

RESOLUTION NO. RS-08-015

**ADOPTING AMENDMENTS TO THE TEXT OF THE 2002 COMPREHENSIVE
PLAN FOR WASHINGTON COUNTY, MARYLAND
(CP-08-001)**

RECITALS

The Board of County Commissioners of Washington County, Maryland (the "Board"), adopted the 2002 Comprehensive Plan for Washington County, Maryland (hereinafter the "Plan") on August 27, 2002, effective August 27, 2002 in accordance with Md. Code, Article 66B, Section 3.07.

The Washington County Planning Commission (the "Planning Commission"), under the provisions of Md. Code, Article 66B, may recommend adoption of any amendment to the Plan.

Amendments to the Plan have been recommended by the Planning Commission and the proposed amendments would amend the text of Chapters 7 and 8 of the Plan relating to Priority Preservation Areas to bring the Plan into compliance with the Agricultural Stewardship Act of 2006.

It is the opinion of the Planning Commission and the Board that the amendments are consistent with the goals and objectives of the Plan.

The Planning Commission held a public meeting for the purpose of taking testimony on the proposed amendments on April 21, 2008 and a public hearing was held on May 19, 2008 by the Board pursuant to public notice duly given as required by Md. Code, Article 66B, Section 3.07.

A copy of the recommended amendments was referred to all adjoining planning jurisdictions, and to all affected State and local jurisdictions that have responsibility for financing or constructing public improvements necessary to implement the Plan.

The Board has considered all recommendations of the Planning Commission, the Planning Staff, those comments received as part of the public meeting before the Planning Commission and the public hearing before the Board, and also reviewed any written communications which were submitted concerning the proposed amendments to the Plan, and the Board conducted this review process in public session(s).

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, MARYLAND, that the 2002 Comprehensive Plan for Washington County, Maryland is hereby amended as follows:

CP-08-001

(1) Chapter 7, **SENSITIVE AREAS**, is hereby amended as follows:

Section B. is amended to read as follows:

B. ANALYSIS

There are four sensitive areas mandated by the Economic Growth, Resource Protection and Planning Act of 1992. Each heading includes a dialogue on the needs, benefits and potential impacts of development on the sensitive area. In the simplest of terms, protection consists of identification and avoiding the disruption of the natural processes. When avoidance is not possible, minimization of impact is the next preference and may include special measures to mitigate negative effects.

Whenever possible the use of existing ordinance or regulation to accomplish plan goals is the first priority. The County resisted the temptation to create new regulation when it implemented Sensitive Area ordinance amendments in 1996. This plan element recommends only enhancements of those methods to address the plan goal. There is an obvious economy in this approach.

Policy may be an acceptable means of sensitive area protection. However, the use of the land is governed by a group of existing County ordinances. These ordinances are the most likely and appropriate candidates for further amendment. They include the Subdivision, Zoning, Forest Conservation, Adequate Public Facilities, Floodplain Management and Storm water Management Ordinances.

Chapter 381 of the 2006 Acts of the Maryland General Assembly requires counties to evaluate agricultural and forestlands intended for resource protection or conservation as part of the Comprehensive Plan's Sensitive Areas Element. In addition, Chapter 289 of the 2006 Acts of the

Maryland General Assembly was passed and is known as the Agricultural Stewardship Act of 2006 (the "Act"). The Act requires that Maryland counties seeking State certification of their agricultural land preservation programs establish "Priority Preservation Areas" (PPAs) as a means for focused and efficient expenditure of preservation funding. Evaluation of these newly defined sensitive areas, as well as the evaluation and delineation of the PPAs can be found in Chapter 8 of this document.

100 Year Floodplains

(2) Chapter 8, ENVIRONMENTAL RESOURCE MANAGEMENT, is hereby amended as follows:

(i) Section B.6.c) is added and shall read as follows:

B. ANALYSIS

6. Agriculture

c) Priority Preservation Areas

The Agricultural Stewardship Act of 2006 (the "Act") provides the impetus and guidance for counties in the State of Maryland to become more diligent in the effective spending of land preservation funds. It is the intent of the Act that counties establish goals and priorities for the effective and efficient use of land preservation funding.

