



*Maryland Department of Planning*

*Martin O'Malley*  
*Governor*

*Anthony G. Brown*  
*Lt. Governor*

*Richard Eberhart Hall*  
*Secretary*

*Matthew J. Power*  
*Deputy Secretary*

March 4, 2010

RE: Patuxent River Commission Biennial Report

Dear Governor O'Malley,

The Maryland Department of Planning is required by §5-809 of the State Finance and Procurement Article to report on the progress of the Patuxent River Commission (PRC) toward its goals of restoring and protecting the Patuxent River. This report serves to update yourself and the General Assembly.

The PRC has spent the past four years meeting monthly focusing on a range of topics. Those topics ranged significantly and included every jurisdiction in the watershed. A short list of broad topics includes review of federal, state, and local plans and policies for restoration and protection, coordination with groups of similar interest for potential cooperation, review of activities with potential negative water quality impacts, review of Patuxent relevant local plans, and community outreach. There were other presentations and discussions that did not focus on the topics listed above but they had little to no relation to the goal of this report.

This report is meant to inform yourself and the General Assembly about the actions and efforts of the PRC to implement the recommendations of its Policy Plan. The Policy Plan was first written in 1984 and was meant to be reviewed every five years and the commission, or a workgroup thereof, decides whether or not an update is warranted. Review of the original plan began in 1997 and an update was submitted to the General Assembly in 2000. The most recent update began in 2007 and is still underway. The update to the Policy Plan will serve to identify where the commission as a whole sees itself aiming and what it should strive to accomplish within the next five years. Also underway is the update to the Patuxent River Commission Work Plan. The Work Plan serves to indentify how the commission expects to reach its goals by focusing its efforts within the following calendar year. The 1997 update of the plan, which outlines initial steps to address the recommendations from the 1984 plan, is being used as a basis for this report and can be found at

[planning.maryland.gov/PDF/OurWork/PRC/PatuxentRiverPolicyPlanUpdate1997.pdf](http://planning.maryland.gov/PDF/OurWork/PRC/PatuxentRiverPolicyPlanUpdate1997.pdf). The recommendations from the 1984 plan are:

- Establish a primary management area to protect environmentally sensitive areas
- Implement best management practices and vegetative buffers to control stormwater impacts
- Identify and address major nonpoint source pollution sites
- Retrofit existing development
- Accommodate future development

- Increase recreation and open space
- Protect forest cover
- Preserve agricultural land
- Manage sand and gravel extraction
- Adopt an annual action program

The potential actions and objectives from the 1997 update are:

- Implement a comprehensive watershed management approach to control all sources of pollution and resource degradation.
- Continue to restore, improve, and protect the habitat function of aquatic and terrestrial living resource.
- Concentrate new development in and around existing developed areas and population centers while protecting rural lands and the associated agricultural economy.
- Enhance the environmental quality and community design in new and existing communities.
- Develop a sense of stewardship for the Patuxent River and its watershed through increased public education and participation programs.
- Provide sufficient funding and staff to support continued programs, policies, and projects to meet the ten recommendations of the Plan.

The recommendations from the 1984 version have largely been addressed by the counties within the watershed. Many of the recommendations from that plan are broad in scope and are without specific goals, so determining the extent to which those goals have been met is largely impossible. One could review the goals, review the work of the commission and the jurisdictions within the watershed, and recognize that the goals have been implemented but identifying the degree to which each jurisdiction has been successful is made difficult by the lack of specificity and quantitative measures within the goals. One constant since the 1984 plan was created has been the declining quality of the Patuxent River; the 2009 Patuxent River Report Card (created cooperatively by the University of Maryland's Center for Environmental Studies and the National Oceanic and Atmospheric Administration) indicated a D- rating for the Patuxent's ecosystem, one of the lowest ratings in the Chesapeake Bay watershed.

There are no distinct goals in the most recent update, begun in 1997. Instead, that version offers potential actions and objectives. These actions and objectives are even broader in scope than the 1984 recommendations and are less tangible because they serve as potential actions and objectives, implemented to the extent of the commission's willingness and ability to do so.

