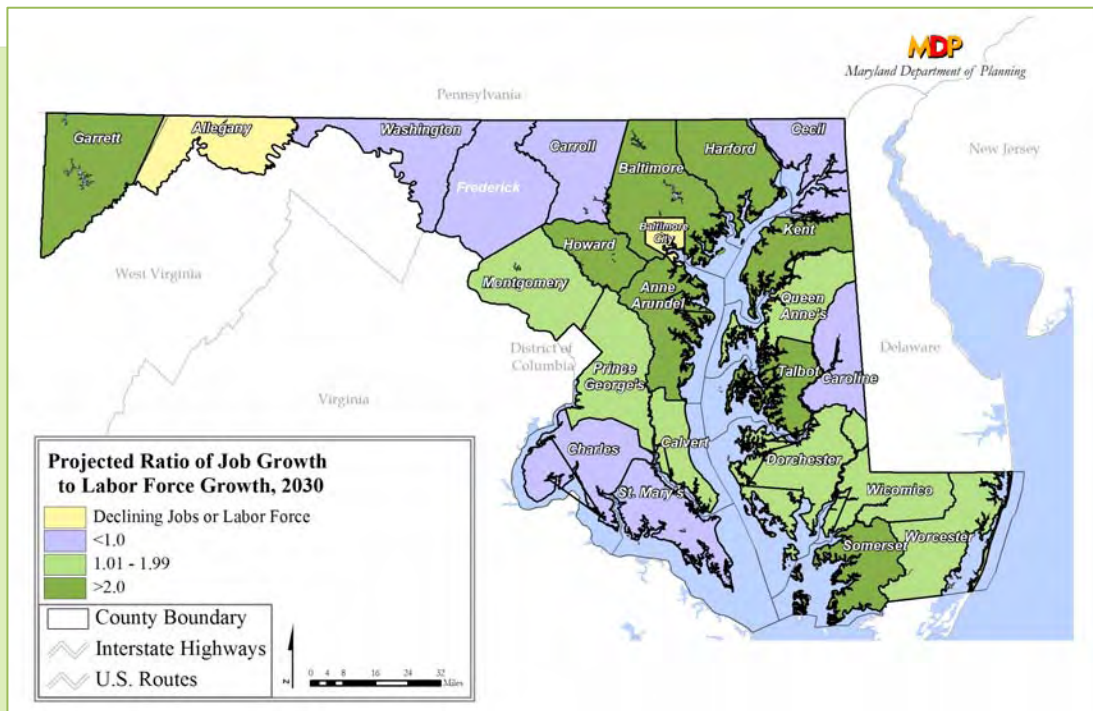


Figure 7 Projected Ratio of Job Growth to Labor Force Growth for Maryland's Jurisdictions, 2002 - 2030

Source: Maryland Department of Planning

Housing Trends

The other side of the “jobs/housing imbalance” is where housing is located. A key factor in the migration patterns from the older and newer suburban counties is a search for more housing options. This migratory pattern however, is more complex than the search for more affordable housing. Part of this migration is the search for a larger house on a larger lot. The escalation of housing prices in the current decade accentuated this problem. Between 2002 and 2007, it became increasingly difficult to purchase a home for less than \$300,000 (**Figures 8 and 9**). Housing prices have greatly exceeded increases in household income: median household income for 2002-2007 increased 16.7%, median sales value for 2002 increased 73.6%. While housing prices have decreased in the fourth quarter of 2007 and are likely to continue to decrease in 2008, the increase in housing prices will still exceed the increase in household income.

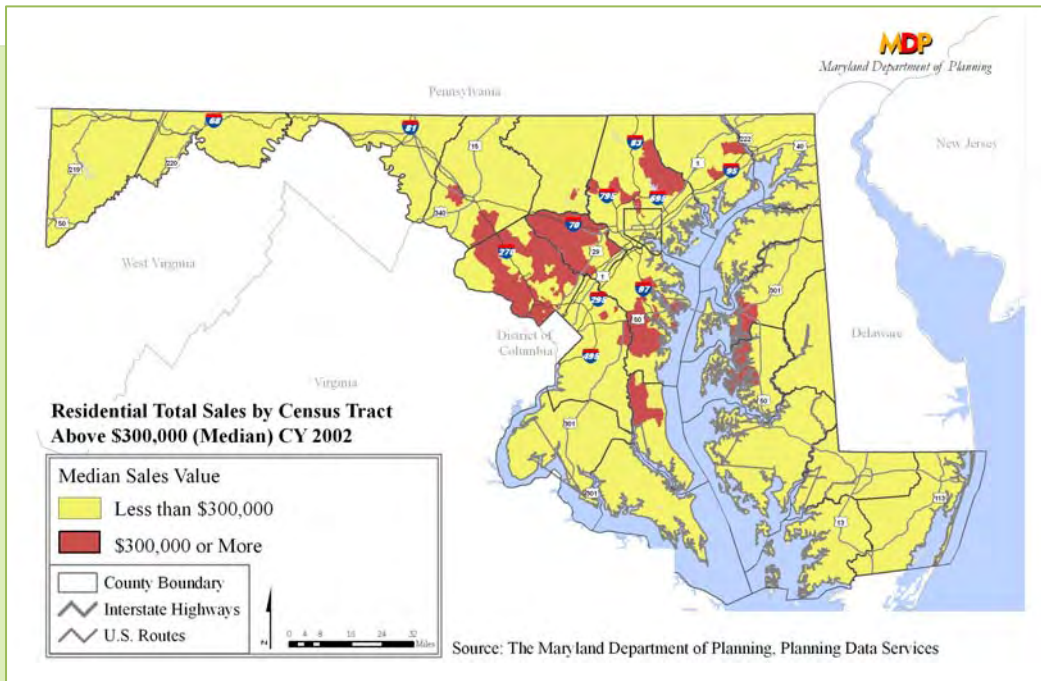


Figure 8 Residential Total Sales Above \$300,000 (Median) 2002

Source: Maryland Department of Planning

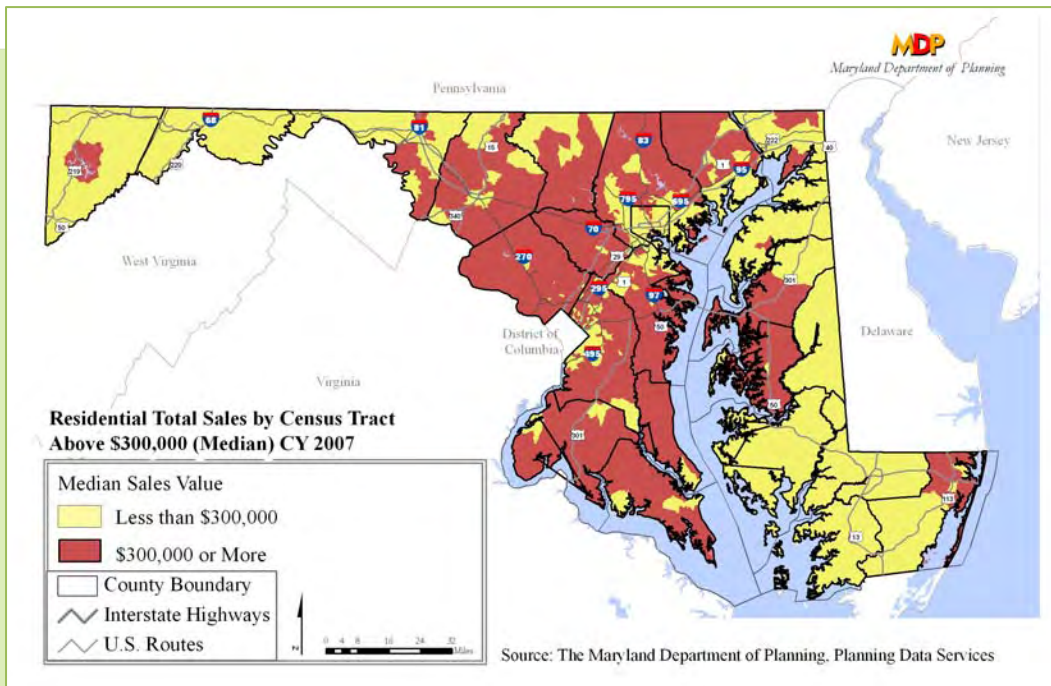


Figure 9 Residential Total Sales Above \$300,000 (Median) 2007

Source: Maryland Department of Planning

Commuting Trends

One way to address the imbalance between where people work and where people live is by commuting – a fact of life for hundreds of thousands of Maryland residents. In fact, Maryland has the second-longest commute in the country, according to U.S. Census data. The average full-time worker spends 255 hours per year (more than six work weeks) going to and from work. Commuting times have increased in Maryland for a variety of reasons including housing affordability, personal choice, market forces, and job location



differences within households. The average Marylander traveled 10,104 miles in 2006.

In 2000 over 450,000 Maryland residents, or 17% of Maryland residents who work, commuted out of state, while almost 183,000 out-of-state residents commute to work in Maryland. This means Maryland is a net exporter of labor.

At the county level, commuters are both incoming and outgoing. “Net commutation” is the number of incoming workers from other jurisdictions, minus the number of residents commuting outward to jobs elsewhere. In 2000, only a handful of jurisdictions in Maryland had net in-commuting, *i.e.* more

people commuting into the jurisdiction than commuting out. With the exception of Baltimore City, all of the larger jurisdictions, which comprise the bulk of jobs in Maryland, experienced net out-commuting in 2000. (Figure 10).

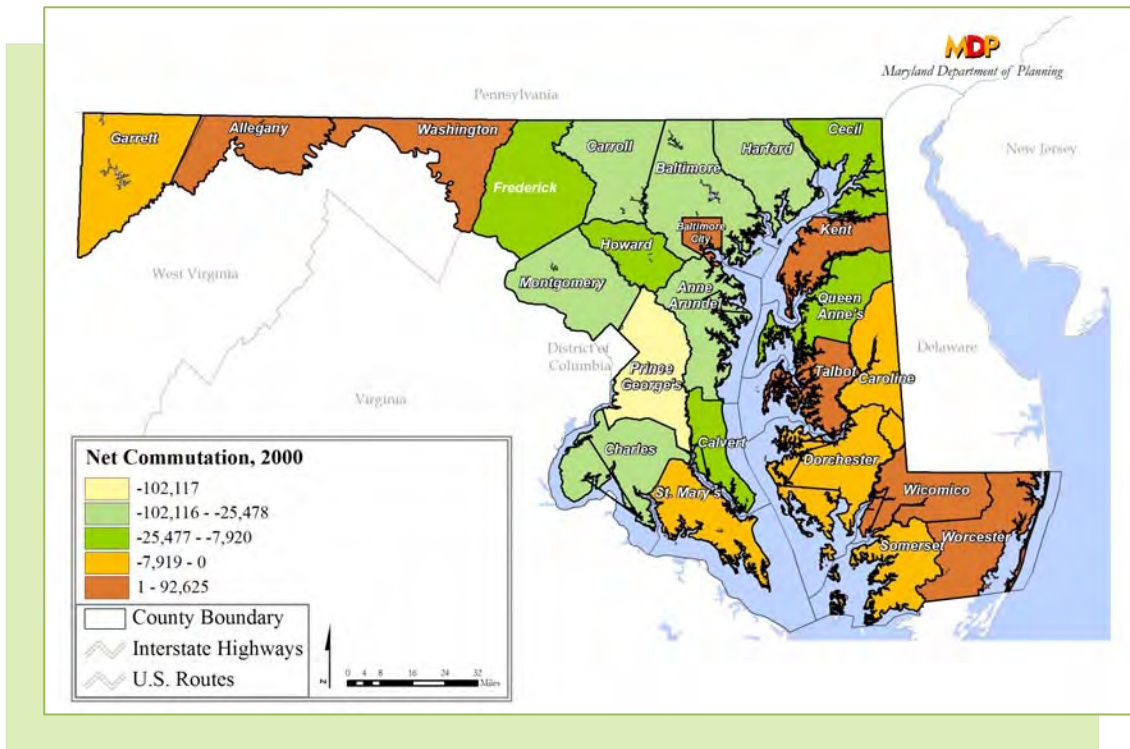


Figure 10 2000 Net Commutation for Maryland's Jurisdictions

Source: Maryland Department of Planning

Analysis of labor force and job growth suggests that by 2030, three jurisdictions in the Baltimore Region – Baltimore, Anne Arundel and Howard Counties – will need to move from a net out-commuting mode to a net in-commuting mode to meet labor force needs. In addition, Prince George's County will need to have significantly fewer of its residents commuting outward. The map below indicates how net commuting would need to change to be enough labor to meet the projected jobs. (Figure 11).

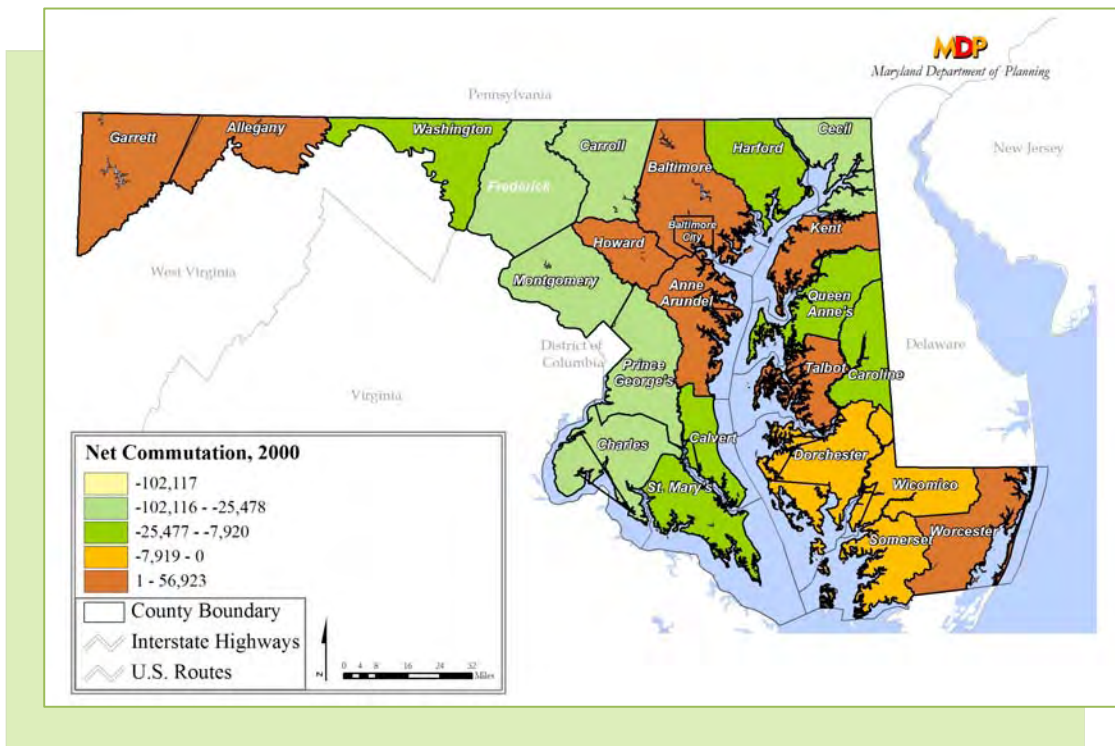


Figure 11 2030 Net Commutation for Maryland’s Jurisdictions

Source: Maryland Department of Planning

Overall, Maryland is projected to experience a “jobs/housing imbalance.” This means that for the job forecasts to be reached, Maryland must see either more household/population growth or a significant change in the net commuting patterns. Either significantly fewer Maryland workers will be commuting to jobs out of state, or substantially more out-of-state residents will be commuting into Maryland for work.

Vehicle Miles Traveled

Between 1996 and 2006, vehicle miles traveled per person in Maryland grew by 12.7%. Total vehicle miles traveled in the State grew 23% while during the same period Maryland’s population grew only 9.6%. (Figure 12). With projected population growth, combined with the continuation of existing development patterns, vehicle miles traveled is expected to increase in Maryland. The increase of vehicle miles traveled is also further complicated by the increase in fuel prices.