Land preservation efforts in Washington County have a nearly 30 year history. Starting in 1978 with one program, the Maryland Agricultural Land Preservation Program (MALPP), the land preservation program in Washington County has grown to 7 programs including: MALPP, Farm and Ranchland Protection Program (FRPP), Maryland Environmental Trust (MET), Transportation

Equity Act Funds (TEA), Green Print, Rural Legacy, and most recently Installment Payment Purchases (IPPs). Another potential funding source currently being explored by the County is a Transfer of Development Rights (TDRs) program whereby a privatized system of developer purchased development rights in the Rural Area could be transferred to the Urban Areas. The County has also had some limited success with donated preservation easements.

It has always been the goal of Washington County to support a diversified system of agricultural operations that include but are not limited to dairy, livestock, crop, orchards, vineyards, and timber. As stated in Chapter 2, one of the goals developed as part of the Washington County Comprehensive Plan is to, "promote a balanced and diversified economy, including agriculture." One of the County's objectives in obtaining this goal is to maintain at least 50,000 acres of land in the County in agricultural production. This acreage goal was developed in the early 1990's in coordination with the Agricultural Extension Office and the University of Maryland based on an evaluation of critical mass and land needed to support the agriculture industry. Through 2007, Washington County has permanently preserved approximately 21,000 acres of farmland and woodlands through various preservation programs. In addition, approximately 17,000 acres of land are in short-term preservation districts.

A key component in the success of an agricultural preservation program is the efficient spending of funds to maximize the community benefit. Since the inception of agricultural preservation programs in Washington County, a priority rankings system has been used to determine the best use of preservation funds. Expanding upon this existing practice, and to remain

consistent with State preservation goals, the County's priority preservation areas are being designated to further refine and maximize the focus and impact of preservation funding. To establish the boundaries of the PPAs, staff evaluated several criteria generally accepted by the MALPF program as priority criteria.

Analysis

In accordance with the guidance provided in the Act, the additional 30,000 acres of permanently preserved land needed to meet the County's stated goals should equal at least 80 % of the total undeveloped area in the defined priority preservation areas. To determine the amount of land needed in the PPAs to meet the 80% preservation target, the County began its evaluation by electing to exclude, to the degree possible, areas of existing development. This decision was founded on the belief that the inclusion of developed areas within the PPAs contradicts the intent of designating such an area. Already developed areas will not qualify for land preservation programs and therefore do not belong in targeted "preservation areas". Therefore, the beginning assumption was that at least 30,000 acres of undeveloped land would be designated in PPAs. Applying the 80% preservation target established in the Act would then require, at a minimum, approximately 40,000 acres of land to be established as PPAs. To determine if this assumption provided enough land to meet the preservation target, a development analysis was completed to determine how much development could occur in the PPAs and whether 40,000 acres of land would be enough area to meet our land preservation goals.

However, prior to the completion of the development analysis, the location of the PPAs needed to be determined so that accurate calculations of development potential could be predicted based on zoning districts. Previous preservation efforts in Washington County have begun to build three primary blocks of easements. They are generally located in the Clear Spring, Downsville, and Smithsburg areas. To the degree possible, PPAs were extended around these existing blocks of easements to include parcels adjacent or in close proximity to existing permanent easements and 10 year districts. Using the County's GIS database, parcels generally located outside of Urban and Town Growth Area boundaries and Priority Funding Areas that are greater than 20 acres and have an agricultural use assessment were used as potential sites for PPAs. The areas were further defined by focusing on parcels that were located in close proximity to existing permanent easements as well as existing 10-year districts. Then the soils and forest cover were evaluated to ensure that productive areas were being defined. Finally, Staff focused the primary areas for establishment of PPAs around existing "blocks" of agricultural easements located generally in the Clear Spring, Smithsburg, and Downsville areas.

