



Maryland Association of
COUNTIES, Inc.

169 Conduit Street
Annapolis, MD 21401
(410) 269-0043 (Baltimore Metro)
(301) 261-1140 (Washington Metro)
(410) 268-1775 (fax)
www.mdcounties.org

MACo PlanMaryland Comments

(Prepared 2011-08-30)

This document constitutes the Maryland Association of Counties' (MACo's) formal comments on the PlanMaryland Draft Plan (dated April 2011). As part of its comments, MACo will also reference several other documents, including:

- PlanMaryland Draft Plan Executive Summary (April 2011)
- Where Do We Grow From Here? A Report of the Task Force on the Future for Growth and Development in Maryland (December 1, 2008)
- Letter to Secretary of Planning Richard Hall from MACo and Maryland Association of County Planning Officials on PlanMaryland concerns (August 9, 2010)
- PlanMaryland Workgroup Review and Recommendation Report, adopted by the Maryland Sustainable Growth Commission (July 25, 2011)
- PlanMaryland Progress Report (July 2011)
- Maryland Department of Planning (MDP) Pamphlet: What PlanMaryland Is/What PlanMaryland Isn't (Date Unknown)

MACo acknowledges the effort and work put into the draft plan by MDP staff and those in other State agencies. MACo also acknowledges the willingness and effort MDP has shown in meeting with both MACo and county officials throughout the State.

MACo has been involved throughout the PlanMaryland discussion process and even prior, submitting a letter of concern to Secretary Hall in August of 2010, nearly 7 months before the draft plan was released. In that letter, MACo and the county planners association stated that PlanMaryland could be beneficial if it is based on certain principles and structured to serve certain functions, particularly if it fostered better communication and cooperation at both the State and local levels and helped resolve policy conflicts between State agencies.

However, the letter made it clear that PlanMaryland should incorporate local comprehensive plans as part of its foundation (a sentiment also expressed by the Growth Task Force in its 2008 report) and not seek to supplant local land use authority or micromanage growth. MACo believes that the first draft of the plan does not adequately address either concern and raises many other policy and process concerns as well.

In response to stakeholder and public feedback, MDP released a progress report in July that acknowledged some of the concerns and promises that changes will be made in a second draft that will be released after the close of the first public comment period on September 1. While MACo will address the Progress Report where appropriate, MACo believes the brunt of its comments should focus on the first draft. If an opportunity is given to comment on the revised draft, MACo will certainly do so and modify its comments as appropriate.

Based on a thorough review of the PlanMaryland draft and the proposed adoption process, MACo has identified nine issues that should be addressed if PlanMaryland is to truly become the collaborative land use document that it purports to be.

1. PLACE DESIGNATION PROCESS AND SELECTION

The Place Designation process is one of the core points of PlanMaryland and is discussed at length in Chapter 4 of the Plan. According to the Plan: “The Place Designation Process is an iterative and collaborative State/Local effort to determine where the State and local governments will jointly deploy their resources as possible to achieve the Goals and Objectives of PlanMaryland. This process begins with Initial State Designations, which are based on GreenPrint, AgPrint, and GrowthPrint, followed by a State/local collaborative process.” Combined, the three “Prints” create a policy map that will serve as the guide for the implementation of PlanMaryland. Local governments may submit recommendations for adding designated places but ultimate approval authority rests with the State.

- A. *The place designation categories and criteria should be clearly defined through a collaborative process involving the State, local governments, and other stakeholders. The benefits and drawbacks of each designation category should be clearly explained.*

Currently, the Plan provides some broad information but little detail on the criteria used to determine whether a particular area qualifies under a specific place designation and what it means to be classified under that place designation. What are the ramifications of being classified as a priority water resource area? What criteria should be considered when designating a GrowthPrint area versus an established neighborhood? A county should not be expected to make a potentially significant decision regarding place designation without a full understanding of the criteria and ramifications of that decision. The Sustainable Growth Commission also expressed concern over the lack of specificity regarding place designation categories and recommended a collaborative process for determining designation criteria.

- B. *PlanMaryland should clearly define a place designation process collaboratively agreed upon by the State, local governments, and other stakeholders. The process should be linked with local comprehensive plans and zoning. Growth areas should be designated by local governments, with collaborative feedback and comment from the State (analogous to the current system used for Priority Funding Areas (PFAs)).*

The State and local governments should also work collaboratively on other place designations. The State should not make any initial place designations.