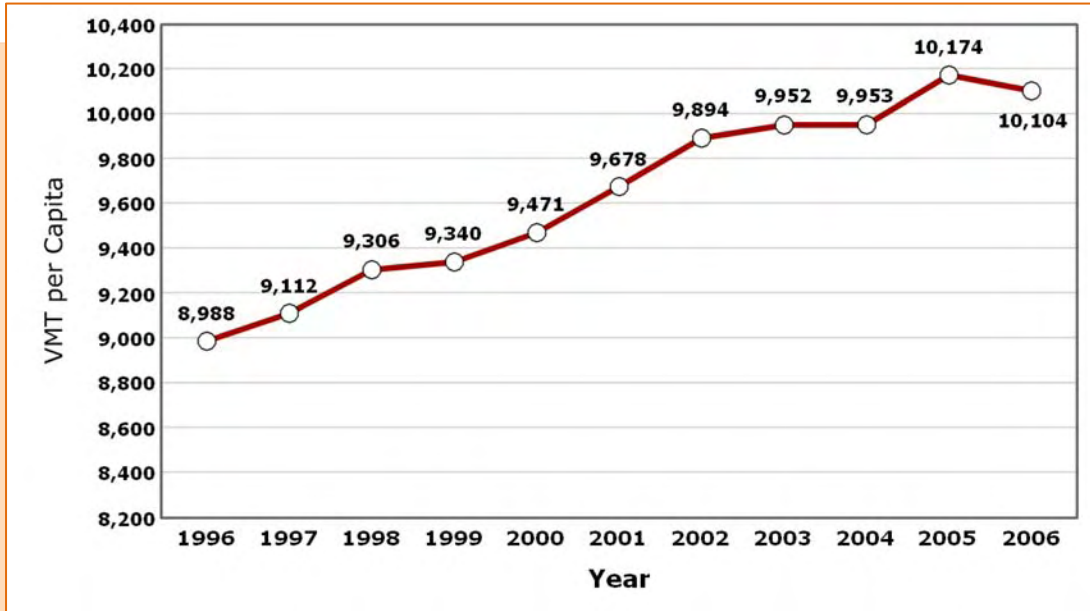


Figure 12 2008 Annual Attainment Report on Transportation System
 Source: 2008 Annual Attainment Report on Transportation System Performance, MDT

Transit

Since 2004, transit trips per person have gradually increased. According to the Maryland Department of Transportation 2008 Annual Attainment Report, between FY 2006 and FY 2007, transit ridership increased on all Mass Transit Administration modes including Core Bus, Metro (Washington and Baltimore), Light Rail, MARC, Commuter Bus, Locally Operated Transit Systems and Paratransit services. (Figure 13)



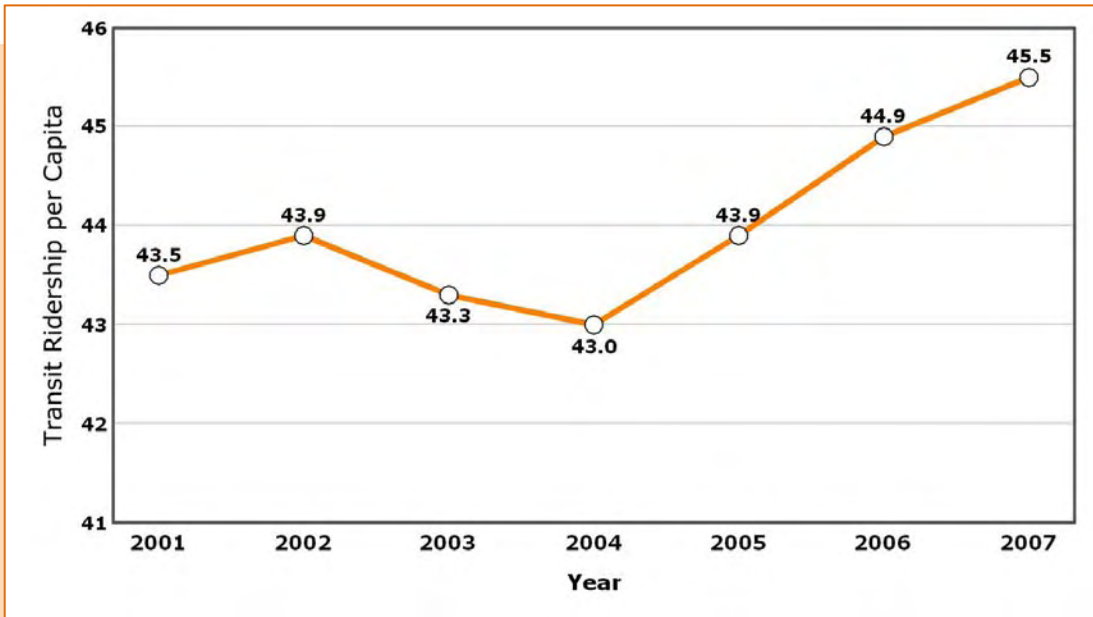


Figure 13 Transit Ridership in Maryland

Source: 2008 Annual Attainment Report on Transportation System Performance, MDOT

Growth Management In Maryland, Past And Present

A. Early History

Maryland’s leadership on growth issues dates back more than 75 years to 1933, when the General Assembly created the first statewide planning commission in the nation. Nearly eight decades later, we grapple with many of the same issues as our predecessors. The Planning Commission’s 1938 report, *Five Years of State Planning*, cited these surprisingly familiar issues: uncontrolled growth, premature rural subdivision, loss of productive soils, strip growth, loss of forest land, loss of Chesapeake Bay fisheries, needs for infrastructure and capital improvement, needs to acquire forest land and set goals for preserving agricultural land.

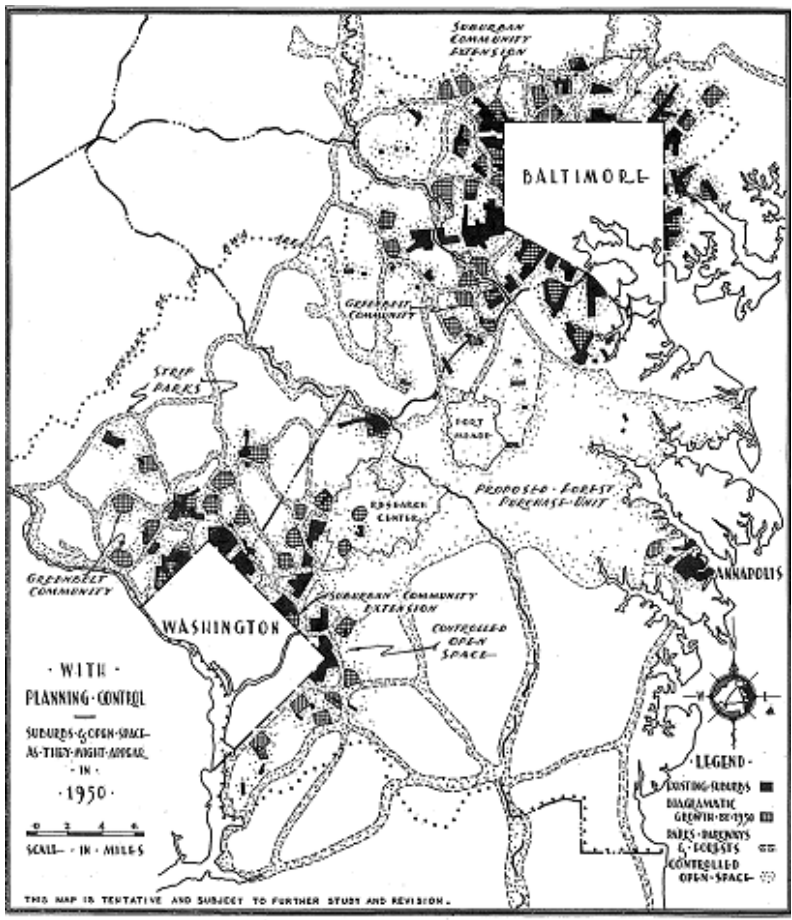


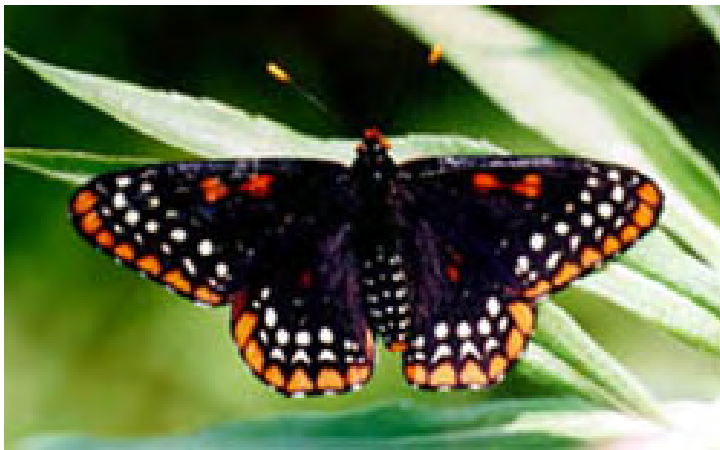
Figure 14

Source: Five Years of State Planning, Maryland State Planning Commission, December 1938.

In the 1970s, citizens and public officials in Maryland became concerned about the health of the Chesapeake Bay, which plays an integral role in the lives of many Marylanders. More people and more development throughout the Chesapeake watershed created more pollution in the waterways feeding the Bay, with noticeable impacts on vegetation, animal habitats, and the annual harvests of crabs and oysters. In a direct response to threats to the Chesapeake Bay ecosystem, the General Assembly (in conjunction with Pennsylvania, Virginia, the District of Columbia and the U.S. Environmental Protection Agency) enacted major environmental protections such as the Land Use Act of 1974, which authorized the Secretary of MDP to designate areas of critical state concern. MDP designated 57 areas for special consideration as areas for preservation, conservation or utilization. State and local actions were strictly voluntary, however, and many of these areas have yet to be conserved, preserved, or used. The Land Use Act also allowed MDP to express the state's interest in local land use decisions and to intervene in land use, development or construction issues.

B. Precursors to Smart Growth

Continuing concerns about the deteriorating state of the Chesapeake Bay were the impetus for what became known, nationally and in Maryland, as “Smart Growth.” Maryland and Virginia jointly formed the Chesapeake Bay



Commission in 1980. In 1985, the Commission adopted a plan for bay restoration and protection. The Chesapeake Bay Agreement, signed in 1987 by the Governors of Maryland, Pennsylvania and Virginia, the Mayor of Washington, D.C., the administrator of

the U.S. Environmental Protection Agency and the Chairman of the Chesapeake Bay Commission, committed the signatories to specific goals for protecting and restoring the Bay. A group called the Year 2020 Panel of Experts produced a report at the end of 1988, documenting the effects of growth in the Chesapeake region and making numerous recommendations. The report proposed seven visions to guide urban development policy in the region.

Responding to that report, Governor William Donald Schaefer appointed a commission (known as the “Barnes Commission” after its chairman, Michael Barnes) to recommend ways to limit the impact of growth on the Chesapeake

Bay watershed. The Barnes Commission recommended giving the State power to zone certain areas for growth and others for protection. However, the legislation based on the Barnes Commission's recommendations failed to pass the General Assembly amid concerns about State intrusion into local authority over land use matters.

The Barnes Commission report did, however, provide a foundation for the Planning Act of 1992, which required local governments to prepare comprehensive land use plans and to review their plans every six years. Plans were required to incorporate a sensitive-areas element and to be responsive to the Act's "seven visions" (later expanded to eight, all included below):

- Development is concentrated in suitable areas;
- Sensitive areas are protected;
- In rural areas, growth is directed to existing population centers and resources are protected;
- Stewardship of the Bay and land is a universal ethic;
- Conservation of resources, including a reduction in resource consumption, is practiced throughout the region;
- To assure the achievement of the first five visions, economic growth is encouraged and regulatory mechanisms are streamlined;
- Adequate public facilities and infrastructure under the control of the county or municipal corporation are available or planning in areas where growth is to occur; and
- Funding mechanisms are in place to achieve these visions.

C. The Smart Growth Package

In 1997, Governor Parris Glendening tried a different approach to the growth and land use question than the Barnes Commission. Rather than pursue increased State regulatory powers over local land use and land management, the Governor directed his staff to arrive at a strategy that:

- Favored incentives over regulations;
- Preserved local autonomy;
- Could be rapidly implemented;
- Would not create a new bureaucracy; and
- Had modest budgetary impacts.

What the General Assembly received from the Governor, and ultimately approved, were five bills and a budgetary proposal.

- The **Smart Growth Areas Act** created “Priority Funding Areas” (PFAs), and declared that the State would only invest its funds for roads, water, sewer and other infrastructure in projects within the PFAs. The intent was to prevent the State from subsidizing urban sprawl by offering a financial incentive to encourage development within the designated growth areas.

The Smart Growth Areas Act defined PFAs as:

- All land inside the Baltimore and Washington beltways;
- All Maryland municipalities, based on their January 1997 boundaries;
- Designated Neighborhood Program Areas;
- Enterprise Zones; and
- Heritage Areas that were also county growth areas.

The legislation also permitted local governments to certify additional PFAs that met certain criteria:

- Water and sewer service existed or were planned;
 - Average permitted residential density was 3.5 units per acre;
 - The growth plan was consistent with projections; and
 - The PFA size was large enough to meet projections for 20 years of growth.
- At the same time, the **Rural Legacy** program was aimed at protecting large tracts of undeveloped land from development. The State provided funds to local governments and land trusts for purchasing properties and development rights in rural areas to preserve agriculture, forest and natural resource lands. This was called the “inside-outside” strategy – incentives for growth inside the PFAs, with incentives for preservation outside them.
 - A **Brownfields** program provided financial incentives and technical assistance to eligible participants who cleaned up and redeveloped abandoned or underutilized industrial properties that were, or were thought to be, contaminated.
 - **Live Near Your Work** offered incentives to help employees buy homes close to their workplaces.
 - **Job Creation Tax Credits** made employers eligible for State income tax credits when they created 25 or more new, full-time jobs within a PFA.

The incentives in the 1997 Smart Growth legislation were laid atop a land management framework that had been delegated to local jurisdictions since 1927 (Article 66B of the Maryland Code). As a result of the State's delegation of this authority, municipal and county governments control decisions about



zoning, subdivisions and other aspects of development and growth management, with a few notable exceptions. The State Planning Act of 1974 gave the State authority to intervene in local land use matters, but this power has seldom been invoked.

The Critical Areas Act of 1984 required 16 counties, Baltimore City and 44 municipalities to implement a land use and resource management program designed to protect the Chesapeake Bay from pollution and loss of wildlife habitats.

But while the State has delegated responsibility for zoning, subdivision and other aspects of growth management to local jurisdictions, it has also provided them clear direction about how to plan. The

Planning Act of 1992 requires local governments to prepare comprehensive land use plans and review them every six years. It requires the plans to incorporate each of the six (now eight) visions and to address a sensitive-areas element.

In 2006, the General Assembly (in HB1141) required the plans to address several additional elements – the water resources and municipal growth elements. Also, sensitive-areas plan elements must now be reviewed by the Department of the Environment and the Department of Natural Resources. The addition of the water resource, municipal growth, and (for participating counties) the priority preservation elements to local comprehensive plans is likely to have a positive impact on planning in Maryland once these elements are implemented through the adoption of ordinances and regulations.

Currently comprehensive plans must include the following required elements and may include the following optional elements:

Required Elements:

- Statement of Goals, Objectives, Principles, Policies and Standards;
- Transportation Plan Element;
- Mineral Resources Plan Element (if applicable);
- Water Resources Plan Element;
- Municipal Growth Plan Element (only municipalities);
- Sensitive Areas Plan Element;
- Land Use Plan Element (only non-charter counties);
- Community Facilities Plan Element (only non-charter counties);
- Fisheries (if located on tidal waters of the State and only non-charter counties);
- Areas of Critical State Concern (within non-charter counties); and
- Recommendation for Land Development Regulations to Implement the Plan.

