



October 1, 2012

Paul Emmart
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

RE: PROPOSED ACCOUNTING FOR GROWTH POLICY AND REGULATIONS

Dear Mr. Emmart:

The Maryland Association of Counties (MACo) appreciates the opportunity to comment on the Accounting for Growth (AfG) policy and regulations (COMAR 26.08.11.01-.07) proposed by the Maryland Department of the Environment.

These comments supplement earlier comments submitted by MACo as part of a memorandum submitted by the WIP Workgroup to the Maryland Sustainable Growth Commission on July 23. It is MACo's understanding that MACo's prior comments have been incorporated into the comment record. MACo's comments fall into six broad categories.

(1) SIMPLICITY AND TRANSPARENCY

Any AfG policy and offset program must be transparent and simple to understand and administer. MACo remains concerned that the proposed AfG policy will become increasingly complex and unwieldy over time.

(2) FLEXIBILITY

The AfG policy must acknowledge local differences and allow county governments the flexibility to allow or reject a range of credit options. Adopting a rigid, "one-size-fits-all" approach will result in regional disparities and unfair application of the policy.

(3) OFFSET LOADS

MACo is opposed to establishing an offset load requirement that is greater than 100% of the change made to a parcel of land pre- and post- development. While it makes sense to require a developer to mitigate any new nutrient and sediment runoff generated by the development (*i.e.*, offsetting the new growth), MACo questions why a

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developer should be *required* to address nutrient and sediment runoff that existed on the land prior to the new development. Such a policy could halt growth in many areas of the state. However, while it should not be a mandate, developers should be strongly *encouraged and incentivized* to achieve additional nutrient and sediment reductions beyond their pre- and post- development target.

MACo is also concerned that the offset load calculations are too generic and do not take into account site specific circumstances. There are instances where a lower density development will generate far less nutrients and sediment runoff than the offset target indicates and where a redevelopment project could generate significant new runoff that is not captured by the offset target. While MACo acknowledges that a true site specific analysis may not be feasible, the proposed offset targets seem to be based on overly broad assumptions. Further refinement, and if necessary the creation of tools to estimate nutrient and sediment changes based on site specific characteristics, is needed.

Finally, MACo is concerned about the inclusion of air deposition sources in the nutrient target. Air deposition is better addressed through the various proposed transportation greenhouse gas reduction strategies that are included in the State's draft greenhouse gas reduction plan.

(4) CREDIT OPTIONS AND FEE IN LIEU

Options for generating credits, including a fee in lieu and a nutrient trading program, must be clearly defined. A broad range of credit options must be available at the same time the offset requirement takes effect. If the nutrient trading program is not ready at the same time as the offset requirements take effect, the future of such a program will already be weakened at the outset. Trading geographies should not be restricted based on development type as the restriction may unduly limit the ability of rural counties to grow. Likewise, a fee in lieu should remain available as a local option.

(5) VERIFICATION AND ENFORCEMENT

MACo remains concerned that the ultimate burden of verification and enforcement for offsets will fall on local governments. MACo would strongly oppose any mandate that

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would force verification and enforcement duties, whether expressly or implicitly, on the counties. Counties lack the staff and resources to track what will likely become a significant number of offsets.

MACo also questions the logistical challenges that will arise from trying to track offsets over time. The AfG policy envisions that offsets will be "permanent." However, the only practical way to easily track a permanent offset is through a perpetual easement or similar restriction entered into the land records. While some offsets, such as planting trees on a tract of land, may have a significant lifespan other offsets, such as a farmer maintaining a vegetated buffer on a field, will require regular maintenance and upkeep. The AfG policy must clearly define how such offsets will be monitored and enforced.

(6)COST

Further detail is needed regarding the cost implications of the proposed AfG policy. Offsetting nutrients and sediment from new development will carry a significant cost and it is critical to ensure that offsets can be done in the most cost effective manner possible.

MACo is committed to the creation of a reasonable and practical AfG policy and will continue to engage with stakeholders to address the concerns of county governments. The purpose of the AfG policy should be to offset the impacts of new growth and it is imperative that the policy not go beyond its intended purpose. MACo cannot support a policy that would effectively halt growth in rural areas or destroy the viability of redevelopment projects in urban areas. Please do not hesitate to contact me if you have any questions regarding these comments.

Sincerely,



Leslie Knapp Jr.
MACo Legal and Policy Counsel