Some Rural Legacy Areas were also included within priority preservation area boundaries; however, these areas were limited based on the recommendations of the Agricultural Advisory Board. It was the Advisory Board's opinion that due to the limited amount of MALPP funding and the fact that the Rural Legacy Areas have a broader pool of preservation funds available to them due to a broader set of criteria (i.e. environmental and historical factors), that MALPP monies should focus on stabilizing active agricultural operations. Most of the Rural Legacy Areas designated in

PPAs revolve around the Antietam Battlefield area stretching across the MD 32 corridor over to Boonsboro. Areas in the south and east of the Rural Legacy boundaries were evaluated as potential areas but were found to be either low in priority for agricultural use due to soil class or low forest cover, or because of the small parcels sizes (especially along South Mountain) caused by old 'wood lot' deeds created during the Civil War era.

After determining preliminary locations for priority preservation area designation, and establishing a minimum preservation target threshold of 40,000 acres, a development analysis was completed to determine how much development could occur in the PPAs and whether 40,000 acres of land would be enough area to meet our land preservation goals.

Prior to 2005, Washington County had two prevailing zoning classifications labeled as Agriculture and Conservation. The zoning densities in these two classifications allowed dwelling unit to acreage densities of 1:1 and 1:3. This left the County susceptible to large amounts of sprawl development and threatened the resources the community found most important. In 2005, the County, based on recommendations founded by this document, adopted zoning densities in the rural areas that reduced development potential from dwelling unit per acreage ratios of 1:1 and 1:3, to ratios of 1:5, 1:20 and 1:30. Exemption lots were also assigned to varying degrees in these areas for farmers who may wish to provide lots to family members or need to sell lots to help finance the operation of the farm. Based on a development analysis of the designated PPAs, with the current zoning designations of 1:5, 1:20 and 1:30 accompanied by exemption lot potential, the development potential in these areas is approximately 7200 units. While this number may seem high, it is

important to note that this figure has no projection date for total absorption and these findings need to be put into context with the County's historic growth patterns.

As outlined in Chapter 12 of this document, several housing unit projection scenarios were analyzed for potential impact on available land area in the County. Two of these scenarios were analyzed for potential impact on land area. The first scenario analyzed is the 'composite' scenario. These figures are based on an average between the State of Maryland housing unit projections and Washington County's projections based on historic trends. The 'composite' scenario analysis projects that approximately 9,925 additional residential units will be added to the County housing stock over the next 20 years. This averages out to about 500 new units per year in the County. When these units are dispersed between urban vs. rural development, approximately 15% of the projected new units are designated to the rural areas of the County. This dispersal was further broken down into policy areas. Generally it is acknowledged that the rural areas of Washington County fall into 4 different policy areas designations – Agricultural, Environmental Conservation, Preservation and Rural Village. According to the dispersal analysis in Chapter 12, approximately 1,464 new units (73 units/year) are anticipated in the rural areas over the 20 year horizon period. Therefore, broken down on a policy level basis, an additional 1,115 units (56 units/year) are anticipated in the Agricultural Rural area, 180 units (9 units/year) in the Environmental Conservation area, 37 units (1.8 units/year) in the Preservation area, and 132 units (6.6 units/year) in the Rural Villages.

The second analyzed housing unit projection scenario evaluated in Chapter 12 was the 'wave' scenario. These figures were based on above average growth trends that might occur over

the 20 year horizon. The projections were calculated using a 50% increase over the 'composite' figures. The 'wave' projections predict an additional 14,888 housing units added to the current housing stock over the 20 year horizon period. This would equate to approximately 745 new units per year over the 20-year horizon period. Applying the same 15% rural area dispersion that was used in the 'composite' scenario, the dispersal ratio predicts that 2,195 of the new units (110 units/year) could occur in the rural areas over the 20 year horizon period.

Relating these analyses to the PPAs, it was calculated that approximately 16% of the total rural land area is designated within PPAs. Assuming an even dispersal of the projected development over the entire rural area, it is anticipated that 16% of the potential development could occur within the PPAs. This would mean that we could expect to see between 230 and 350 new housing units (or between 11.5 and 17.5 units per year respectively) in the PPAs if the land is not permanently preserved within the 20 year horizon period.