Optional Elements:

- Community Renewal;
- Housing Elements;
- Flood Control;
- Pollution Control;
- Conservation;
- Natural Resources;
- Priority Preservation Areas;
- General Local and Extent of Public Utilities; and
- Workforce Housing Plan.

Often, an amalgamation of these elements is included to better address a locality's unique issues and concerns related to its planning needs. The additional non-required plan elements listed above are often addressed in local comprehensive plans but not necessarily identified as a separate plan element. Many State agencies review and comment on local comprehensive plans in an advisory capacity, including MDP and the Departments of the Environment, Natural Resources, Agriculture, Transportation and Business and Economic Development. MDP oversees the overall State agency comment process and consults with other State agencies to resolve any conflicts.



Local Growth Management Tools

Counties and municipalities have several tools for controlling local growth and development. The most important is the power to zone land, which determines how it can be used. Zoning can also control housing types (single-family, multi-family), setbacks, landscaping, or parking requirements. Subdivision rules determine how land can be divided into smaller pieces for sale, often for building residential communities, and what basic services must be provided to homes built on the property. In addition, a number of Maryland counties and municipalities also have adopted Adequate Public Facilities Ordinances (APFOs), which are designed to assure that development only occurs where necessary services and infrastructure, including roads, water and sewage, are in place.

D. Effectiveness of Smart Growth in Maryland

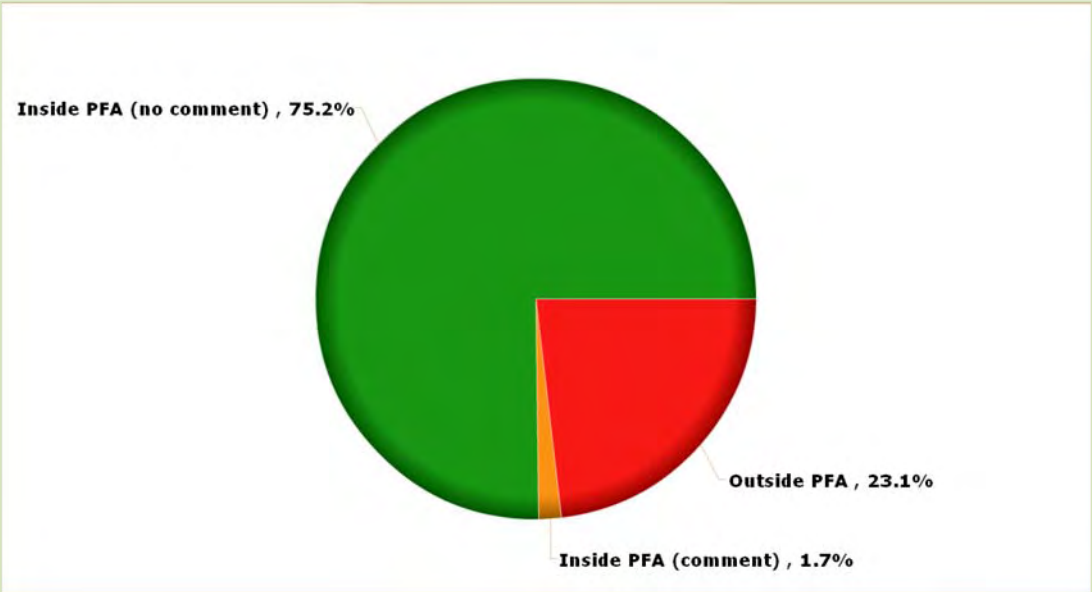
Despite broad support for Smart Growth principles, data suggest that, in its first 10 years of implementation, Smart Growth has had limited success in stopping or slowing the trend in Maryland toward sprawl development. The Smart Growth legislation's effectiveness has been hampered, in part, by lower than anticipated State funding for infrastructure in the PFAs and land preservation programs, such as Agricultural Land Preservation and Rural Legacy. It has also been hampered, in part, by the inability of local governments to achieve denser development in the PFAs and to protect rural areas through more restrictive zoning, which is usually accompanied by easement acquisition.

Housing Inside (and outside) PFAs

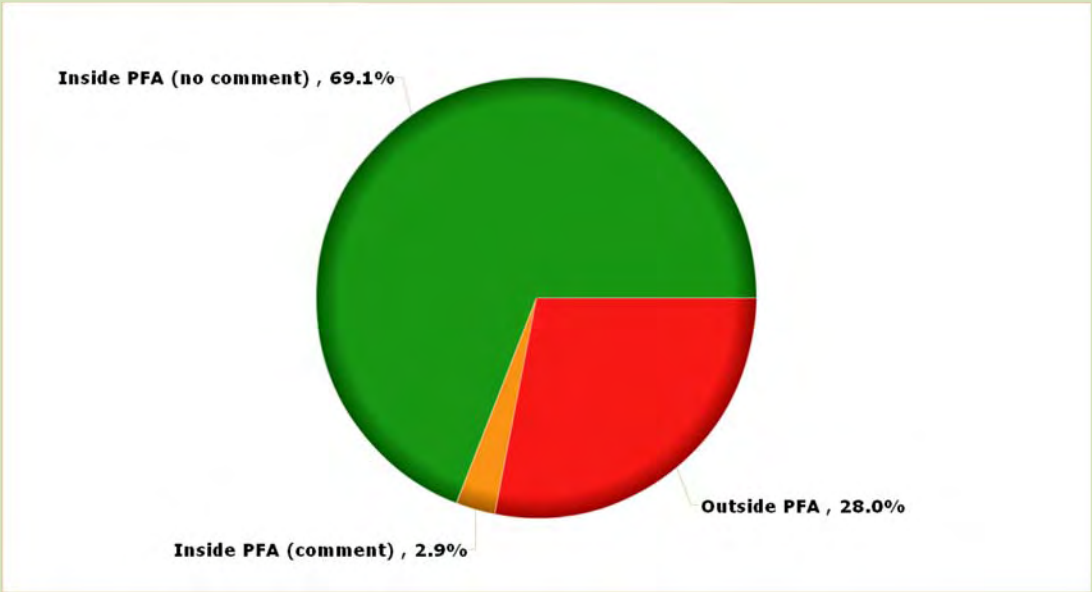
If effective, Smart Growth should result in an increasing percentage of new homes being built inside PFAs. That has not been the case to date. Statewide, the percentage of single-family residential parcels developed inside PFAs was 76.9% between 1990 and 1998, prior to the implementation of Smart Growth. For the years 1999 to 2006, since the implementation of Smart Growth, the percentage of single-family residential parcels developed inside PFAs actually dropped to 72.0%.

More importantly, while the majority of improved residential *parcels* being developed are inside PFAs, the overwhelming majority of improved residential *acres* being developed remain outside PFAs. From 1990 to 1998, 73.5% of acres developed were outside PFAs. Since Smart Growth, from 1999 to 2006, 75.7% of acres developed were outside PFAs, a slight increase. (**Figure 15**).

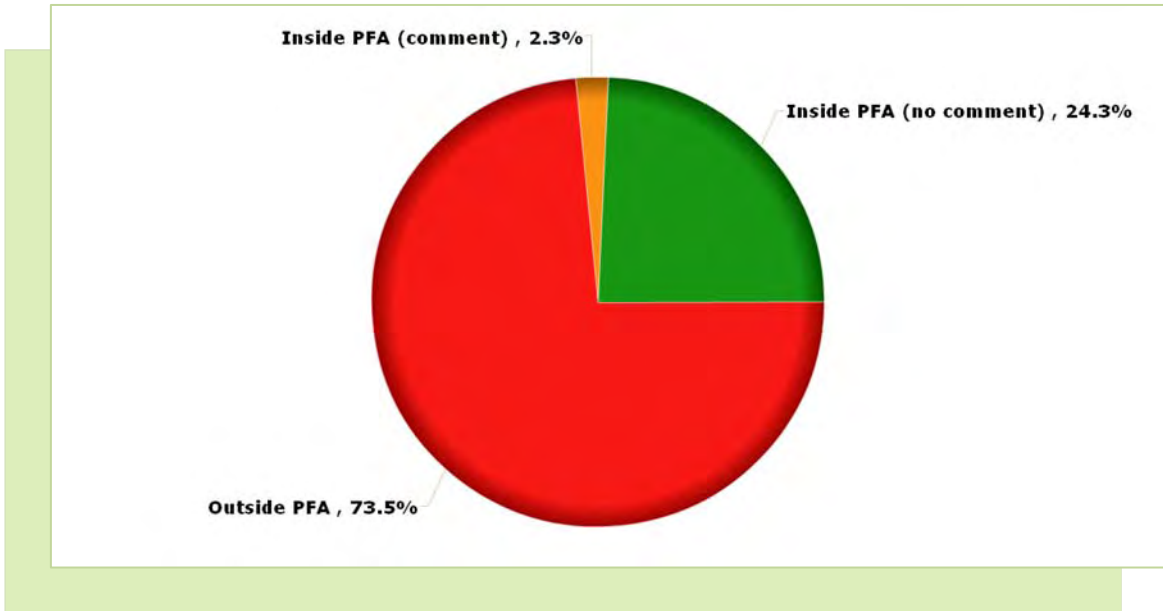




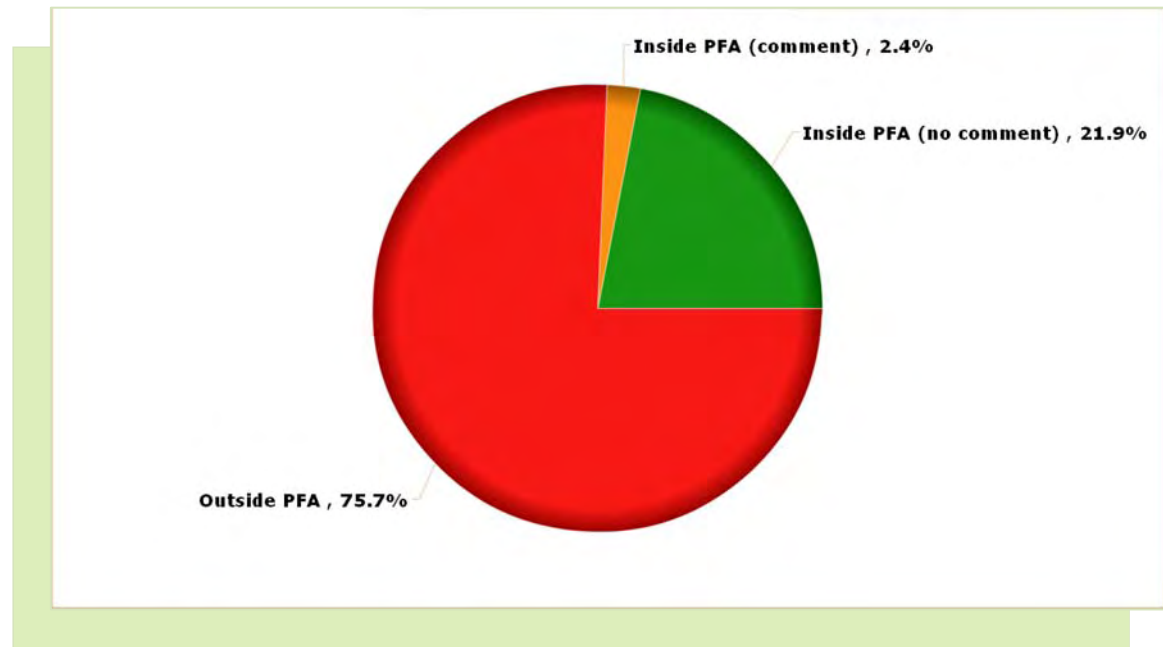
Pre-Smart Growth: Percent of Parcels Developed Inside and Outside PFAs in Maryland, 1990 - 1998



Post-Smart Growth: Percent of Parcels Developed Inside and Outside PFAs in Maryland, 1999 - 2006



Pre-Smart Growth: Percent of Acres Developed Inside and Outside PFAs in Maryland, 1990 – 1998



Post-Smart Growth: Percent of Acres Developed Inside and Outside PFAs in Maryland, 1999 - 2006

Figure 15 (all 4 pie charts)
 Source: Maryland Department of Planning

Transportation Investments

Another important place to assess Smart Growth's impact is in transportation investments. Transportation spending is the largest category of the State's Smart Growth incentives. A study by the National Center for Smart Growth Research and Education at the University of Maryland shows that because of projects already under way when the law took effect, the actual percentage of Maryland Department of Transportation (MDOT) spending within PFAs has fluctuated. The red line in **Figure 16** is the percentage of major capital project spending inside PFAs, which averages about 60% (not including renovation or maintenance projects). Other lines show spending on grandfathered projects, projects subject to exemption, growth-related major projects, projects with exemptions approved by MDOT and the Board of Public Works, and projects with unspecified or undetermined locations (e.g., transit equipment/facility improvements, Motor Vehicle Administration equipment/facility projects, or some proposed highway projects that are in the early stage of a project planning study and their location specific improvement types and scopes have not been determined). Also shown are appropriations for two large transportation projects: the Addison Road Metro Extension and Woodrow Wilson Bridge – both projects inside PFAs.

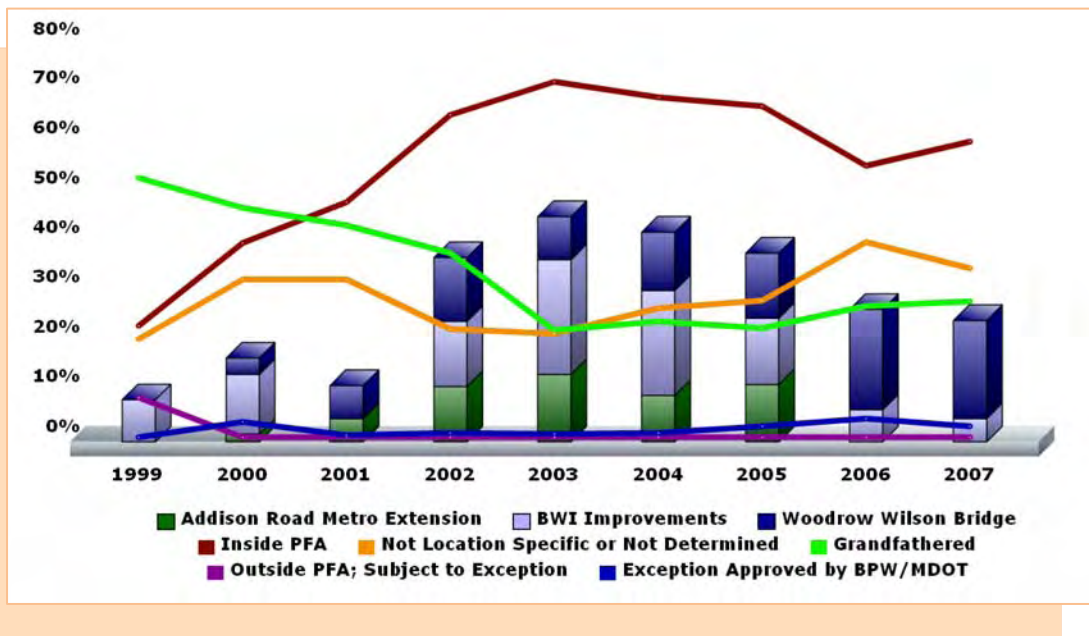


Figure 16 MDOT Major Capital Spending by Smart Growth Status FY 1999 - 2007

Source: The national Center for Smart Growth Research and Education, University of Maryland, Gerrit-Jan Knaap and Rebecca Lewis: "State Agency Spending Under Maryland's Smart Growth Areas Act – Who's Tracking, Who's Spending, How Much, and Where?" September 2007

After FY2003, the share of spending inside PFAs began to decline because spending on the Addison Road project and BWI airport projects diminished, while spending on not-location-specific transit projects increased. Approximately 2.5% of "growth-related" major capital project spending (not including renovation or maintenance projects) by MDOT was provided for

projects outside PFAs with exceptions approved or pending approval by the Board of Public Works.