When the PRC was created in 1980, there was the expectation that the Commission could accomplish more for protecting the river than the individual local governments could collectively do on their own. A tremendous amount of growth has taken place in the watershed without adequate controls exercised. In this environment, the ability of the PRC to accomplish its function has obviously been limited. The renewed emphasis on the Chesapeake Bay restoration provides an opportunity for the PRC to be much more successful in carrying out its mission.

During the time since the last biennial report the commission has spent considerable time discussing state and federal level programs and policies, and hearing about local issues that have local impact. On occasion they have reviewed and discussed environmental protection efforts at local levels that are not currently reaching their potential and have recognized that those issues could be reviewed and discussed at the scale of the entire watershed. One such example is sediment and erosion control.

The issue was first raised to the commission through the recognition of excessive siltation and runoff from two properties; a state highway project, and a development in St. Mary's County. In the instance of the state highway project, the representative from the Maryland Department of Transportation looked into the report of sediment escaping, continued a dialogue with the commissioner that brought the issue to the commission, and resolved the problem. While the outcome was a success for local water quality, attempting to restore the Patuxent River as a whole cannot be done on a site by site basis. Yet there exists an opportunity for identifying if problems at certain sites are indicative of larger, watershed-wide gaps in restoration and preservation efforts.

The example in St. Mary's County was of a development site that was in violation of the site plan that required staging the grading process. Instead, the developer cleared and graded all seventeen acres at once. Precipitation washed away a large amount of the very friable soils indicative of the area. Research done by commission members, including county staff and representatives from the Department of the Environment, identified a review and enforcement process that was considered somewhat inadequate by members of the commission to recognize, prevent, and mitigate the potential effect of mistakes like this. This discussion led to larger themes of county versus state inspection and enforcement and staffing levels for this type of review. The commission eventually began sending letters to relevant jurisdictions, state and county, to advocate for stricter reviews and increasing staffing levels to ensure adequate inspection and enforcement. The current economic reality contributes to a lack of appropriate staffing levels to ensure that all potential problems are identified early in the process and are corrected before they have major impact. The commission has stated that a review of budgetary focus on inspection and enforcement should be a process undertaken by your office and the General Assembly.

Since 2005, the commission has also spent time hearing presentations on local plans (e.g., draft water resource elements) and policies from local jurisdiction staff to ensure they are consistent with the goals of the Patuxent Policy Plan. Most of these presentations have been informational in nature and have not resulted in large consistency among the local governments in terms of zoning, natural resource protection, or land use planning. Moving forward, the Patuxent River would be well served by a PRC that has the authority or the clout to require consistency in environmental and planning requirements among the jurisdictions of the watershed. That being said, there needs to be recognition of the importance of local autonomy and the ability for each separate jurisdiction to shape its own destiny. Reconciling the need for autonomy with the need for a consistent restoration strategy is unavoidable and yet very difficult. Determining ways in which municipalities, counties, and state agencies can work together to ensure relative uniformity should be a process undertaken by your office and the General Assembly.

The commission is also a very diverse group. It is made up of thirty-four members ranging from educators to scientists, local planners to agency staff, environmentalists to farmers, and more. While the breadth of knowledge and experience is helpful in gathering a broad range of opinions on any issue brought forth, the sheer size of the commission makes it slow moving and often riddled with discussions of procedure. There have been times where the commission has had to delay decisions on issues it has deemed important because of a lack of voting members to pass a motion. MDP recommends reviewing the membership of the commission to determine its value in context of its ability to act quickly and uniformly should be a process undertaken by your office and the General Assembly.