The currently proposed place designation process undermines the concept of PFAs and local autonomy. While it is true that the actual PFA statute is not changed by PlanMaryland, vesting approval authority for growth areas essentially renders them meaningless, as the State will have final say over where a local government should target growth in its jurisdiction. The decision of designating places related to growth should remain with the local governments, with State ability to provide feedback and comment. Other place designations should be determined jointly through a collaborative approach between the county and State.

The Sustainable Growth Commission has also recommended a collaborative approach to the creation of the place designation process, noting “The Plan must provide ample opportunity for local governments, State agencies, and others to participate in determining the processes for Place Designation....” The place designation process proposed in the draft Plan is not collaborative and mutually-agreed upon. Instead, it is driven and controlled by the State.

Finally, the State should not initially designate places; it is contrary to the envisioned collaborative process. MDP has acknowledged in its PlanMaryland Progress Report that there will be no initial state-designated places in the second draft of PlanMaryland.

C. The Plan should specify what happens when an area is subject to multiple place designations.

Place designations are designed to serve a variety of different goals and the same area can be subject to multiple designations. However, the Plan does not clearly identify the effects of a place subject to multiple designations. For example, what happens if an area is designated as both a GrowthPrint Area and a Priority Water Resource Area? How are the differing priorities of the two designations resolved? The Plan should provide details on how the place designations will interact with one another.

D. The Plan should specify that the place designation process will not occur until the designation criteria, State policies and implementation strategies, and local responsibilities are also developed.

It is critical that counties know all of the ramifications of place designation before the place designation process is initiated. There should not be any “gaps” or “blanks” in this understanding, meaning all State policies and implementation strategies and local responsibilities are clearly identified prior to place designation. The clearest process for doing this would be to identify the place designation categories and place designation process first, State policies and implementation strategies and local responsibilities second. Only then should the actual place designation begin.

The Sustainable Growth Commission shares this concern, stating: “The Plan must provide ample opportunity for local governments, State agencies, and others to participate in determining the processes for Place Designation and associated Designation Criteria before the State Implementation Strategies take effect, including any funding or regulatory decisions based on Place Designations.” At the PlanMaryland Forum at the MACo Summer Conference on August 19, Governor Martin O’Malley simply stated “yes” when asked if the Plan would not be implemented until the State worked with the counties to fill in the gaps in the current draft of the Plan, including State policies and implementation strategies and local responsibilities.

- E. *PlanMaryland should clarify that the three “Prints” – GrowthPrint, AgPrint, and GreenPrint, do not represent strict boundaries dictating where growth and preservation should occur. Rather, the “prints” are useful analytical mapping tools that can assist in, rather than determine, place designations.*

While GrowthPrint is a new creation, both AgPrint and GreenPrint existed prior to the introduction of PlanMaryland. All three “Prints” are useful mapping and analysis tools but they are not and were never intended to represent “lines on a map” that will dictate State or local land use policies.

The Sustainable Growth Commission also recommended that the Plan “should clarify that the ‘Prints’ are GIS mapping tools that represent ‘Areas Currently Targeted’ by existing programs.” In its PlanMaryland Progress Report, MDP states that the Plan will include such a clarification.

2. STATE POLICIES AND IMPLEMENTATION STRATEGIES

State policies and implementation strategies should be developed through a collaborative process involving the State, local governments, and other stakeholders. Both the benefits and consequences of the policies and implementation strategies must be explicitly identified in the Plan prior to its implementation.

State policies and implementation strategies should be developed through the same collaborative approach discussed in Comments #1 and #3 for the place designation criteria and process. This is also a recommendation of the Sustainable Growth Commission. The mutually-agreed upon policies and implementation strategies should be included in the Plan prior to the Plan’s implementation.

3. LOCAL GOVERNMENT RESPONSIBILITIES

Any envisioned local government responsibilities should be developed through a collaborative process involving the State, local governments, and other stakeholders. Any mutually-agreed upon responsibilities should be explicitly identified in the Plan prior to its implementation.

Any local responsibilities under the Plan should be developed through the same mutually-agreed upon collaborative approach discussed in Comments #1 and #2. The responsibilities should be included in the Plan prior to the Plan's implementation. Again, both counties and the State need to have a complete understanding of the rules and ramifications of the Plan prior to its implementation.

4. IMPLEMENTATION SCHEDULE

PlanMaryland should include a timetable outlining envisioned development and implementation milestones, including those concerning the place designation process, State policies and implementation strategies, indicators, and local government responsibilities.