As linear projects, highway improvements can be located partially inside or outside a PFA. For some projects with very limited segments that are located outside PFAs, the linear feature regulation was developed and is used to allow such projects to be considered as locating inside PFAs. However, most projects partially outside PFAs and projects totally outside PFAs are subject to exemption requirements outlined in the PFA law, e.g., connecting PFAs, limited capacity improvement, or primary safety improvement. (Figure 17).

For the State Highway Administration (SHA) specifically, an estimated 70% of its major project investments occurred inside PFAs and another 19% partially within PFAs, as shown in the chart below. (Figure 17). Some transportation projects which are outside of the PFA connect two PFAs. In the rural areas, these PFA connecting roads are often more road miles thereby increasing the percentage of road projects outside of the PFA.

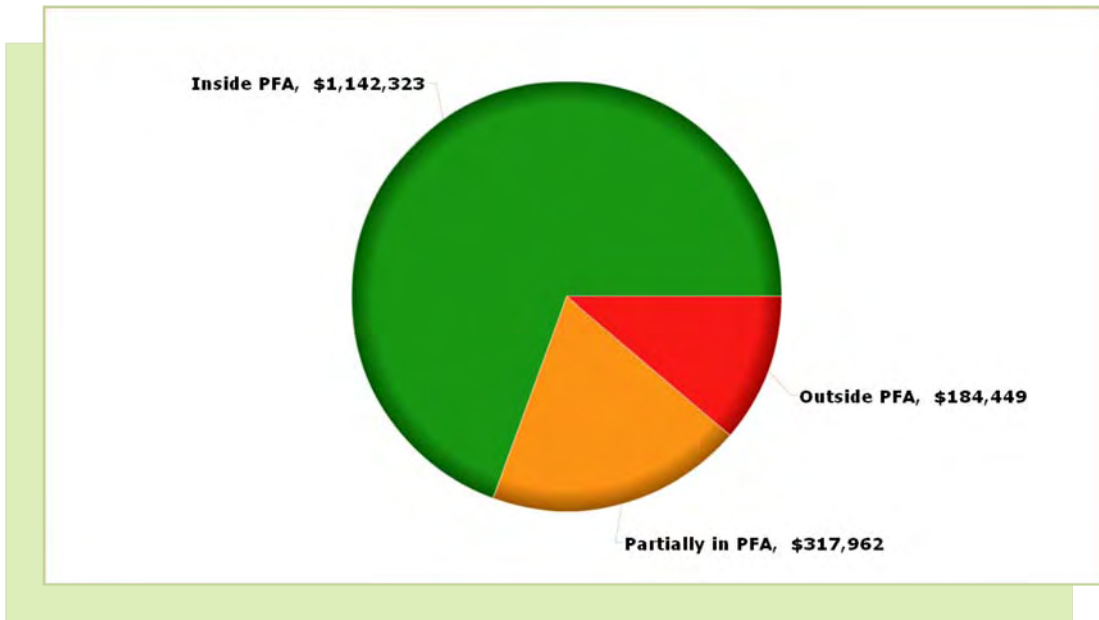


Figure 17 Total Estimated Cost for 2007 CTP SHA Major Projects (in \$000s)

Source: Maryland Consolidated Transportation Program FY 2007-2012

School Construction

The 1997 Smart Growth Act exempted school construction funds from the general requirement that the State's growth-related spending must be inside PFAs. However, the Smart Growth Act stated that it was the policy of the State that the emphasis of funding for school construction shall be to target the rehabilitation of existing schools to ensure that facilities in established neighborhoods are of equal quality to new schools. As **Figure 18** reflects, over the past 10 fiscal years, the total percentage of State public school construction investments (for school capacity projects -- new, replacement, and addition/renovation projects) spent inside PFAs peaked in FY2000 at 86%.

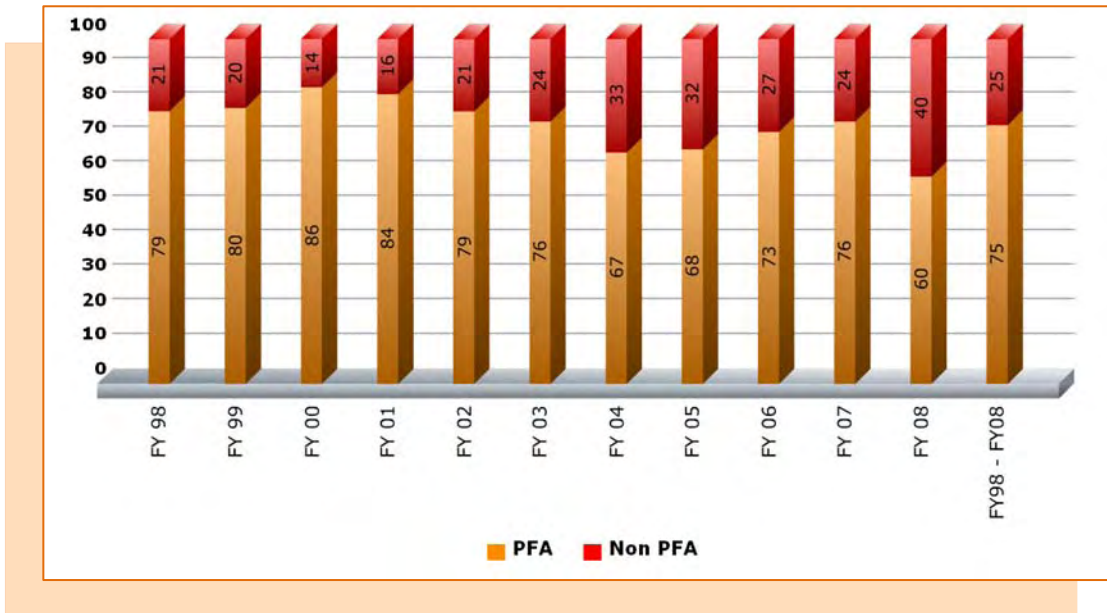


Figure 18¹ Percentage of Funding for School Construction Projects

Source: Maryland Department of Planning, Public School Construction Program 2007

¹ This chart reflects school capacity projects – new schools, replacement schools, and addition/renovation projects. It includes addition/renovations projects because most renovation projects add some additional seating capacity to a school. It also includes mandatory kindergarten additions after the adoption of the kindergarten requirement by the General Assembly. It does not include systemic, gyms, science labs, limited renovation or relocatable classrooms.

Water and Sewer

To the extent that Smart Growth policies are effective in reducing development of individual septic systems outside of community service areas, these policies may place more pressure on community water and sewer systems. The provision of adequate water and sewer capacity to accommodate growth in the PFAs is essential to the success of Smart Growth.

Smart Growth originated in part from concerns about the health of the Chesapeake Bay. Ironically, water pollution regulations designed to protect the Bay sometimes complicate concentration of growth into developed areas of Maryland. Water pollution regulations designed to restore and protect the Bay may have the effect of limiting the expansion of sewage treatment plants in the very areas designated for growth. Some communities, facing growth pressures, are approaching their limits of sewer capacity as result of nutrient caps or



limitations called Total Maximum Daily Loads or TMDLs.² For counties and municipalities trying to bring growth into already developed areas wastewater treatment plant limitations can affect how much new growth these systems can support without undertaking additional, expensive measures.

Meanwhile, in undeveloped areas, the alternative to hooking up to the nearest sewerage system

is a septic tank. Gallon for gallon, however, septic tanks dump far more nitrogen into the environment than treatment plants. New technology for septic systems can reduce nitrogen concentrations by about half, but that is still more than double the amount achieved by advanced sewage treatment systems.

² For a more detailed explanation of TMDLs see **Appendix G**.

Water supply shortages are also occurring in various locations throughout the State, and the pressure on water resources, from both quality and quantity perspectives, will continue to increase. The recently published report *Water for Maryland's Future: What We Must Do Today* makes important recommendations for measures that are needed to obtain better information about and better manage the State's water resources. Accurate information is critical to assuring that adequate water supplies will be available to support Smart Growth and the competing demands for the State's water resources in the future.

If growth limits, as a result of TMDLs or water supply shortages, force residents from developed areas to undeveloped areas, the risks for the Chesapeake are actually greater. **Figure 19** shows the improved parcels on septic systems in Maryland as of 2007.

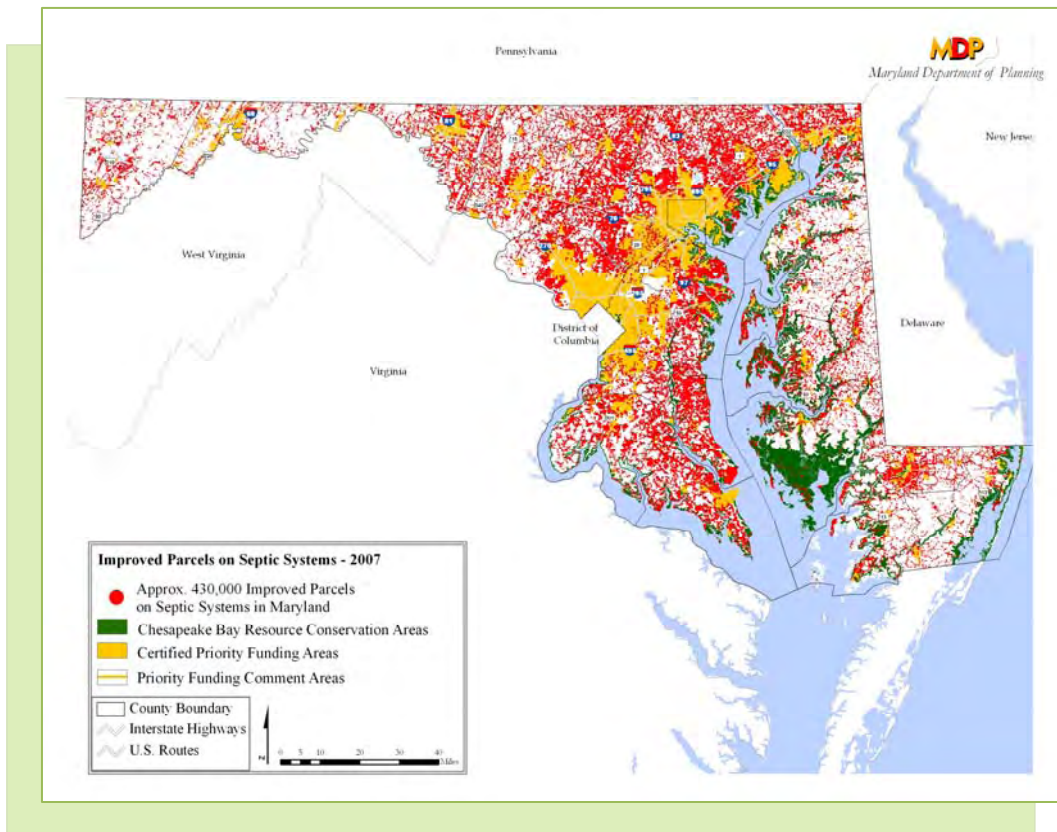


Figure 19 Maryland Improved Parcels On Septic Systems 2007

Land Preservation

Agricultural and Natural Resource lands outside Priority Funding Areas remain under tremendous development pressure. This development pressure has resulted in the fragmentation of resource lands. The presence of residential lots and subdivisions in these areas determines the level to which lands are fragmented. As the number of residential homes and subdivided lots increases, the ability to maintain the resources decreases; fragmenting the presence of

agricultural and natural resources. The contiguity of these lands is vitally important to maintain, strengthen and stabilize Maryland’s environmental resources; conserving large forested regions, preserving ecological habitats, protecting critical water supply lands and fostering a strong and robust agricultural community.

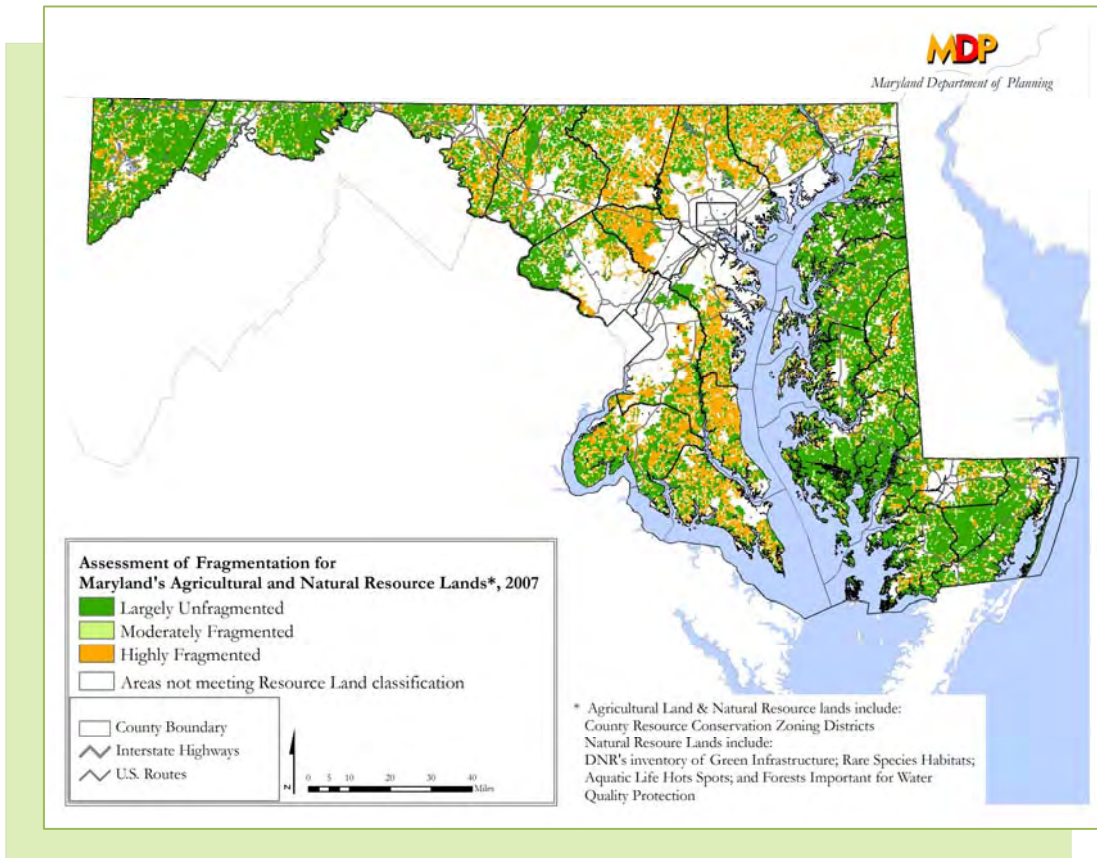


Figure 20 Assessment of Fragmentation for Maryland’s Agricultural and Natural Resource Lands, 2007

Figure 20 illustrates residential development trends on sensitive agricultural and natural resource lands. As of 2007, 28% of Maryland’s resource lands have experienced high levels of fragmentation due to residential development and subdivision. The orange areas on the map depict this high level of fragmentation; indicating a high concentration of residential development in these areas, or more than five residential units or subdivided lots per 100 acres. Moderate fragmentation is characterized by the light green areas, where some residential development has occurred, but there is still some contiguity to the existing resource lands; these areas have between 3 and five residential lots per 100 acres. Dark green areas are largely unfragmented or undisturbed by residential development and represent the most contiguous blocks of

resource land in the state, with two or fewer residential lots per 100 acres. The areas in white represent existing Priority Funding Areas.