The Patuxent is also a watershed unlike the others in Maryland. Located in both central and southern Maryland, the Patuxent faces a diverse set of land uses and related issues. The northern portion of the watershed in Howard, Montgomery, Prince George's, and Anne Arundel counties have historically experienced higher rates of growth than their counterparts in the watershed and around the state. The southern portion of the watershed, including Calvert, Charles, and St. Mary's counties, is more agriculturally focused and has experienced less growth historically (although this is changing as growth continues to occur). This combination of development and agriculture, the two largest nutrient contributors, explains the high nutrient loads in the Patuxent. Historically, these two nutrient sectors have focused on insisting that the other plays a larger role in water quality and great amounts of energy have been spent to reduce one or the other. The Patuxent offers an opportunity to recognize that to survive we require both agriculture and growth. The time has come to focus our energy on creating a restoration strategy that focuses on reducing and offsetting the impact from growth and agriculture simultaneously. MDP recommends that your office and the General Assembly could generously help the PRC by addressing this concern by focusing coordinated efforts within the Patuxent watershed to address these two leading sources of nutrient pollution.

The upcoming Chesapeake Bay Total Maximum Daily Load (i.e. Bay TMDL), the Watershed Implementation Plans to address meeting the TMDL, and two-year milestones are great steps for restoring our state's most important and most degraded natural resources; however, we should recognize that the Patuxent is in the unique position of facing many of the largest and most problematic issues related to water quality. The fact that it is the only river entirely within the state of Maryland should encourage you and the General Assembly to look to the Patuxent and its health as a corroboration of the positive or negative effects of these strategies. The PRC will work diligently in the coming months and years to review and discuss these efforts and their effects. Ensuring that there is close communication between policy makers and local reviewers/implementers within the Patuxent watershed should be undertaken by your office and the General Assembly. Since the Patuxent provides a diverse set of influences it could help direct efforts in other watersheds across the state that are less diverse in impact.

As a member of the Chesapeake Executive Council, you certainly are aware of the transition taking place in the Bay restoration effort moving toward a much more regulatory framework for Bay management. While many of the water programs already exist, the big change is that the State and local governments will now be held accountable for their implementation toward meeting the TMDL. Local governments are now responsible for implementing numerous programs that impact water quality directly or indirectly including comprehensive plans, water

and sewerage plans, water resource elements, stormwater and in some cases erosion and sediment control enforcement. In addition, Soil Conservation Districts under both State and Federal law in each County carry out programs for approving plans for erosion and sediment control and stormwater management during construction as well as their activities relating to agriculture many of which have a water quality component. The cumulative effect of these efforts and those of the State must meet specific numerical goals established by the TMDL process. With programmatic activities emanating from the State, Counties, Municipalities and Soil Conservation Districts, the PRC can serve as a clearinghouse for all the participants to hear, discuss and evaluate what each is doing in its respective jurisdictions.

The Department of Planning, as staff of The Patuxent River Commission, is required to biennially review the implementation of the Patuxent Policy Plan, provide specific recommendations and bases for these recommendations. A full account of the recommendations and their bases are in the preceding paragraphs. MDP's recommendations according to the PRC's findings and activities since the last submittal of this report are summarized below.

- Ensure that staffing levels for inspection and enforcement are appropriate for the levels of activities for which the state, county, and local governments are responsible. This is often the first line of defense against negative water quality impacts and could prove to be far less costly than mitigation or restoration. The commission has spent ample time reviewing and discussing this issue and is poised to collectively solve this problem with your office and the legislature.
- Provide guidance to the commission on how best to integrate and uniformly coordinate state, county, and local plans, programs, and policies to create watershed-wide requirements that result in a level playing field among jurisdictions and create inter-jurisdictional communication and awareness.
- Review the structure of the commission to determine essential parties necessary to ensure thorough participation while making certain that the group is not burdensomely large and unable to swiftly act based on the commission's intent.
- Recognize that the Patuxent can serve as a barometer for Bay restoration efforts because of its diverse set of inputs related to water quality. The commission, through its focus on these same restoration efforts, is in position to work cooperatively with your office to review restoration efforts and provide feedback on their efficiency and ability to meet our collective goals.

MDP and the PRC look forward to working with you to restore and protect our vital natural resources. If you have any questions, comments, or requests please have your staff contact Dan Baldwin, staff to the Commission, at [dbaldwin@mdp.state.md.us](mailto:dbaldwin@mdp.state.md.us) or at 410-767-4558.