Many of the key elements of PlanMaryland, such as State Policies and Implementation Strategies, local government responsibilities, the entire place designation process, and the effects of place designation categories remain undefined in the initial PlanMaryland draft. Commensurate with the collaborative processes recommended in Comments #1-3, the Plan should also contain an implementation schedule. This was also a recommendation of the Sustainable Growth Commission.

5. PLAN INDICATORS AND MONITORING

The Plan should detail the monitoring and annual review process of the Plan. Any indicators that will be used in relation to PlanMaryland, especially those envisioned to be collected by local governments, should be clearly identified.

Chapter 6 of the Plan discusses reporting requirements and progress indicators for PlanMaryland. However, except for a basic outline of possible indicators, the Plan does not provide sufficient detail on how PlanMaryland's progress will be tracked. The Sustainable Growth Commission found that the Plan "lacks measurable indicators of progress" and recommended that "PlanMaryland's goals and objectives should be rewritten to provide specific and measurable direction for the Plan." MDP's PlanMaryland Progress Report discusses an annual review process and indicates that many of the envisioned metrics will come from already available information, but still lacks necessary detail.

6. PLAN OVERSIGHT

As key implementers of PlanMaryland along with the State, local governments should have a role in the oversight of the Plan in tandem with the Smart Growth Subcabinet. The advisory role and duties of the Sustainable Growth Commission should be better defined.

Chapter 6 of the Plan also discusses management and oversight of the Plan. In the initial draft, there is no oversight role for local governments, even though the Plan is touted as a collaborative process and local governments will be key implementers along with the State. Instead, oversight authority rests with Smart Growth Subcabinet, which is primarily composed

of State agency heads. If the Plan is intended to foster better cooperation and partnership between the State and local governments, local governments should play a part in the oversight of the Plan.

The Sustainable Growth Commission found: “The statutes that address the requirements for a State Development Plan were written in the 70s, before local governments were required to plan, before the 1997 Smart Growth statutes, and before several other growth/preservation statutes were passed. It is, therefore, not surprising that the statutes created the framework for a Plan that only involves the Department of Planning (MDP). It appears that the intent of the Plan is to provide guidance for all State agencies and for local and regional governments. If so, then it is worth considering whether the Plan needs an oversight structure that includes more than MDP and the Smart Growth Subcabinet.”

The MDP Progress Report mentions that the Smart Growth Subcabinet and the Sustainable Growth Commission will review and provide feedback on the annual updates of PlanMaryland but does not mention changing the proposed oversight structure. MACo supports a local government oversight role, as well as a better defined role for the Commission in an advisory capacity. MACo is opposed to the creation of a statewide land use or planning commission with adjudicatory power.

7. SCOPE AND BOUNDARIES OF THE PLAN

PlanMaryland should clearly define its scope and boundaries. The Plan should include the following language from the MDP pamphlet What PlanMaryland Is/What PlanMaryland Isn't:

[PlanMaryland] is not a:

- *Substitute for local comprehensive plans nor will it take away local planning and zoning authority.*
- *Top-down approach to force compliance with a statewide land-use plan.*
- *Silver bullet that will solve all of our problems, but it is a strategic plan to address issues such as community disinvestment, sprawl development and inefficient use of existing resources.*
- *“One size fits all” approach. PlanMaryland recognizes that different areas of the state have different characteristics, problems, issues and opportunities.*
- *Mandate to spend more. On the contrary, if PlanMaryland helps local governments implement their existing comprehensive plans, it will save money by avoiding expenditures for unnecessary infrastructure and other costs.*
- *Conclusion, but the beginning of a collaborative process between the State and local governments to address critical issues of environmental and fiscal sustainability.*

Additionally, the Plan should state that list what state actions, such as the issuance of specified permits and approvals, will and will not be considered part of the Plan.

Local planning and zoning authority and the ability to make land use decisions are a central component of local governments in Maryland. PlanMaryland could reduce or abrogate this authority. While the current Administration has stated that it is committed to preserving local decision making authority, there are no guarantees that future Administrations will interpret the Plan in the same manner. Therefore, the Plan should clearly define its scope and set explicit boundaries on its role. MDP has acknowledged the need for such clarification, both in its PlanMaryland Progress Report and a pamphlet entitled: What PlanMaryland Is/What PlanMaryland Isn't.

Furthermore, both the Administration and MDP have characterized the Plan as a way for the State to focus its fiscal resources (i.e., the State will not interfere with local government growth decisions, but will not subsidize projects with State funds where the State disagrees). However, the State could go beyond this basic premise if State Policies and Implementation Strategies dictate that necessary permits or approvals will not be given unless a project is fully compliant with the Plan. Such a scenario would constitute a de facto vesting of project approval authority with the State rather than the local governments.