Additional Growth Pressures from BRAC

Maryland is expected to receive more military-related jobs than any other state as a result of the U.S. Defense Department's 2005 Base Realignment and Closure (BRAC). The majority of these jobs (94% or 15,300 direct jobs and 27,000 indirect and induced jobs) are expected to be located within the ten-county Central Maryland area beginning in 2009. While it is not certain how many total jobs will be generated, estimates indicate that between 40,000 to 60,000 new Maryland employment positions may be created within the study area. Additionally, the Ft. Meade region anticipates significant non-BRAC job growth associated with the National Security Agency and other Army on-post movements.

MDP has concluded that BRAC-related growth will increase development pressures in several jurisdictions that already are experiencing high growth rates and BRAC-related relocations will accelerate demands for housing at all income levels. MDP projects that 85% of new development will locate within PFAs. However, MDP believes that several jurisdictions will need to take significant steps – including up-zoning and investments in infrastructure and public services – to enable their PFAs to accommodate the growth resulting from BRAC. MDP also believes that these jurisdictions will need to protect their rural areas through restrictive rural zoning and programs such as the Purchase of Development Rights (PDR) and/or Transfer of Development Rights (TDR). MDP believes that in the absence of these measures, some jurisdictions may find much of their rural lands built out.

Smart Growth Successes

Despite the troublesome trends, Maryland does have many Smart Growth success stories. These success stories, several of which are summarized below, are examples for others to emulate and adopt. The State and the local governments responsible for these successes should promote them to show that Smart Growth is achievable:

- **Baltimore City** – After several decades of population declines, the U.S. Census Bureau figures show that the City of Baltimore has turned a corner stabilizing at 637,455 residents in 2007. Home values and housing investment has grown significantly in Baltimore City. Average sale prices in the City grew from \$82,000 in 2000 to \$183,000 in October of 2008. Similarly, residential building permits grew from 212 in 2000 to more than 1000 in 2006 according to the Baltimore Metropolitan Council. Admittedly, it is difficult to predict the effect of the current economic downturn.

Billions of dollars in broad investment is taking place and more is planned all over the Baltimore City. The investment activities range from East Baltimore Development, Inc.'s redevelopment in East Baltimore to new homes in Woodberry to biotech activities in Poppleton to planned developments in Uplands and Park Heights. The Downtown

Partnership of Baltimore reports that investment projects valued at \$4 billion are currently underway in the downtown area. The Partnership projects that there is demand enough for 7,000 additional residential units over the next six years.

- **Cumberland** – Cumberland is one of Maryland’s first Main Street Communities. The City has successfully revitalized its downtown core and has used sustainable economic development strategies to highlight its transportation history. The City has also further invigorated itself with its success as a Maryland Arts and Entertainment District. This designation signifies that Cumberland has evolved into a thriving arts community, providing service organizations, galleries and activities to support its local artists. The City has been home to several successful historic tax credit projects in the downtown core that have enhanced the turn-of-the-century architecture. The Historic National Road, Western Maryland Railroad, the Great Allegheny Trail, and the C & O Canal all come together here to create a sense-of-place.



- **Baltimore County** – Baltimore County uses many different tools to preserve its open space and farmland. The County employs the use of an urban-rural demarcation line (URDL) which limits the extension of services to help concentrate development in the County’s planned growth areas. Another strong tool is the limiting of development to two lots for each 50 acres above 100 acres on land for farming. While on watershed protection lands, one lot per five acres is allowed, lots must be clustered and environmentally sensitive areas must be protected. Baltimore County has a successful agricultural land preservation program to purchase conservation easements and leads Maryland in acres donated to the Maryland Environmental Trust. Easement acquisition allowed the County to enact strong rural zoning.

- **Easton** – The Town of Easton, with its population of 14,000, has become a thriving center of commerce on the Eastern Shore. It boasts an historic Town Center with Colonial and Victorian architecture which supports a vibrant shopping district. Easton is an arts and cultural center as well with the restored Avalon Theatre and eclectic art galleries. Local residents enjoy good health care from a strong local hospital, Memorial Hospital at Easton, and medical community.
- **Montgomery County** – Montgomery County's Agricultural Reserve is a rural crescent of more than 90,000 acres crowning the northwestern third of the county. Montgomery County has long been a leader in farmland and open space preservation, showing that working farms can thrive in close proximity to urban and suburban areas. The Agriculture Reserve was created through a combination of restrictive rural zoning and a successful and innovative transfer of development of rights program. Today, the Agricultural Reserve provides fresh produce to area residents at pick-your-own farms, orchards, and farm stands within the Reserve, and at farmers markets, grocery stores and restaurants in nearby cities and suburbs.
- **Leonardtown** – Leonardtown has successfully revitalized its Town Square using multiple State programs. One example of the Town's success is the Leonardtown Wharf Project which includes a park, restaurant, mix of stores, office space and loft apartments. When completed, the project will offer 168 full-time jobs.

E. Summary

Maryland's current Smart Growth policy is incentive-based, rather than regulatory. The program seeks to change land use patterns in Maryland by discouraging sprawl development and encouraging concentrated growth and the preservation of rural resources. This policy uses State financial incentives that favor concentrated growth and rural protection, and then directs State resources to support these priorities. Unlike the efforts that preceded it, the current Smart Growth policy did not seek to shift the balance of land use authority from local governments to the State, and zoning, density, subdivision and other land use decisions remain delegated to Maryland's county and municipal governments.



While Smart Growth, as defined and implemented in Maryland, has achieved many successes, research and analysis suggest that major challenges remain. The percentage of housing built outside of PFAs is slightly higher than a decade ago. Transportation investment has not consistently been targeted to PFAs. As of 2007, approximately 430,000 septic systems exist on improved parcels. Land preservation has not accelerated. An increasing share of undeveloped lands is fragmented and as a result, substantial preservation of large tracts of rural land is unlikely in many areas.

These outcomes do not result from deliberate efforts to subvert Smart Growth, whose principles are familiar to and widely valued by Maryland's diverse stakeholders. Instead, they result from inexorable and intense growth pressures that are driven by the State's high quality of life, extraordinary natural resources, excellent location and overall desirability as a place to live. In some areas of the State, the problem is even more acute and accelerated because of Maryland's BRAC success, which will bring tens of thousands of new residents seeking housing, schools, and transportation options. At the State level, the lack of sufficient funding for infrastructure, planning and land preservation has

hampered the implementation of Smart Growth. This is compounded at the local level by forces for property rights, community pressures to grow or not to grow, and individual citizen preferences, all of which can affect local government pursuit of Smart Growth policies and implementation measures.

Without additional concerted and cooperative action by State and local governments, the trend toward sprawl will continue and lead us toward an undesirable and untenable outcome. We must work together to avoid it.

In the following section of this Report, the Task Force offers more specific findings and recommendations to address a wide variety of growth and development challenges it identified.

Recommendations

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1. Modernize the State’s Planning Visions to Achieve Smart and Sustainable Growth by Updating the “Eight Visions”

The “Eight Visions” were first adopted by Maryland in the 1992 Economic Growth, Resource Protection, and Planning Act. They were initially developed by the Year 2020 Panel of Experts, an inter-disciplinary group convened by the Chesapeake Bay Commission in 1987 to evaluate the impact of future growth in the Chesapeake Bay Region. The 2020 Panel issued its report in December 1988 and described six visions needed to strike a balance between growth and environmental needs. These were ultimately codified in 1992, with two additional visions for a total of eight.

State Finance and Procurement Article §5-7A-01 provides that the Eight Visions are Maryland’s “Economic Growth, Resources Protection and Planning Policy” (*i.e.*, the State’s growth policy). Section 5-7A-02 limits State funding for various capital projects unless the projects are consistent with this growth policy or “the local plan of the jurisdiction in which the project is located.”



The Visions are also incorporated in Article 66B (Land Use) §1.01 and apply to all counties and municipalities in Maryland. Local jurisdictions are required to implement the Visions through the plan. Further, §4.09 requires that jurisdictions “shall ensure that the implementation of the provisions of the plan that comply with §§1.01 and 3.05(a) (4)(vi) and (viii) [the land use and sensitive areas elements] are achieved through the adoption of applicable zoning ordinances...subdivision ordinances...and other land use ordinances...that are consistent with the plan.”

The Visions are a now-familiar touchstone of Maryland land use law and policy, but they have been in place without amendment for 16 years. They have never been modernized to reflect and keep pace with current growth and development patterns and trends, or Maryland’s commitment to Smart Growth. It quickly became clear to the Task Force that the Visions should be updated and, through its Eight Visions Workgroup, the Task Force drafted, discussed and now recommends

a new set of Visions to guide growth and development in Maryland to help achieve Smart and Sustainable Growth.

Following are the existing and the proposed revised Visions:

The Existing Eight Visions

(pursuant to Economic Growth, Resource Protection, and Planning Act of 1992)

1. Development is concentrated in suitable areas;
2. Sensitive Areas are protected;
3. In rural areas, growth is directed to existing population centers and resource areas are protected;
4. Stewardship of the Chesapeake Bay and the land is a universal ethic;
5. Conservation of resources, including a reduction in resource consumption, is practiced;
6. To assure the achievement of [the] above, economic growth is encouraged and regulatory mechanisms are streamlined;
7. Adequate public facilities and infrastructure under the control of the county or municipal corporation are available or planned in areas where growth is to occur; and
8. Funding mechanisms are addressed to achieve these visions.

Proposed Revised Visions

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.
2. **Public Participation:** Citizens are active partners in the planning and implementation of community initiatives and are sensitive to their responsibilities in achieving community goals.
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.
6. **Transportation:** A well-maintained, multimodal transportation system facilitates the safe, convenient, affordable and efficient movement of people, goods and services within and between population and business centers.



7. **Housing:** A range of housing densities, types, and sizes provides residential options for citizens of all ages and incomes.
8. **Economic Development:** Economic development and natural resource-based businesses that promote employment opportunities for all income levels within the capacity of the State's natural resources, public services, and public facilities are encouraged.
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.
12. **Implementation:** Strategies, policies, programs and funding for growth and development, resource conservation, infrastructure, and

transportation are integrated across the local, regional, State and interstate levels to achieve these visions.

The Visions are incorporated in State statutes, and therefore updating and amending the Visions will require legislation. Once the Visions are updated, local governments would be required to comply with them as part of their comprehensive plan update cycle, including any ensuing revisions of local land use ordinances. Of equal importance, the State Development Plan now being prepared by the State would need to incorporate the revised Visions, and State agencies would begin to evaluate programs and policies for compliance with the updated language of the proposed Visions.

The Task Force believes the revised Visions are more consistent with, and will further, Maryland's ongoing aspiration to develop and implement sound growth and development policy -- particularly Smart and Sustainable Growth. It recommends the enactment of legislation adopting these new Visions in the 2009 General Assembly session.

R-1⁷

2. Strengthen Comprehensive Plans

The General Assembly Should Respond to the Recent Terrapin Run Case with Corrective Legislation

The majority opinion of the Court of Appeals in *Trail, et al. v. Terrapin Run, LLC, et al.*, No. 44, September Term, 2007 (March 11, 2008) contains a wide-ranging discussion of the history of planning in Maryland and the role of a local jurisdiction's comprehensive plan. The Task Force's Terrapin Run Workgroup analyzed the opinion; its summary and analysis are attached as

Appendix H.1.

Based on the Workgroup's report, a majority of the Task Force concluded that the overall effect of the opinion is to weaken the link between the comprehensive plan and its implementing ordinances such as zoning, though the Maryland Association



⁷ R-1, R-2, etc. within each recommendation box is intended to index the Recommendations for future reference.

of Counties has noted that not all of its county attorneys and planning directors concur. Nonetheless, a majority of the Task Force believed that the *Terrapin Run* decision would devalue the significant local government and citizen investment of time and resources in comprehensive plans, an investment that continues to increase as planning issues continue to increase in complexity.

The *Terrapin Run* decision did not consider Section 4.09 of Article 66B. That section requires that “a local jurisdiction shall ensure that the implementation of the provisions of the plan...are achieved through the adoption of applicable zoning ordinances and regulations, planned development ordinances and regulations, subdivision ordinances and regulations, and other land use ordinances and regulations that are consistent with the plan.” The comprehensive plan is also required to be reviewed at least once every six years and, if necessary, revised or amended. In addition, the local jurisdiction is to ensure that the plan is implemented through land use ordinances and regulations that are consistent with the plan.

The advantages of a comprehensive plan are apparent. First, the comprehensive plan is prepared by professionals along with the planning commission or board, who are able to objectively evaluate population projections, economic factors, resource limitations, and environmental protection. Second, the process involves numerous stakeholders and is open to the public. It represents the application of State-established planning criteria to the particular circumstances of the local jurisdiction by the local jurisdiction. It represents the broad vision of the people of the jurisdiction for their future. Third, although the plan can be revised more frequently, its 6-year lifetime virtually assures that it will survive through changes of administration and the membership of the local legislative body. This longer-term planning horizon reduces uncertainty and facilitates the coordination of development with the necessary infrastructure.

Maryland is best served if all land use decisions conform to the overall comprehensive plan in both the location and timing of development. Development of property consistent with the locally developed and adopted comprehensive plan is mandated by statute, it is achievable, and it is good policy. Accordingly, The Task Force believes that the General Assembly should clarify this, by passage of appropriate legislation.

The Task Force recommends amending Article 66B to remove any ambiguity created by *Terrapin Run* and clarify that a local jurisdiction must implement and follow the comprehensive plan it adopts, as contemplated by the State’s Economic Growth, Resource Protection, and Planning Act of 1992. Any such amendment should be tailored to avoid unintended consequences within Article 66B or other areas of the State’s planning laws, and to preserve the distinction between the comprehensive plan as an overarching policy document and land use ordinances and regulations that implement it.

R-2

Provide Earlier Opportunities for State Agency Comment on Local Comprehensive Plans

For decades, MDP has led a formal process to review and comment upon local governments' comprehensive plans. Currently, that comment period is statutorily required 60 days before the local plan is adopted. The process, and the ultimate purposes of such review, would be enhanced by the addition of an informal meeting and preliminary comment step earlier in the comprehensive plan development process. Such a meeting would provide an opportunity for more collaboration and for better incorporation of comments into the plan.

MDP, in coordination with each local government, should adopt a policy for meeting early in the comprehensive plan development process to coordinate and collaborate about the jurisdiction's comprehensive plan, and to facilitate local consideration and potential incorporation of State comments into the plan before its adoption. Adoption of State comments would remain in the discretion of the local government.

R-3



Increase Technical and Financial Support for Local Comprehensive Planning, Particularly in Smaller Communities with Limited Capacity

Many local governments need technical and/or financial assistance to develop and implement their comprehensive plans. MDP and other State agencies provide various forms of technical assistance to all local governments. This includes information on best practices, data and analysis, interpretation of policies and laws, etc. As planning issues in Maryland have become more complex and as new required chapters or elements have been added to comprehensive plans, the need for technical assistance has increased. At the same time, the State's ability to provide additional technical assistance is limited, with key financial assistance available mostly to smaller jurisdictions. One new effort initiated by a collaboration of State agencies, the Sustainable Communities Initiative, was designed to address these issues by helping lower income communities afford consulting support for comprehensive planning, but this program alone is not enough.

The State should identify additional resources for providing technical and/or financial assistance to local governments for development and implementation of their comprehensive plans. Existing non-profit and university resources should be examined as potentially efficient ways to provide such assistance. Currently, some counties are providing planning assistance to their municipalities, and such voluntary planning collaboration should be encouraged.

R-4

3. Collect Good Information for Good Planning

Advancement and achievement of public policy objectives like Smart and Sustainable Growth are helped by the application and analysis of broadly accepted and reliable information about goals, indicators, trends, forecasts and the like (*i.e.*, metrics). Despite its critical importance, little comprehensive quantitative information exists to measure how Maryland is growing at the state, regional, and at times local levels. While some measures or indicators exist statewide, additional ones are needed.

