



FINAL REPORT

OF THE
TASK FORCE ON
SUSTAINABLE GROWTH &
WASTEWATER DISPOSAL

PRESENTED TO



Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Thomas V. Mike Miller, Jr.
President of the Senate

Michael E. Busch,
Speaker of the House

December, 2011



Staffed by:



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Introduction

The phenomenal natural wealth and abundance provided by the Chesapeake Bay has been vastly diminished. Once teeming with oysters, shad, soft shelled clams, grass shrimp, and Atlantic sturgeon, the Bay now experiences annual dead zones and its formerly lush and widespread meadows of seagrass are fewer and far between. Meanwhile, on the land, within the Bay watershed in Maryland, our forests are declining again after a half century of steady regrowth, and our agricultural heritage continues to disappear.

The decline of our natural and rural resources is caused by a variety of reasons, including common development practices that consume large amounts of land for each new home, lack of sufficient control of some sources of pollution, barriers to growth within our historic towns and cities, and disparate levels of sound land use planning. Lastly, new threats from climate change—including sea-level rise, precipitation changes and worsening storms—are beginning to impact our quality of life and natural resources and are expected to worsen over time.

Despite these losses, Marylanders still have much natural heritage to enjoy, both on the land and within our waters. Wise fishery management methods over the last decade have brought back striped bass, increased blue crab harvests, and are giving renewed hope to oyster restoration. New stormwater management requirements and wastewater treatment plant technologies are reducing the impact from development to our streams and rivers. Many thousands of acres of farms, new parks, and natural areas have been conserved. Smart growth and historic preservation efforts have reinvigorated many of our towns and cities and have slowed the loss of our rural landscape.

We're at a crossroads in many respects. The federal government, recognizing the failure of voluntary efforts to fully restore the Chesapeake Bay, initiated a new accountability framework in 2010: now, each Bay State must develop and implement a watershed implementation plan, and must meet 2-year short-term milestones and complete implementation of restoration measures no later than 2025. Within Maryland, after 10 years of smart growth efforts, despite some significant successes, there is widespread recognition that much more needs to be done if we are to significantly stem the loss of our rural resources and reverse the decline of many of our cities and towns. Recent innovative responses, such as

Maryland's Chesapeake Bay Watershed Implementation Plan, BayStat, the Maryland Sustainable Growth Commission, PlanMaryland, and the Task Force on Sustainable Growth and Wastewater Disposal raise hope that we can find and implement measures to sustain our existing wealth and achieve a more plentiful future for our families and children.

The Task Force on Sustainable Growth and Wastewater Disposal was born out of recognition that outdated wastewater technologies – septic systems – are one of the few nitrogen pollutant sources in Maryland that continues to increase and which often supports wasteful land development practices outside of our sewerage areas. If left unchecked, such practices could undermine Maryland's Bay restoration, smart growth, and sustainability efforts. Maryland's population continues to grow and is expected to increase by 1 million people by 2035. Implementing protective measures now will ensure that the land use and pollution impact of future Marylanders is minimized, giving us the greatest chance of success in restoring the Chesapeake Bay and protecting our rural landscape.

Governor Martin O'Malley created the Task Force on Sustainable Growth and Wastewater Disposal in April 2011 through Executive Order 01.01.2011.05. The charge of the Task Force was to "recommend regulatory, statutory, or other actions to address the impacts of major developments on septic systems and their effects on nutrient pollution, land preservation, agri-business, and smart growth" to the Governor and the General Assembly.

Members of the Task Force and Workgroups

The Task Force included 28 members from across Maryland, representing the full spectrum of interested stakeholders. These include:

- Task Force Chair, Delegate Maggie McIntosh of Baltimore City, Chair of the House Environmental Matters Committee
- Task Force Vice Chair, Jon Laria, partner in the law firm of Ballard Spahr and Chair of the Maryland Sustainable Growth Commission
- Erik Fisher, land use planner with the Chesapeake Bay Foundation
- Fred Tutman, Executive Director of the Patuxent Riverkeeper and member of the Patuxent River Commission
- Robert Mitchell, Director of the Environmental Programs Division of Worcester County
- C.R. Bailey, Vice President of Marrick Properties
- Madison "Jimmy" Bunting, Jr., Worcester County Commissioner
- Rob Etgen, Executive Director of the Eastern Shore Land Conservancy
- Pat Langenfelder, President of the Maryland Farm Bureau