Taking this evaluation one step further, potential land consumed by development over the 20 year horizon period was analyzed to determine if enough land was designated in PPAs. Assuming an average lot size of 2 acres per development right (based on historic development trends), under the more prolific growth scenario, the 'wave scenario', we would anticipate approximately 700 acres of land converted for development. Based on this evaluation, it appears that the 40,000 acres of land designated in PPAs should adequately absorb development while still providing opportunity for preservation goals to be met.

Challenges

Even though the development analysis projections show trends toward low growth potential in the Rural Areas of the County, development pressures are still one of the largest challenges to overcome for land preservation programs. In 2005, Washington County took a monumental and proactive approach in limiting sprawl development and protecting land resources in the rural areas by revising its zoning regulations for these areas. Among the changes made was a reduction in zoning densities from a dwelling unit to acreage ratio of 1:1 and 1:3 to ratios of 1:5, 1:20 and 1:30. These changes have significantly reduced development potential 60 to 70 percent on average on rural land and have consequently reduced the number of dwelling units and their potential to create incompatible uses next to existing agricultural operations. These changes are also allowing more time for local officials to explore and produce mechanisms for land preservation. Therefore, taking into account the recent rezoning of rural lands and the development potential analysis contained in this section, it is not anticipated that adoption of these PPAs will need to add additional land use limitations on parcels in these areas at this time.

In addition to the density changes made in the 2005 rural area rezoning, building setback increases were instituted on newly created residential parcels that abut existing active farms. It is too early to determine the success of this new regulation, however, it is anticipated to reduce the typical incompatibility issues between farms and residential uses such as spray drift, dust, etc.

Other land management ordinances have also been used to help manage the impact of growth in the rural areas of the County. Most notably are the Forest Conservation Ordinance and the Adequate Public Facilities Ordinance. The Forest Conservation Ordinance was adopted in

response to the 1991 State Forest Conservation Act which was passed to help slow the loss of forested lands across the State. As a result of the implementation of the Forest Conservation Act, forest conservation easements have been established all over the County and created de facto open space areas that have helped to preserve the natural resources of the County. In addition, developments that were unable to provide forest mitigation areas on site have assisted in the permanent preservation of several hundred acres of land through forest conservation easements using payment-in-lieu-of-planting funds.

The Adequate Public Facilities Ordinance was originally adopted in 1990. The purpose of this Ordinance is to ensure that public facilities and services needed to support development are available concurrently with the impacts of the new development. Public facilities recognized in the document include roads, schools, water & sewer service, and fire protection. In the rural areas, the most affected facilities are roads and schools. The APFO does not directly limit development like the Zoning Ordinance, however, it does require that development impacts on local facilities be paid for by the developer rather than increase the burden on Countywide taxpayers. While the APFO may not directly limit development, when coupled with the limited development potential allowed by zoning, the upgrade or implementation of new facilities are sometimes not financially advantageous when compared to potential profit from development.

Another tool used by the County to reduce development pressure is the 10-year agricultural district program. In exchange for the landowner agreeing not to develop their property for a period of five to ten years, the County and the State provide a property tax break incentive on the land and

its improvements. This program does not extinguish development rights but does provide the element of time for permanent preservation efforts to occur.

Funding has also been a significant challenge in trying to obtain permanent preservation easements. Both Washington County and the State of Maryland have had varying degrees of success in funding land preservation programs. Because funding for land preservation is primarily derived from property taxes and agricultural transfer taxes, funding tends to follow the fluctuations in the overall economy. Regardless of these fluctuations, the amount of funding needed to meet the goals of these land preservation programs continues to escalate and surpass the availability of funding in both the County and State budgets. Alternative means of funding such as TDRs, IPPs, and donated easements continue to be analyzed as options. However, the success and efficiency of these types of programs tend to be erratic and difficult to predict.