Measures or indicators should address at least the following:

- Amount and share of growth in and out of PFAs
- Density mix of growth in and out of PFAs
- Measures of housing choice, including affordability
- Measures of growth's impact on the environment (land, water, air and habitat)
- Indicators informing the fiscal cost of growth

- Agricultural preservation
- Development capacity analysis
- Jobs/housing balance
- Measures or indicators to inform the transportation impact of growth
- Indicators on growth's impact on business (job creation, fiscal impact, agri-business, tourism, forestry etc.)
- Indicators on growth's impacts to cultural and historic resources
- Measures or indicators on reporting the creation of new lots and building permits in and out of the PFA

MDP should work with local governments and other stakeholders, including the Task Force itself, to jointly develop a set of Smart and Sustainable Growth indicators that can be used at the local, regional and state levels. The Task Force recognizes that application of these indicators will necessarily vary among jurisdictions due to regional and other local distinctions. Drafts of these indicators should be shared with the Task Force by July 1, 2009 for review and comment.

R-5

4. Sharpen the Focus of Priority Funding Areas (PFAs)

The fundamental purpose of Priority Funding Areas (PFAs), established by law in 1997, is to focus State spending to most efficiently and effectively use existing infrastructure, preserve existing neighborhoods, and preserve Maryland's fields, farms, and open spaces. By statute, PFAs include:

- Municipal boundaries as of January 1997;
- Designated Neighborhood Program Areas;
- Enterprise Zones;
- Heritage Areas that are also county growth areas; and
- Area inside the Beltways

By statute, local governments may also certify additional areas consistent with stated criteria, as local growth areas.

Certain criteria must be met in order for an area to be a certified PFA -- existing or planned water and sewer service, average permitted residential density of 3.5 units per acre, growth plan consistent with projections, and a PFA size based on an assessment of land needed for 20 years' growth.

Like the “Eight Visions” passed in 1992, the 1997 PFA law has never been substantially changed or updated in view of evolving growth and development issues. Yet, PFAs are in many ways the lynchpin of the State’s growth policy because they directly affect where the State can and does spend its money in support of growth.

A PFA Workgroup of the Task Force met to evaluate the efficacy of the PFAs, and it quickly became clear that this multifaceted and complex issue could not be addressed effectively within the limited time prior to delivery of this mandated report. Following is a brief summary of the issues the Workgroup identified.

Stakeholder perspectives on the performance of PFAs vary extensively. Because all land within incorporated municipalities before 1997 were automatically included within PFAs, the Maryland Municipal League (MML) is largely satisfied with PFAs as they currently exist, although MML would support extending PFAs to include growth areas established under HB1141. The Maryland Association of Counties (MACo) would prefer more flexibility in the criteria used to establish PFAs and, perhaps, requiring PFAs to be



coterminous with growth areas designated in comprehensive plans. The environmental community is most concerned with tightening restrictions on development outside PFAs, while the development community is most concerned with removing barriers to development inside PFAs. MDP is resistant to eliminating the criteria that establish PFAs but supports policies that would both increase restrictions on development outside PFAs and decrease impediments to development inside PFAs. Most stakeholder groups support the idea of reconsidering the process through which State funds are restricted for projects inside PFAs; this includes the reexamining the set of

programs subject to PFA review, the process of exceptions and appeals, and the criteria that warrant PFA review and merit an exception.

Discussions among the PFA workgroup addressed proposals that would redefine the criteria for establishing PFAs, creating additional disincentives for development outside PFAs, and creating additional incentives for development inside PFAs. Ideas for redefining criteria for establishing PFAs focused on trying to make PFAs consistent with growth areas in comprehensive plans. Ideas for creating additional disincentives for development outside PFAs included proposals to downzone land outside PFAs, imposing a development tax outside PFAs, and requiring the adoption of best available technologies for onsite sewage disposal systems outside PFAs. Proposals for strengthening incentives for development inside PFAs included the establishment of PFA tiers in which particular regions within PFAs would receive even higher priority for funding under existing State programs.

Perhaps because there was no clear consensus on the problem with existing PFAs, however, there was no consensus on which, if any, of these proposals for improving the performance of PFAs might be pursued or adopted. Nonetheless, because the PFAs are so central to the State's growth and development policy, their intent, performance and efficacy must be fully evaluated, understood and improved, to the extent necessary and possible.

The Task Force will study PFAs as a Focus Area of its ongoing work, with the intent of providing by November 1, 2009 a critical analysis of the effectiveness of PFAs along with recommendations for possible changes.

R-6

5. Emphasize Transit-Oriented Development (TOD)



Maryland has a unique opportunity to leverage existing transit investment and promote more efficient land use through encouraging compact, mixed use development near its transit stations. This

approach, known as “Transit-Oriented Development” or “TOD,” can be pursued as a mechanism to promote transportation choice for many Maryland residents and provide a major focus for the accommodation of future growth in the State. TOD sites are often considered the best Smart Growth sites.

A TOD approach leverages the locational advantages of station areas by improving non-motorized access and clustering a mix of uses to reduce the number of trips that must be taken by automobile. Supported by transportation-demand management (TDM) strategies that change travel behavior (how, when and where people travel), TOD can help increase the overall efficiency of the State’s transportation system, while providing an essential framework for more sustainable growth in the State. The approach can result in substantial quality of life improvements for Maryland households by cutting transportation and commuting time costs associated with the ownership and operation of vehicles, while promoting the development of more livable communities for current and future State residents.

Although Maryland’s transit network provides relatively high quality service, our current land use patterns do not provide for the most efficient use of transit. All too often, patrons have little choice but to access the transit network by car, and stations are surrounded by inefficient surface parking lots that render station areas unattractive and unsafe for pedestrians. The State’s existing transit station areas hold tremendous opportunity for infill and revitalization that could be a major focus for the State’s future growth. Indeed, if our existing station areas were developed (within half mile radius) to maximize their TOD potential, they could theoretically accommodate all of the State’s projected growth for the next 20 years. Although realistically station areas and transit capacity must be planned to accommodate appropriate levels of growth for their area, the potential cost-savings, system efficiencies and quality of life improvements of TOD suggest that this approach could play a major role in accommodating the State’s future growth.

Despite large transit investments, and our status as the fifth most densely populated state in the nation, Maryland continues to have a much higher share of travel by automobile than it does for public transit. The U.S. Census Bureau found that on average Marylanders have the second-worst commutes in the nation. Recent spikes in gasoline prices have prompted many Marylanders to consider public transit seriously for the first time. In addition, there is an increasing awareness across Maryland of the environmental consequences of auto travel. This includes traffic congestion that wastes valuable time and energy and produce pollution that harms our health and contributes to global warming. However, many of Maryland’s would-be transit-riders quickly face the limitations of our current transit system, and their frustration returns them to their cars.

The relationship between transportation and land use presents a special Smart Growth challenge. Smart Growth development patterns are important for efficient transportation; yet, such development patterns are difficult to

achieve without good transportation options. Similarly, transportation services, especially transit service, are compromised by dispersed development patterns that make efficient transit services difficult to deliver. Therefore, good transportation service and good land use policy depend on each other to succeed.

The Task Force sees great promise in TOD and in Maryland's public transit system to make increasingly more vital contributions toward feasible alternatives to auto travel, thereby relieving traffic congestion, reducing our dependence on oil, curbing pollution, stimulating the economy, and helping to sustain healthy, vibrant communities.

Accordingly, the Task Force supports TOD as a key State policy initiative and makes the following specific recommendations in support of TOD:

The State and local governments should work cooperatively to promote appropriate levels of development at existing transit station areas to support and utilize the significant public investments in this expensive infrastructure. Existing transit stations should be a focus of state-local collaboration.

R-7

MDOT should study feasible public actions, both fiscal and programmatic, to support increased capacity for Maryland's future growth. Specifically, MDOT should study the feasibility and relationship of system and site-level investments required to support focused growth around Maryland's existing transit network, and the opportunities and barriers for such investments should be identified and investigated. This activity must involve active participation from both local and State agencies, as well as other stakeholders.

R-8

The State should encourage compact development and mixed land uses in PFAs around transit areas. Local governments should respond by providing policy, programmatic, and regulatory frameworks that support development patterns that are walkable and transit supportive, and within a reasonable walking distance (typically 1/2 mile) of existing transit service. These measures should in turn promote mixed-income housing, employment and transportation alternatives that are more efficient, affordable and cost-effective. Substantial State incentives may be required to achieve these outcomes.

R-9

State TOD incentives should be provided to local governments that adopt agreed-upon, TOD-friendly planning, zoning, TOD supportive infrastructure policies and financing, TOD supportive housing programs, design and/or other measures that enable and permit high-quality TOD within existing transit station areas.

R-10

Support local government adoption of TOD-friendly planning, zoning, and infrastructure investment. State agencies can assist through the development of TOD-supportive housing programs, model zoning codes and technical assistance to help define community-appropriate, customized solutions that promote active, income-diverse, pedestrian- and transit-friendly communities. Local governments should also have more flexible authority to use local revenue sources to support TIFs or bonds connected with the creation of TOD infrastructure.

R-11

Create a capitalized TOD Revolving Loan Fund to provide gap financing for TODs. This program might be administered similarly to the DHCD Neighborhood Business Development Program, which incentivizes the creation of small business in targeted community revitalization areas.

R-12

Define and implement a program for financing bicycle and pedestrian facilities in all TODs, and for financing structured parking for TODs where necessary to encourage redevelopment of surface lots. The Maryland Transportation Authority or the Maryland Economic Development Corporation could act as the financing agency.

R-13

Provide the State's full faith and credit to TOD-zone TIF districts as a means of sharing costs associated with TOD. Engaging the State's credit on behalf of some or all investor return will reduce the risk and therefore the cost of TOD development. The State could also provide a tax credit by exempting interest payments on such bond financing from state income tax.

R-14

6. Preserve Land for Resource Production and Protection

Maryland is the fifth most densely populated state in the country, yet the State has also made protection of rural lands a priority, both to preserve natural resources and the industries that depend upon them. Directing development to growth areas and away from rural areas is critical to the protection of habitat, streams, rivers and the Bays, and equally important for the continued viability of Maryland's agri-business, seafood and tourism industries.

Maryland has the sixth most expensive farmland in the country. Even in difficult economic times, the average price for farmland in Maryland, according to the U.S. Department of Agriculture, is \$9,100 an acre in 2008. Because a significant portion of our farmland is within commuting distance of urban and suburban job centers, development pressure on this land is



intense. With an aging farmer population and increasing real estate prices, remaining farmland in Maryland and the agriculture industry is threatened.

To help address this problem, the General Assembly passed a joint resolution in 2002 setting a goal to preserve 1,030,000 acres in Maryland. To date, the Maryland Agricultural Land Preservation Foundation (MALPF), the Rural Legacy program, and local Purchase of Development Rights and Transfer of Development Rights programs have placed under protective easement about half that stated amount.

Additionally, in 2006 the General Assembly passed HB2, the Agricultural Stewardship Act, which requires counties to have a Priority Preservation Plan (PPA). A PPA includes the geographic delineation of areas that are targeted for resource conservation preservation. HB2 also expressed the intent of the General Assembly to commit \$20 million in additional funding for agricultural

preservation “to the extent the funds are available”. To date, funding at this level has not been provided.⁸

For Maryland to meet the challenge of growing while preserving the pastoral heritage of its rural areas, the State should actively support programs to assist farm, forestry, seafood and recreation-based businesses to achieve profitability and sustainability.

The following recommendations seek to address this challenge.

Protect Funding for Maryland’s Land Protection Programs and Also Ensure That Their Sources are Not Diverted to Other Uses

Maryland’s critical land protection programs described above depend substantially on revenues from the State’s real estate transfer tax and agricultural transfer tax. In a declining real estate market, revenues from these taxes are reduced, threatening funding for these programs. In addition, although the current administration has not done so, prior administrations have diverted these revenues to the general fund to be used for other purposes.

Recognizing that the State’s financial commitment to its land preservation programs is essential to their success, the Task Force recommends that the State maximize available resources for important preservation programs including the Critical Farms Program, the Next Generation Farmland Program, the Installment Purchase Agreement Program, the Maryland Agricultural Land Preservation Program, the Rural Legacy Program, the Maryland Environmental Trust, and Program Open Space. The Task Force strongly encourages that funding sources for land protection and preservation be protected and never diverted to other uses.

R-15

⁸ The State’s expenditures on land preservation since 2000 totals \$690 million, according to the Maryland Department of Legislative Service, as summarized in **Appendix I**.

Target Land Preservation Programs

The need for land preservation will always exceed the amount of public funds dedicated to that purpose, and current economic conditions and trends will exacerbate this problem. Therefore, resources should be targeted where possible to maximize return on the State's investment.

As noted above, in 2006 the General Assembly passed HB2, which requires counties to have a Priority Preservation Plan focused on designated Priority Preservation Areas (PPAs) which include the geographic delineation of areas that are targeted for resource conservation or preservation. A priority preservation area analysis assesses the status, vulnerability, threat and potential return on conservation investment in potential focus areas to do the following:



- Develop short- and long-term geographic and resource-specific objectives for land preservation and conservation in potential focus areas, based on the extent and configuration of land areas needed to sustain resources of interest;
- Evaluate the degree to which local land use management tools support achievement of those objectives in each area;
- Communicate conservation objectives and the strengths and weaknesses identified for supporting programs in an area; and
- Use the priority preservation area assessment and consultations with local government to select focus areas for the longer term, where resource-specific objectives are most likely to be achievable in those time frames.

Such targeting provides a good opportunity to enhance resource conservation efforts by applying the priority preservation area concept to target not just individual parcels, but large geographic areas rich in high quality natural resources that also benefit from the stabilizing effects of local zoning and land use management authority.

The State should make every effort to maximize its expenditures for land preservation programs, but should also concentrate its expenditures for land preservation programs where the substantial investment is also protected by local land use management authority such as zoning, subdivision regulations, Priority Preservation Areas, or other facilitators of Smart Growth.

R-16

Support Agricultural Land Preservation Initiatives That Protect Resource-Based Industries

While Maryland is a national leader in land preservation programs, the State's rural lands continue to be subject to significant development pressures. Ongoing and enhanced State and local purchase of land for preservation (via fee simple or preservation easement) should be augmented by land management tools such as protective rural zoning, subdivision regulations, Priority Preservation Areas, or other facilitators of Smart Growth. In addition, resource-based industries such as agriculture, forestry, recreation, and tourism need to be vibrant in order to help decrease the incentive for property owners to sell their rural lands to developers for sprawl development. The loss of rural land to development and the resulting fragmentation of the landscape are damaging to resource-based industries and to the environment.

State and local governments should look at comprehensive approaches to land preservation beyond purchasing land for preservation. While additional State funding for such programs is critical, local governments should also strengthen land management tools (e.g., protective rural zoning and subdivision regulations) for rural lands to protect existing resource-based industries, thereby decreasing the incentive for land owners to sell their land for development. The Maryland Association of Counties believes, however, that this local government action should only be undertaken once the State has met its funding commitments to land preservation. Usually, successful downzoning of agricultural land has been accompanied by aggressive easement acquisition, such as in Baltimore County.

R-17

Explore Expansion of Transfer of Development Rights (TDR) Programs

Ownership of a parcel of land confers upon its owner a number of rights, including the right to make reasonable use of the property. Zoning or other regulations may specify the maximum density for development of the property including, for example, the right to cover a certain percentage of the site with buildings, and the right to develop a certain number of dwelling units. A TDR program allows these development rights to be acquired and transferred to another property, thereby protecting the "sending" property from development and allowing more development on the "receiving" property, typically in an area where growth is desirable and being directed.

State law authorizes local jurisdictions to enact TDR programs voluntarily. Few local jurisdictions have done so, however, because of the complexity of TDR programs. Only two jurisdictions that have TDR programs, Montgomery and Calvert Counties, have been able to create successful programs that have preserved land while creating viable markets for the transferred densities.

TDR programs are not a substitute for strong rural zoning that independently protects such lands. However, despite the difficulties associated with creating viable TDR programs, particularly those that transfer rights across jurisdictional boundaries, the Task Force believes that further study of TDR viability is warranted. Though difficult to design and implement, a statewide or regionally based TDR program holds promise because such programs yield broader “receiving” areas for the transferred density.