- Richard Hutchison, Talbot County farmer
- Jim Rapp, Executive Director of Delmarva Low-Impact Tourism Experiences
- Robert Sheesley, owner of Eco-Sense Inc. environmental consultancy
- Dr. Kelton (Kelly) Clark, Director of the Morgan State University Estuarine Research Center in St. Leonard and Chair of the Patuxent River Commission
- Brian Hammock, attorney, Venable LLC
- Robin Truiett-Theodorson, member and former President of the Abell Improvement Association in Baltimore City
- State Senator Paul G. Pinsky of Prince George's County, lead sponsor of SB 846
- Senator David R. Brinkley of Frederick County
- Delegate Steve Lafferty of Baltimore County, lead sponsor of HB 1107
- Richard Eberhart Hall, Secretary of Planning
- Robert M. Summers, Secretary of Environment
- Earl (Buddy) Hance, Secretary of Agriculture
- John Griffin, Secretary of Natural Resources
- Margaret McHale, Chair of the Critical Area Commission
- David Carey, Bel Air Mayor (representing the Maryland Municipal League)
- Joe Adkins, Frederick City Planning Director (representing the Maryland Municipal League)
- Katheleen Freeman, Caroline County Planning Director (representing the Maryland Association of Counties)
- Chris Trumbauer, Anne Arundel County Councilman (representing the Maryland Association of Counties)
- Russ Brinsfield, Executive Director of the Harry R. Hughes Center for Agro-Ecology in Queenstown

In addition, the Task Force Chair created four workgroups, which were open to all interested parties, and also included specific Task Force members, to develop recommendations for the Task Force to consider. Each workgroup met at least four times. The four workgroups included:

- Existing Infrastructure & Available Technologies (Infrastructure Workgroup), Chair, MDE Secretary Summers
- Impact of Agriculture and Agricultural Land Values (Agricultural Workgroup), Chair, MDA Secretary Hance
- Where and How we Grow in Maryland (Growth Workgroup), Chair, MDP Secretary Hall
- Funding Sustainable Communities and Growth (Funding Workgroup), Chair, DNR Secretary Griffin

State agency staff from MDP, MDE and DNR supported the work of the Task Force and its workgroups. Agendas, meeting minutes, workgroup reports and presentations given to the Task Force and workgroups were posted online on the MDP website at

<http://planning.maryland.gov/YourPart/septicsTF/septicsTaskForce.shtml>

Role of the Maryland Sustainable Growth Commission

Recognizing that there is some overlap of the mission of the Maryland Sustainable Growth Commission with the focus of the Task Force, the Executive Order required the Task Force to coordinate with the Maryland Sustainable Growth Commission, including holding at least two joint meetings with the Commission to coordinate on issues of mutual interest. Two joint meetings were held on September 12 and October 25. The Task Force acknowledges the work of the Concentrating Growth Workgroup of the Maryland Sustainable Growth Commission, which has developed recommendations that would limit the land consumption and overall pollution impact of new development in Maryland.

Their recommendations can be found at:

http://planning.maryland.gov/YourPart/773/MSGC_Meetings.shtml

Decision-Making Process

The Task Force met ten times from July 2011 through November 2011. Each workgroup met at least four times. State and local government officials, along with researchers and specialists, presented information to the Task Force, specifically those items listed in Section E of Executive Order 01.01.2011.05. The workgroups met and were first tasked with the following: list the impediments to a consensus on principles contained within HB1107 (2011 legislative session), identify the resources needed to move toward a consensus, and outline the direction and early recommendations achieved. Each workgroup was given a list of topics, which were raised by Task Force members as important issues during its first meeting, to use to frame their discussions. Over the course of several meetings, the workgroups identified areas of consensus and areas without consensus in response to the Task Force Chair's request. The areas of consensus and without consensus, with background information, were summarized in the October 25, 2011 workgroup reports at

<http://planning.maryland.gov/PDF/YourPart/septicsTF/20111025/allWGprogressreports102511.pdf>. The workgroup's final recommendations were presented to the Task Force, discussed and voted upon.

