



November 9, 2011

The Honorable Martin J. O'Malley
Governor
State of Maryland
State House
100 State Circle
Annapolis, MD 21401

Dear Governor O'Malley:

With the release of the revised draft of PlanMaryland (the Plan) (dated September 2011), some of MACo's previously raised concerns have been addressed. However, MACo still has trepidation with three overarching areas of the Plan. This letter summarizes MACo's remaining concerns. MACo's earlier comments on the initial draft (dated August 30) and the revised draft (dated October 18) provide more specific details.

(1) THE PLAN SHOULD CONTAIN CLEAR PROTECTIONS FOR LOCAL LAND USE AUTONOMY

Counties remain concerned about the potential of PlanMaryland to usurp local land use authority. Proponents have argued that PlanMaryland is only a policy document that will apply to State funding decisions and not override existing statutes and regulations. However, it is clear from the language of the Plan that the intent and effect of the Plan as it is being implemented will be to promote statutory, regulatory, and policy changes at both the State and local levels.

The Plan clearly states that local governments are expected to be consistent with the Plan and if necessary change their policies, ordinances, and zoning to ensure consistency. And while local governments may nominate designated places and special areas, ultimate approval rests with the Smart Growth Subcabinet, an entity consisting almost entirely of State departmental heads.

When the language of the Plan is weighed against the assertions of the proponents, including representatives of the Administration, the result is an ambiguity that has caused anxiety for many counties. MACo believes three steps should be taken to resolve the ambiguity.

First, PlanMaryland should contain a clearly stated clause, similar to that found in some legislation, that the Plan does not establish any new cause for State denial of projects, permits, or funding beyond what already exists in State law and regulation. Such a statement would not affect existing State authority to limit funding or approvals, which the Maryland Department of Planning (MDP) has argued is already broadly-based.

Second, the Plan should mirror the structure of the 1997 Priority Funding Area (PFA) law and let local governments designate places, subject to defined criteria. One of the primary purposes of PFAs is to focus State funding and while the Plan does not directly change the law regarding PFAs, the practical effect of the place designations will be to narrow the focus of State funding, essentially rendering the PFAs moot. As place designations will essentially become new PFAs, their designation should be left up to the local governments and not be subject to State approval.

Third, the special area designation process should be modified. Under the revised draft, both local governments and the State may nominate special areas, but the State retains final approval authority. The Plan stresses that special area nominations should be jointly made whenever possible. MACo recognizes there may be a valid State interest in certain areas but believes there should be an appeal mechanism when a local government and the State disagree over a special area designation. Such an appeal should go to a neutral third party.

The three proposed changes would provide clarity and substantially allay the concerns of the counties regarding local land use autonomy. This is especially important given that unlike any prior significant land use initiative, PlanMaryland will not be subject to debate or approval by the General Assembly.

(2) IMPLEMENTATION OF THE PLAN SHOULD BE DELAYED UNTIL THE "BLANKS" ARE FILLED IN

While MACo is appreciative of the 60-day extension of the comment period for revised draft, the implementation of PlanMaryland should be delayed further because of the unfinished state of the Plan. The Plan is still missing many critical details, including: (1) designation criteria; (2) benefits and ramifications of the designations, including how the different designation categories will interact with one another; (3) local government responsibilities; (4) Plan benchmarks; (5) State implementation strategies; and (6) indicators or performance measures.

These categories need more development and detail than what is currently provided in the revised draft of the Plan. Given that much of the missing information is what will actually form the practical core of the Plan, the Plan should not be adopted and implementation should be delayed until these "blanks" can be filled. The Maryland Sustainable Growth Commission recommended that the Plan should not take effect until the place designation process and State implementation strategies have been developed through a collaborative review process. Given the significant impact PlanMaryland will have on growth and development, it is important that all stakeholders know and understand the rules before the place designation process begins.

The Plan should make clear and unambiguous statements that funding and regulation will not be affected until the Place Designation process and the associated Implementation Strategies have been vetted through a collaborative review process.

(3) THE PLAN SHOULD BE A COLLABORATIVE EFFORT

Some of the challenges with the initial draft of the Plan were the result of the Plan being drafted without significant stakeholder participation in the drafting phase of the Plan. As local governments play a major role in Maryland's land use process, MACo has continuously stressed the importance of having local governments "at the table" to help create the Plan and help fill in the "blanks" discussed in Concern (2). This collaborative approach was also supported by the Maryland Sustainable Growth Commission. The revised draft itself contains many references to collaboration.

Unfortunately, the process to-date has not been truly collaborative. MDP created the initial draft of PlanMaryland "in-house" and appears to be continuing this trend with the creation of the designation criteria. Commenting on a finished draft is very different from helping to author the draft in the first place. MACo hopes that true collaboration can occur.

CONCLUSION

MACo has consistently been supportive of the Plan's stated goal of more consistency across State agencies. However, MACo remains concerned about how the Plan will interact with the local land use decision making process.

Given the nature of these concerns, MACo believes that good policy would be best served by further reflection and scrutiny on the Plan. Building off and respecting local comprehensive plans, refining the implementation specifics, and engaging in true collaboration with local governments cannot be reliably achieved within the short weeks ahead. A final, in-house redraft cannot fully accommodate these well founded worries. PlanMaryland should not be submitted as a "final" document until these steps are taken, and should therefore be delayed.

MACo believes that if these concerns are addressed, many county fears regarding the Plan will be allayed. MACo remains willing to work with the Administration, MDP, and other stakeholders to address these important issues.

Respectfully yours,



Michael Sanderson
Executive Director

cc: Richard E. Hall, Secretary, MDP
Jon Laria, Chair, MD Sustainable Growth Commission