MDP should convene an inter-agency and inter-governmental workgroup, including State and local stakeholders, to explore the viability of TDR programs at all levels. The workgroup should report back to the Task Force with an interim report by July 1, 2009, and a final report by November 1, 2009.

R-18

7. Assess and Address Critical Infrastructure Needs

To achieve Smart and Sustainable Growth, we must build and maintain infrastructure in existing communities. The basics -- water, sewer, roads, and schools -- are absolute prerequisites for denser and more walkable communities. Libraries, parks, cultural/recreational and other similar facilities enrich our communities and are critical amenities that attract people to live where they do. Local, State and federal funds can meet only a small fraction of this demand.



An Infrastructure Assessment Workgroup of the Task Force studied a number of critical infrastructure issues and provided the Task Force with a report. See the Workgroup’s report at **Appendix H.2**. Based on the Workgroup’s report and further discussion, including the efforts of an Adequate Public Facilities Workgroup described further below, the Task Force makes

the following recommendations to focus attention and resources on the State's infrastructure needs.

Require the Maryland Department of Planning To Update the 2004 Infrastructure Survey and Local Government Cooperation with the Survey

The State last conducted a comprehensive survey of its infrastructure in 2004. This survey should be conducted at least every ten years to provide policymakers with a current understanding of the condition of Maryland's infrastructure and how that condition promotes or detracts from the State's ability to achieve Smart Growth priorities. The survey should identify infrastructure needs that are the highest priority for achieving the State's and local government goals for Smart and Sustainable Growth.

MDP, in conjunction with other State agencies, local governments, and the Task Force, should develop and implement changes to the 2004 survey format to maximize its usefulness for the purposes described. Local governments should participate fully in completing the survey, whose utility will be compromised if data is incomplete.

R-19

Complete a Ten-to-Twenty Year Historical Survey of State and Local Infrastructure Investment for Schools; Land Preservation Including Agricultural and Open Space Protection; and Transportation Improvements

The Task Force believes that State and local policymakers would benefit from a historical perspective on infrastructure funding in Maryland, both to identify past trends and help plan for future needs. Such a study should focus on spending, but also on the extent to which existing infrastructure is being used efficiently and to its capacity.

The Department of Legislative Services, the entity with access to the broadest spending and budget data, should be asked to complete a historical infrastructure study by November 1, 2009, engaging the assistance and resources of other agencies and entities with access to relevant data and resources. The Maryland Agricultural Land Preservation Foundation, has recently studied its own efficiency and is actively pursuing improvements. This study may be a useful foundation for further efforts.

R-20



Expand the Department of Housing and Community Development's Local Government Infrastructure Finance Program

The State's Local Government Infrastructure Financing Program, administered by the Department of Housing and Community Development (DHCD), issues bonds on behalf of counties, municipalities and/or their agencies, to finance projects that serve the community at large. State issuance of such bonds helps smaller governments to achieve greater efficiency and lower cost than individual bond issuances.

Eligible projects can include, but are not limited to, streetscape improvements, transportation enhancements and water system and wastewater treatment facilities. Bonds issued through the program are triple-A rated by virtue of municipal bond insurance and participants enjoy fixed, tax-exempt interest rates. Actual interest rates depend on market conditions at the time of sale, but depending on the size of the issue, economies of scale can further reduce issuance costs. Local governments receive loans from the bond proceeds and must repay the debt incurred through the bond financing. They also pay their pro-rata share of the costs of issuance of the pooled bonds. A loan is a general obligation of the participating jurisdiction, secured by the full faith, credit and taxing power of the local government.

Requests from local governments for assistance with municipal bond financing have nearly tripled from \$33 million in 2007 to more than \$100 million for 2008. Accordingly, DHCD is currently reviewing options for enhancing the reach of the Program as a means of making more funds available to meet infrastructure needs, although the cost of bond insurance in the current financial crisis is affecting all public finance. The Department is looking at other models for infrastructure investment, including the Virginia Resource Authority, which provides a similar service to the DHCD's Development's Local Government Infrastructure Finance Program but, at a

larger scale. Virginia's program uses the backing of the Commonwealth's "moral obligation" to repay any municipal defaults; Maryland should consider the same, or even using its full faith and credit, to minimize costs of municipal financing for local partners.

The Task Force supports DHCD's efforts to expand the Local Government Infrastructure Financing Program and requests that DHCD report to the Task Force, on an ongoing basis but no later than June 1, 2009, on the success of its efforts.

R-21

Maximize Local Government Authority to Fund Local Infrastructure Needs

Only two of Maryland's counties (Baltimore and Montgomery) have authority to impose any type of new tax or fee as long as State law does not preempt that tax or fee. Otherwise, under the Maryland Constitution, a county or a municipality must have express authority from the General Assembly to impose a tax or fee. For example, if a county wanted to impose a transfer tax to fund infrastructure, the county would have to rely on the General Assembly to pass legislation authorizing the imposition of a transfer tax. Many counties and municipalities have been unsuccessful in persuading the General Assembly to authorize a new tax or fee.

In the area of financing, all counties and municipalities have the authority to adopt ordinances for tax increment financing for public infrastructure.



All counties have authority to establish special tax districts for limited purposes such as providing drainage improvements or providing street lighting. In addition, charter counties have broad authority under the Express Powers Act to create special taxing districts to carry out most county services. However, authority to create special taxing district and to levy ad valorem taxes and issue bonds and other obligations for the purpose of financing infrastructure improvements is only authorized in eleven counties (Anne Arundel, Baltimore City, Calvert, Charles, Garrett, Harford, Howard, Prince George's, St. Mary's, Washington, and Wicomico). The type of infrastructure improvement authorized in special taxing districts include water and sewer systems, roads, lighting, parking, parks and recreational facilities, libraries, schools, transit facilities and solid waste facilities. Municipal corporations have the authority to create special taxing districts and to levy ad valorem taxes.

Particularly in view of the enormous demand for infrastructure and the practical limitations of the current financial climate, the State should provide counties and municipalities with the broadest possible authority for funding local infrastructure projects, including authority to use any reasonable tax, revenue source or financing vehicle. While the decision to use a particular tax or funding vehicle should always rest with local government, the State should continue to encourage local funding decisions that are consistent with the State's Smart Growth policies.

R-22

Improve the Effectiveness of Adequate Public Facilities Ordinances

Essential public facilities such as schools, roads, water, and sewer are necessary to ensure that communities are sustainable and efficient communities. Often, paying for public facilities is not made a priority until current population demands attention be paid. The State authorizes local jurisdictions to enact Adequate Public Facilities Ordinances (APFOs), which condition development approvals under zoning and subdivision ordinances to meeting standards for public facilities such as roads, schools, water supply, sewage treatment, emergency services, libraries, ballfields and parks. Development cannot proceed until these standards are met.

The Task Force's APFO Workgroup was charged with assessing the impact of APFOs on growth patterns. See the Workgroup's report at **Appendix H.3**.

After consideration of the APFO Workgroup report, the Task Force makes the following recommendations:

The State's planning laws (Article 66B) should be amended to:

- Require a local government that has an Adequate Public Facilities Ordinance (APFO) to report every two years to MDP whether the APFO results in an APFO restriction, moratorium, or capacity problem within a PFA. That report shall include the location of the restriction, type of infrastructure involved, and the estimated time for the resolution of the restriction.
- Require MDP to prepare and publish a report every two years identifying geographic areas and facilities within PFAs that do not meet local APFO standards, and any improvements to those facilities that have been scheduled and/or proposed in the jurisdiction's Capital Improvement Program (CIP).

R-23

Jurisdictions should consider waiving APFO restrictions for workforce housing, affordable housing, and infill and revitalization projects within the PFA. Some jurisdictions already have waivers for these types of development. The final determination of waiver should be left to the local government, however.

R-24

The State should identify new funding sources to be used for infrastructure improvements within PFAs to support Smart Growth. State funding decisions should give high priority to infrastructure projects that remove reasonable APFO restrictions, moratoria, or other capacity problems that stop or limit development within PFAs or reimburse local governments for forward funding of these projects. An inter-agency and inter-governmental Workgroup should be convened to study alternative approaches to raising such revenues, with the results reported back to the Task Force by November 1, 2009 for further review and recommendations.

R-25

Article 66B §11.01 should be amended to authorize local governments to establish a transfer of development rights program to facilitate the purchase of land for a school or other public facility within a PFA. Under this approach, the pre-existing development rights associated with property selected to become a school or other public facility could be sold to a third party, who would use those development rights to obtain increased density on land elsewhere within the community served by the school or public facility. Proceeds of the sale of development rights would be used to help purchase the public site and/or construct the facility. (Article 66B §11.01 currently provides that "a local legislative body that exercises authority granted by this article 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.").

R-26

Voluntary communication and cooperation among the counties, municipalities, and their local boards of education should be encouraged, especially with respect to growth and capacity issues. Local jurisdictions and their boards of education should meet at least twice a year to discuss how the jurisdiction and board will handle growth issues related to school capacity, student growth projections, and where possible, the siting of school facilities in a manner consistent with sound land use and public facilities planning.

R-27

The State should work to increase the quality and quantity of demographic information available to school boards to better project trends in student population. Officials should use student generation rates based on actual experience and consider geographical differences. Officials at all levels should cooperate on strategies to increase enrollment at schools that are under capacity.

R-28

MDP should prepare a study on the practicality of building vertical "urban" schools in the more densely built areas of PFAs. The study should also consider the practicality of making schools part of a mixed use or transit oriented development project and co-location of public facilities.

R-29



The State should examine the adoption of a 6-year CIP for school construction, instead of the current 1-year CIP, to give localities more predictability in funding.

R-30

The State should study the efficacy of making school construction decisions subject to PFA review, in a manner similar to state spending decisions on water, sewer, and transportation infrastructure. The Task Force discussed the merits of such a policy at length and reviewed multiple options prepared by its APFO Workgroup, as well as alternates prepared by other Task Force members. Copies of these proposals are attached as Appendix H.3. Ultimately, the Task Force supported applying PFA review, with a modified exception process, to the new construction of new schools outside of PFAs. However, it concluded that more time was required to consult further with various stakeholders. Using the Task Force's work as a foundation, MDP should work with the Interagency Committee on School Construction (IAC), the counties, and the education community to study the issue, including the process of applying PFA review to the construction of new schools outside of PFAs and the possibility of extending such review to capacity enhancements of existing schools outside of PFAs. MDP should provide a report to the Task Force by July 1, 2009 for further discussion and recommendations.

R-31

8. Address Maryland's Housing Challenges

Increase Resources and Activities to Support Affordable/Workforce Housing

As home prices have increased substantially over the last years accompanied by rising construction costs, the resources available to support affordable housing activities at the State and local levels have become stretched. Recent changes in the financial markets have lowered the value of some important existing tools, such as Low Income Housing Tax Credits (LIHTC). Expanded federal, State, and local actions through budgetary commitments as well as regulatory actions are needed.

Develop new funding sources to support Department of Housing and Community Development and local government affordable and workforce housing activities, complementing Congress's recent establishment of a National Housing Trust that may send additional resources to states by 2010.

R-32

Work with Federal representatives to grow Federal formula-based housing and community development funds such as HOME, Community Development Block Grant (CDBG), Low Income Housing Tax Credits, Mortgage Revenue Bonds, Housing Choice Vouchers, and Public Housing funds.

R-33

Encourage local governments to adopt local affordable housing strategies including housing trust funds, inclusionary zoning, land trusts, payments in lieu of taxes and waivers for local impact and development fees for affordable housing.

R-34

Target existing and new resources where possible to projects that help people of modest income live near where they work or near viable transit options.

R-35

Continue its proactive emphasis on preserving homeownership in the face of the national foreclosure crisis, and plan for the longer term by helping families strengthen their household financial management and savings plans.

R-36



Expand Housing Information and Policies in Local Comprehensive Plans

The location, shape, and quality of growth, transportation commuting patterns, as well as social needs and services in communities, are influenced by the availability of housing. The failure to adequately plan for housing adequate to support employment located in a jurisdiction also results in relocation of households to other jurisdictions and even other states. In fact, according to the 2000 Census, Maryland has the 2nd worst commute in the country. These patterns often drive growth and development to areas with cheaper land costs, which promotes sprawl. Yet, the average cost of housing inside PFAs is generally less than outside the PFAs. Addressing housing affordability would play a significant role in smarter growth management and is critical to achieving more sustainable communities.

Maryland communities should better incorporate housing affordability into planning activities to help guide land use, zoning, and other development-related decisions. Consideration should be given to including in local comprehensive plans housing market information, a discussion of available affordable housing, an analysis of housing availability in the context of employment, as well as goals and strategies to address these and related issues.

R-37

Evaluate the Benefits of Creating Community Land Trusts

Community land trusts have the potential to create and support affordable and workforce housing, particularly in jurisdictions with very high housing costs. The community land trust model was created approximately thirty years ago to address high housing prices in East Coast cities. However, since then, community land trusts have been used in all parts of the country.

According to the National Community Land Trust Network, there are currently over five thousand such trusts throughout the country.

A community land trust is a nonprofit organization that owns the land under a home, but not the home itself. A homeowner must pay a nominal fee to the trust to lease the land but owns the home in full. By removing land costs, a community land trust makes it easier for a low or moderate-income person to purchase a home. An easement on the home restricts the homeowner from reselling the home above a certain price, thus keeping such housing affordable in perpetuity. The community land trust model may also be applied to rental housing, housing cooperatives, and the preservation of family farms.

The use of community land trusts in Maryland should be studied further by the Department of Housing and Community Development, working with local governments, advocates, and the community, to determine whether community land trusts can help meet Maryland's affordable housing needs. An initial report should be presented to the Task Force by July 1, 2009.

R-38

9. Stimulate Revitalization of Existing Communities

Encourage Growth Through Reinvestment and/or Tax Credits in Older, Existing Communities, Particularly in Greyfields/Brownfields, Areas Near Transit Stations, and Other Specially Designated Areas Such As BRAC Zones, Enterprise Zones And Community Legacy Areas

Maryland has developed a number of innovative tools to advance Smart Growth through neighborhood revitalization. The State has previously created a new set of revitalization tools, including the Maryland Heritage



Rehabilitation Tax Credit, the Neighborhood BusinessWorks program, Live Near Your Work, and Community Legacy, that have resulted in significant physical and

economic improvement in older communities statewide. These investments, when coupled with community energy and local pride, give Maryland's cities, towns and neighborhoods a new chance at viability.

Maryland's older neighborhoods and business districts need access to resources for revitalization and redevelopment. Continuing to encourage growth in these areas serves to combat sprawl and encourage Smart Growth. Such investments also retain the unique character and traditions of the State's many older communities. However, revitalization and infill projects are often more costly up front than new construction due to land assemblage costs, existing or previous uses (including environmental matters), and other site constraints. Existing Smart Growth tools and incentives such as federal and State brownfields programs, historic tax credits, Neighborhood Business Works, and the Community Legacy program play critical roles in stimulating growth in targeted areas. Sustaining and building upon the State's effective revitalization programs makes sense, particularly as the State anticipates substantial population growth and business investment related to BRAC. New programs, such as BRAC Zones, are designed to link BRAC growth to communities seeking revitalization. The protection of these programs is critical in today's budget environment while a broader commitment of resources is fundamental in moving forward.

As a Focus Area for the next phase of the Task Force's work, the Task Force will review, categorize, and assess the State's existing revitalization incentives. The Task Force will also review best practices and ideas from competing jurisdictions and around the country and recommend additional incentives that are cost-effective and economically efficient, yielding an acceptable return on the State's investment. A report should be produced by the Task Force by July 1, 2009.

R-39

Find Creative Solutions to Incentivize and Encourage Small Business Growth in Existing Communities

Many urban markets in Maryland, in particular, remain underserved by grocery, retail and other businesses found in more suburban and affluent areas of the State. Overall reinvestment and revitalization activities need to be accompanied by targeted programs and activities that can expand and sustain the growth of amenities, services, and businesses to attract new investment in such communities.