Another fluctuating hindrance to a land preservation program is the interest of landowners to participate in these programs. When the housing market is in decline, landowners seem to be more receptive to these programs to help generate revenue for the farm. However, during a housing boom, the market to develop usually outweighs the incentive to preserve land. This will continue to be an issue in the land preservation program as the supply and demand of the housing industry continues to fluctuate. Also included in this group are landowners who simply do not wish to participate in the programs for a variety of reasons. However, it is important to note that even though some of these landowners may not wish to participate in land preservation programs, they

likewise do not have a desire to develop the land. Many simply preserve the land based on their own principles of land stewardship.

Supporting Agricultural Operations

Another way to overcome the challenges of land preservation is to help promote profitability in the industry. Recently, the County hired an Agricultural Marketing Specialist to assist in promoting the agricultural industry in Washington County. This position is expected to act as a lobbyist and liaison for the agriculture community.

Another important project the County Commissioners have supported for several years is the Agriculture Education Center. Owned and operated by the County, with financial assistance from the State, the Education Center holds events year round to promote and educate people about the agricultural industry. Also included at the Center is the Rural Heritage Museum that provides citizens a view of history about how people used the land to survive.

Finally, the County adopted a Right to Farm Ordinance in 2004 to help educate the general public about agricultural operations and the potential impacts of development. Efforts include notification of all new property owners of the impacts of farming operations such as odor, dust, spray, etc via a notification, signed by the purchaser, at the time of settlement. The Ordinance also provides a process by which to handle the occasional nuisance complaints that can result from incompatible uses.

Conclusion

As stated previously, in the nearly 30 year existence of land preservation programs in Washington County, almost 21,000 acres of prime agricultural and forested lands have been preserved. This accounts for 42% of the 50,000 acre goal set by the County. Acknowledging that the trend in preservation efforts shows success is high at a programs inception and decreases slowly over time based on varying challenges such as development competition, unwilling participants, lack of funding etc, we anticipate that over the 20 year horizon of this document, the County should be able to obtain at least 70-75% of the overall 50,000 acre goal. This projection is partly supported by the 17,000 acres of land currently designated in 10-year agricultural districts. While these districts are not guaranteed to enter into a permanent easement status, historically, there has been a high degree of permanent easement purchase on these districts versus conversion for development purposes. It would also be anticipated that the County's growth management plans and land preservation policies will adapt and evolve to the accommodate changes in land use planning over the 20 year horizon period that could help limit development and promote land preservation and conservation.

- (ii) **Section C., RECOMMENDATIONS, Agriculture, is amended by adding numbers 5-8 which shall read as follows:**

Agriculture


5. Incorporate Priority Preservation Areas into the Agricultural Preservation Priority Ranking system.

6. Continue to evaluate a 2007 consultant report with regard to whether TDRs are an appropriate mechanism for land preservation in Washington County and coordinate such a program to be compatible with the goals and objectives of land use and land preservation programs and policies already existing in the County.
7. It is recommended that the County continue the ten year agricultural district program to help protect against development pressure.
8. Amend the clustering provision section in the Zoning Ordinance to maximize clustering options in the Rural Area zoning districts.

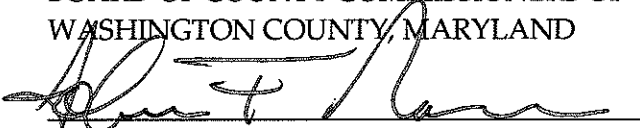
Adopted this 14th day of October, 2008.

Effective the 14th day of October, 2008.

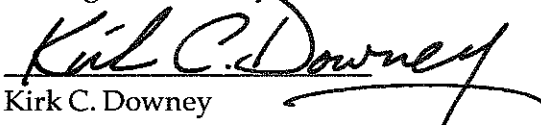
ATTEST:


Joni L. Bittner, Clerk

BOARD OF COUNTY COMMISSIONERS OF
WASHINGTON COUNTY, MARYLAND


John F. Barr, President

Approved as to form
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