8. TIME TO COMMENT ON SECOND DRAFT

The Governor's approval of the second draft of PlanMaryland should be delayed for a period beyond the recently-announced 60 day comment period to allow adequate public and stakeholder review and input. The delay is necessary to refine the second draft into a viable framework for the Plan's future implementation.

MACo and many counties have raised concerns about the lack of ability to comment on the forthcoming second draft of PlanMaryland. Under the original timeline, the public comment period for the initial draft would end on September 1. Subsequently, MDP would create a second draft based on the comments and submit the second draft for approval by the Governor in October. This compressed timeframe allowed no chance for public comment on the second draft.

In response, MDP recently announced a 60 day comment period for the second draft, ending on November 7. MACo is appreciative of the chance to review and comment on the second draft, but remains concerned that 60 days is insufficient time. Unlike a comprehensive plan or zoning update, where there is already a statutory and regulatory framework in place, PlanMaryland represents a significant policy change for the State, local governments and other stakeholders. Adequate public vetting and discussion will be essential to its long term success. While MDP may have been working on the Plan internally for 3 years, there has only been 6 months of public comment and review of the current draft. MDP has stated that there will be significant changes made in the second draft. If this is indeed the case, there needs to be adequate time to review and comment on the second draft.

9. FUTURE PARTICIPATION IN THE PLANMARYLAND DRAFTING PROCESS

PlanMaryland should contain language stating that all stakeholders will be afforded an adequate amount of time to review and comment on any future changes to PlanMaryland and that local governments be able to collaboratively participate in the drafting of those changes.

While MACo compliments both the MDP Secretary and staff on their willingness and dedication to meet with all stakeholders since the release of the PlanMaryland draft, MACo is concerned about the lack of communication and participation that occurred *prior* to the draft's release. Several of the Plan's concepts were vetted in an isolated manner but never in the context of a unified State plan. For example, MDP proposed to the Task Force on the Future for Growth and Development in Maryland that Priority Funding Areas (PFAs) be tiered (similar to the currently proposed place designation process), but there was not any discussion that the idea would become a central point in PlanMaryland's structure. It should also be noted that the Task Force declined to adopt the PFA proposal.

Similarly, MDP held a series of public listening sessions throughout 2010 where the Department presented arguments in support of PlanMaryland and received audience feedback on which of the 12 planning visions were most important. However, the listening sessions did not discuss specific Plan components, particularly those relating to local governments. At no time were the counties allowed to participate in the actual drafting process of the Plan, even though the Plan purports to have both a State component (horizontal integration) and a local component (vertical integration).

CONCLUSION

In conclusion, MACo believes that there is merit to a State land use plan if the plan fosters between communication between local governments and the State and helps resolve conflicting State policies. However, as it stated in its August 2010 letter to Secretary Hall, MACo cannot support a plan that would impose a "centralized State-controlled land use model" and the initial PlanMaryland draft certainly contains such an aspect, starting with State final approval of designated places.

Other "vertical integration" components of the draft appear to go beyond simply improving understanding and communication between the State and local governments on land use visions and policies. Instead, as the PlanMaryland Draft Plan Executive Summary details, local governments are expected to comply with the State land use goals and objectives, even if this goes against local comprehensive plans and priorities:

"Designated Places and implementation strategies will establish shared commitments for State agencies and local governments. To ensure that these commitments are sustained, the Smart Growth Subcabinet will oversee a PlanMaryland Consistency Process. State agencies and local governments contemplating actions that might contradict established goals and commitments will be responsible for bringing the

actions to the Consistency Process for review. The process will seek to ensure two outcomes: (1) that the actions support the goals of the plan and (2) that State commitments to target limited capital and non-capital resources continue to contribute most effectively to the achievement of plan goals.”

Such language does not support collaboration and should be addressed with revised language concerning Plan oversight. For PlanMaryland to be ultimately successful, it must be based on a genuine collaborative partnership between the State and local governments, with mutually agreed-upon rules and limits.

MACo will continue to work with the State and other stakeholders to address our concerns of State control over place designations, the oversight process, and the lack of detail regarding the place designation criteria and process, State policies and implementation strategies, and local responsibilities. Ultimately, MACo believes PlanMaryland has the potential to foster better land use practices across the State and looks forward to further dialog and work on the issue.