As part of its work under recommendation 9(A) above, the Task Force will focus on revitalization incentives directed at supporting the location of small businesses in revitalization areas.

R-40

Reauthorize the Maryland Heritage Structure Rehabilitation Tax Credit and Remove Caps

One of the most powerful tools for revitalization of existing communities throughout the State has been the Maryland Heritage Structure Rehabilitation Tax Credit Program. By focusing only on historic structures, the program directs resources to existing communities where viable structures await rehabilitation and expensive infrastructure is already in place.

From 1996 to 2003, the Maryland Heritage Structure Rehabilitation Tax Credit was widely regarded as the most effective program of its type in the nation. During that period, respected economic development and planning experts described the program as Maryland's most powerful and effective Smart Growth, economic development and community revitalization tool. The rehabilitation made possible by the tax credits has proven advantages over new construction in its return on investment, increased tax revenues, job creation, energy and natural resource conservation. Ironically, this very success and demand for the credits led to changes in the program including adding competitive rankings, overall program caps, and caps on the amount of credits that could be used in any one jurisdiction. As a result, the program's effectiveness has been reduced -- in 2003, the year before these substantial limitations were imposed, 147 applications were received; in 2004, only 61 were received.

Unfortunately, some of Maryland's most capable and successful historic rehabilitation developers have turned their attention to states where the state credits can be predictably obtained and easily combined with federal historic preservation credits. For example, Virginia, North Carolina, Missouri, New York, and Rhode Island do not "cap" their credit programs.

In addition to continuing problems resulting from the program's restructuring, an even more fundamental issue is the looming July 1, 2010 sunset date for the entire credit program.

The Maryland Heritage Structure Rehabilitation Tax Credit Program should be reauthorized and extended by the Governor and General Assembly in the 2009 Session, and jurisdictional and aggregate caps should be removed, allowing the program to continue providing an extraordinary return on investment for the State.

R-41

10. Ensure Adequate Water and Sewer for Smart Growth

Water is a precious and finite resource, which must be managed to assure that future human needs can be met with sustained supplies while also maintaining healthy aquatic ecosystems. Maryland is committed to the restoration and preservation of the Chesapeake Bay, the Coastal Bays, and all its streams and rivers. It is also committed to protecting public health by assuring adequate supplies of safe drinking water.



Sprawling patterns of development can increase the amount of pollution entering our waters and threaten drinking water supplies. The conversion of forests, pastures and other rural uses to residential development not only destroys environmentally beneficial uses, but can also degrade water quality and impair streams by increasing the amount of impervious surfaces, which results in more runoff and associated pollution entering streams. Conventional septic systems do not remove nitrogen, which passes through the ground into the ground water and eventually becomes part of the water flowing in streams. Impervious surface from development encroaches on areas where precipitation percolates into the ground, reducing recharge of underground drinking water sources. Development on land that drains to surface drinking water sources also poses a risk. Sprawl development also results in more vehicle miles traveled, which increases nitrogen emissions to the atmosphere and the amount of nitrogen deposited onto the land and water from the atmosphere. Atmospheric sources of nitrogen are estimated to contribute approximately 30% of the nitrogen pollution loading to the State's waters.

To protect the environment, compact development is preferable to sprawling development. However, providing adequate drinking water and capacity for wastewater disposal for densely populated areas poses challenges in some areas of the State.

The Task Force recommends the following actions to manage water and sewer for Smart Growth.

Fund Hydrologic Studies and an Expanded Monitoring Network

The Maryland Department of the Environment (MDE), which issues permits to appropriate water, must avoid allocating more water than can be sustainably taken. As demand for water increases, the limits of the resource will be approached. MDE must have accurate, comprehensive data to support management and permit decisions. The Advisory Committee on the Management and Protection of the State's Water Resources, chaired by Dr. M. Gordon Wolman, recommended that two ground water studies be completed and the network of monitoring wells and stream gauges be expanded. *Water for Maryland's Future: What We Must Do Today (2008)*. Together, these will provide the comprehensive statewide data and scientific tools needed to allow the maximum allocation of water in a sustainable fashion, without causing ecological damage. This issue affects towns and counties across the State that need more water, from the rocky regions of Western Maryland to the coastal plain of the Eastern Shore.

The State should secure full funding for the hydrologic studies and expanded monitoring network.

R-42

Develop Nutrient Trading for Non-point Sources

Cleaning up the Chesapeake and Coastal Bays and the streams and rivers that feed them has been a State and local priority for decades. This will require that Maryland reduces the amount of nutrient pollution (nitrogen and phosphorus) entering the Bay by millions of pounds a year. A principal strategy for accomplishing this is the imposition of "nutrient caps" on wastewater treatment plants, which contribute about 20% of the nitrogen entering the Bay. Once a treatment plant reaches its cap, it cannot expand unless it finds a way to improve its treatment or offsets the excess discharge by trading or otherwise. Some wastewater treatment plants that serve Smart Growth areas will need to expand to accommodate increased population and jobs.

MDE issued its *Policy for Nutrient Cap Management and Trading in Maryland's Chesapeake Bay Watershed* in April 2008. As Phase I of a two-part Trading Policy, it establishes an approach for trading nutrient allowances between point sources and trading involving the removal of onsite sewage disposal systems (OSDS). A second phase of the Trading Policy, being developed by the Maryland Department of Agriculture with other State agencies, will allow trading between point sources and non-point sources. Phase II would enlarge the options for trading, potentially benefiting wastewater treatment plants that need to expand to accommodate growth.

Phase II of the Trading Policy should be completed and released for comment as soon as possible, but no later than April 1, 2009. Upon its release, the Task Force will review the Policy and make recommendations for further action.

R-43

Level the Playing Field between Development Served by Onsite Sewage Disposal Systems and Development Served by a Wastewater Treatment Plant

Onsite sewage disposal systems are commonly used in large-lot, sprawl development. The average lot size for a house associated with an onsite sewage disposal system is 7 to 8 times greater than those served by central sewer. A conventional onsite sewage disposal system (*i.e.*, septic system) discharges about 30 pounds of nitrogen every year. Some of this nitrogen is taken up by plants or otherwise removed during its passage through the ground and ground water, but 30% to 80% of it can reach surface water.



Best Available Technology can remove a considerable amount of the nitrogen from the wastewater before it enters the environment. To date, Maryland has not required those installing septic systems, or subdividing

land to be served by septic systems, to install Best Available Technology or to offset their new discharges. In contrast, discharges of nutrients from wastewater treatment plants that serve growth areas use BAT and are limited, and new plants must offset their discharges. The net impact is that traditional septic systems pollute four times more per capita than development in growth areas. Development costs associated with installation of a traditional septic system are generally much less than sewer connection fees and have no continuing sewer service fee. This disparity between the non-regulation of nutrient pollution from onsite sewage disposal systems and the regulation of wastewater treatment plants undermines the State's other efforts to foster Smart Growth.

The disparity between the non-regulation of nutrient pollution from onsite sewage disposal systems and the regulation of wastewater treatment plants should be corrected by requiring that all new Onsite Sewage Disposal Systems install Best Available Technology or pay a fee *in lieu*.

R-44

Convene a Stakeholder Group to Discuss Ways to Give Priority in Allocations of Ground Water to Municipalities that Need Additional Water to Support the Desired Densities

A new law, HB 1423 (2008), allows MDE, when appropriating ground water, to give priority to public water systems that serve certain municipalities in Carroll, Frederick, or Washington Counties, provided it does not jeopardize the State's natural resources. MDE is authorized to adopt regulations to implement this practice.

MDE should convene a stakeholder group to discuss the adoption of regulations. Aspects of State water law, if any, that hamper implementation of this practice and options for eliminating barriers to implementation of new regulations should be identified.

R-45

Convene Stakeholder Groups to Discuss Ways to Reuse Water

Water reuse offers an opportunity to reduce the demand for drinking water and can also reduce the amount of pollution entering the environment.

MDE should carefully review existing standards and the programs of other states to develop policies and regulations that maximize opportunity for water reuse without compromising public health. In addition, MDE should explore the use of State funds to help jurisdictions acquire rights for land application of treated wastewater. A status report should be submitted to the Task Force for further review and comment by July 1, 2009.

R-46

11. Incorporate Climate Change into Growth Planning

There is scientific consensus that climate change and global warming are occurring, and the impacts of climate change and sea level rise will have far reaching implications for coastal areas in Maryland. Research has shown that effective Smart Growth policies can affect climate change issues, by helping reduce our carbon footprint, decreasing transportation trips, and avoiding coastal hazard areas. Due to



its geography and geology, the Chesapeake Bay region is ranked the third most vulnerable to sea level rise, behind Louisiana and Southern Florida. In addition to causing coastal inundation, climate change is likely to increase the risk of storm damage throughout Maryland.

The Task Force is aware that Governor O'Malley established the Maryland Commission on Climate Change by Executive Order. The Commission issued a report, *Climate Action Plan*, in August 2008. The report identified numerous actions that could be taken to mitigate the effects of climate change or respond and adapt to those changes. Some of these actions relate to land use and patterns of growth.

In its next phase of work, the Task Force will review the Climate Action Plan and consider whether to make growth and development-related recommendations concerning the actions identified in the Plan.

R-47

12. Promote Preparation and Adoption of State Development Plan, State Housing Plan, and State Transportation Plan

Among its responsibilities, the Task Force is charged with determining the parameters for a State Development Plan, a State Housing Plan, and a State Transportation Plan, and with determining how these plans work together with local land use plans. Since 1974, Maryland law has required the preparation of a State Development Plan for submission to the Governor by MDP, but no such integrated plan has ever been formally prepared. Governor O'Malley has requested that such a Plan be prepared in furtherance of this long-standing requirement. At present, Maryland law has no provision for a State Housing Plan, nor does it require the preparation of a State Transportation Plan (although MDOT prepares a similarly-named document to meet other requirements). Nonetheless, the Task Force sees the value in the preparation of such Plans to help guide the State's policy in these vital areas.

MDP, DHCD, and MDOT have presented the Task Force with proposed parameters for their respective Plans, which have been reviewed by the Task Force as a basis for future development of the Plans themselves. These draft parameters are contained in **Appendix J**.

The three Departments and the Task Force have agreed that the State Housing Plan and State Transportation Plan should ultimately be elements under the umbrella of the overall State Development Plan. Accordingly, MDP, DHCD, and MDOT have been cooperating to synthesize the parameters in anticipation of the process of Plan preparation. Development of a full set of parameters is a complex, ongoing, and dynamic process which the Task Force will continue to pursue in the next phase of its work. Meanwhile, the Departments will commence work on the Plans using the draft parameters as a guide, recognizing that they are likely to be amended and adjusted as the Plans themselves are developed. The Departments will work with other agencies to draw upon their resources and expertise in areas relevant to the Plans being developed.

Very few states have undertaken to prepare statewide development plans, and therefore Maryland finds itself in the vanguard of states aspiring to such a comprehensive and coherent assessment of statewide development and land use issues. To inform its work, the Task Force expects to study approaches taken by other states to their state development plans. The Task Force recognizes that development of the Plans themselves will be a considerable and time-consuming undertaking by the lead State agency for each Plan, and will require the input and involvement of many stakeholders, including other agencies of State government, local governments, interest groups, and the public at large. The Task Force also expects that the Plans will be informed by the local comprehensive plans which have been developed by local jurisdictions throughout the State. The State Development

Plan should not be limited to the parameters of the local comprehensive plans, but should include the local plans as an underlying component.

The Task Force will work with MDP, DHCD, and MDOT on development of their State Development Plan, State Housing Plan, and State Transportation Plan by providing guidance, feedback, and support as the Plans are prepared. This critical component of Maryland's future land use planning will be a Focus Area for the balance of the Task Force's work.

R-48

13. Identify Inconsistent and/or Conflicting Laws, Regulations, and Policies

As in any complex governmental environment, where different entities regulate different aspects of the same activities, opportunities for conflicting or inconsistent rules, regulations, and policies exist. At the very least, these can lead to inefficiencies; at the worst, important public policies could be subverted. The Task Force has asked local governments to identify any such conflicts or inconsistencies they perceive in State law, regulation or policy that relate to land use, and local government representatives on the Task Force and their respective organizations have identified a number for consideration. The validity and seriousness of these issues has not yet been determined or agreed upon, and time constraints have not permitted a full discussion and analysis prior to issuance of this report.

MDP, MDE, and other relevant agencies should meet with local government representatives, and other stakeholders as appropriate, to evaluate potential internal conflicts and/or inconsistencies in State land use law, regulations, and policy, including but not limited to those identified to date. Findings should be reported back to the Task Force for further discussion, evaluation and action, if necessary, by July 1, 2009.

R-49



14. Promote Smart Growth Education and Outreach

Many efforts have been made in the past to teach Maryland's citizens about Smart Growth. MDP has numerous publications available, which include 28 Models and Guidelines and other reports and documents. However, the Task Force believes that there should be a renewed effort and more focus on education, both about the issues themselves and about Maryland's leadership role in Smart Growth nationwide.

Create a Broad-Based Educational and Outreach Program About Smart Growth, Developed Collaboratively by State and Local Government, Including Preparation of a Smart Growth Curriculum

Many State agencies have tools and programs that can be used to promote Smart Growth effectively. Further, Maryland is fortunate to have ready access to the National Center for Smart Growth (NCSG), an international leader in Smart Growth policy development and education located at the University of Maryland College Park. A broad-based approach to outreach should include multiple State agencies working with local governments and other available resources, particularly the NCSG, to facilitate education of the public and, where appropriate, local officials, especially when newly elected or appointed. Practical time constraints prevented the Task Force from engaging in any detailed discussion about a Smart Growth education program might contain or how it might be utilized, though the Task Force did establish the desirability of such a curriculum.

As a Focus Area during the balance of its work, the Task Force will create an Education Workgroup to review existing Smart Growth educational materials as well as past efforts. The Workgroup, including Task Force members, State and local agency representatives, the National Center for Smart Growth, and additional educators to be recruited, should jointly design a Smart Growth curriculum to educate the public and, where appropriate, local officials (especially when newly elected or appointed) about the growth and development challenges faced by Marylanders. Plans and programs should be made relevant to address the specific and local needs of individual jurisdictions.

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Encourage the Reinvigoration of the Maryland Planning Commissioners Association and Link to the Maryland American Planning Association

This year, 2008, marks the 25th anniversary of the Maryland Planning Commissioners Association (MPCA). After a hiatus, MPCA is now meeting and planning its work program. This important group should have the best access to Smart Growth tools and be kept updated on growth and development issues in order to be able to effectively work with their local Planning Commissions to promote Smart and Sustainable Growth.

The Task Force supports the reinvigoration of the MPCA as a valuable component of Maryland's Smart Growth agenda.

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15. Establish a Statewide Planning Advisory Committee

To its credit, Maryland had the first state planning commission in the nation, constituted in 1933. Yet, that commission's successor, the State Economic Growth, Resource Protection, & Planning Commission, was dissolved by statute in 2003, leaving the State without an enduring, broad-based public



body charged with an ongoing role in the State's growth and development policy. Even in its short existence, the Task Force has proven the value of having a statewide forum where planning issues are discussed, common ground is

identified, and differences are clarified. In addition to making the recommendations contained in this initial report, the Task Force has also served as a valuable venue in which diverse interests have convened to discuss critical growth, development, and land use issues. The Task Force's enabling legislation will expire in December 2010, however, and the State would again be left without a State-sanctioned venue for discussion and resolution of these issues.

The State should reconstitute a broad-based statewide planning advisory committee including State and local officials, interest groups, and private citizens. The group will serve as an officially-recognized forum for discussion of growth and development issues by a diverse group of stakeholders. The entity should be created by statute upon the expiration of the Task Force in December 2010, with the Task Force offering recommendations on its scope and structure.

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MARYLAND

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