Recommendations

Recommendation	Vote
<i>Priority Funding Areas (PFAs)</i> Seek funding for Priority Funding Areas (PFAs) to ensure that essential infrastructure (e.g., roads, schools, water/ sewer, emergency services) and amenities are in place to meet new growth needs, although priority should be given to essential infrastructure. Require the State to update the statewide infrastructure needs assessment on a regular basis with prioritization by the State based on projected growth and available funding. Provide enhanced functionality to PFAs and create incentives for redevelopment.	Approved
<i>Building Code</i> Streamline State building code to further encourage redevelopment, reuse and renovation (i.e., Smart Codes II) within PFAs.	Approved (Senator Brinkley opposed)
<i>Regulatory Relief</i> Encourage and assist local governments in instituting “green tape” or “fast track” processes to facilitate the development and review process within designated growth areas. Federal, state and local governments should consider clear procedural and regulatory advantages for growth within designated growth areas. The State legislature and State agencies, in partnership with local government, should identify barriers to growth in PFAs and consider recommendations to overcome those barriers.	Approved (Senator Brinkley opposed)
<i>Comprehensive Plan Tier Approach</i> Local jurisdictions should designate areas within the land use plan of the local comprehensive plan into one of four tiers as described below. Wastewater disposal methods, rural preservation spending, and other criteria will vary by land use tier.	Approved (Senator Brinkley and Commissioner Bunting opposed)

Any increase in load must be fully offset and the site would need to be covered under a Maryland Department of Environment discharge permit to protect water quality based on best science.	Approved
Tier I definition: PFAs per the 1997 law. Generally these are local growth areas.	Approved
Tier I provision regarding wastewater disposal: PFAs should be on public water and sewer unless there are exceptions or provisions in current law.	Approved
Tier II definition: Designated growth area outside of the PFA, that is clearly defined in the county or municipal comprehensive plan (including clear delineation on land use plan maps). Require designation of timeframes for when Tier II areas are phased for growth. Require infrastructure capacity analyses for Tier II areas similar to those required in the Municipal Growth Element.	Approved
Tier II provision regarding wastewater disposal: Method of wastewater disposal driven by availability of central sewer. To the extent possible, these areas should be sewer. When not possible, a good faith effort should be made to obtain capacity from adjacent WWTPs.	Approved
Tier II provision regarding contiguity of growth areas: Preference for Tier II areas to provide contiguous growth where possible.	Approved (Senator Brinkley, Commissioner Bunting and Katheleen Freeman opposed)
Tier III definition: Existing areas not planned for public sewer nor planned for preservation, with a limited amount of development potential. These areas should not be considered for State land preservation funding in most cases.	Approved (C.R. Bailey, Bob Mitchell, Commissioner Bunting, and Rich Hutchison opposed)

Tier III provision regarding wastewater disposal: Tier III areas should be most restrictive with respect to development on septics with exceptions developed for rural villages (these include both the State and local definitions).	Approved
Tier IV definition: Areas planned for rural protection: Rural Legacy Areas, Priority Preservation Areas, GreenPrint Areas, County Agriculture Zones and County conservation zoning districts. In some cases, these areas might overlap with the Critical Area.	Approved
Tier IV provision regarding wastewater disposal: Tier IV areas should have the most restrictions on growth on septic systems.	Approved (Senator Brinkley and Commissioner Bunting opposed)
<i>Septics that Must Include Best Available Technology (BAT)</i> Septics that must include BAT: New construction in Chesapeake and Coastal Bays Watersheds; New construction in other N impaired watersheds; Replacement systems in Critical Areas “New construction” includes an alteration of any residence or building where it is determined that the existing OSDS is not adequate to serve the proposed altered building. BAT not required for replacement of an existing septic system outside of the critical areas except as to accommodate new construction.	Approved (Senator Brinkley and C.R. Bailey opposed)
<i>Implement Operation and Maintenance (O&M) Regulations for BAT</i> Include provisions to ensure compliance; Ensure O&M for life of system; County oversight of O&M, or management by a manufacturer certified/registered BAT service provider, or management by a homeowner that has obtained certification to maintain their own system.	Approved (Senator Brinkley opposed)
<i>Controlling Authority for Shared or Community Systems</i> Allow the use of shared and community systems for new	Approved

subdivisions provided that there is a controlling authority approved by MDE, including a county, a municipality, a sanitary district, Maryland Environmental Service, etc.	
<i>Retirement of Development Rights</i> The State should work with EPA to allow landowners who voluntarily retire development rights to qualify for selling nutrient trading credits. This will require certified nutrient reduction for guaranteed nutrient reduction longer term (i.e. long-term offsets), instead of just a pollution prevention program.	Approved (Senator Pinsky, Fred Tutman and Erik Fisher opposed)
<i>Timeframe to Exercise Lots</i> If the state were to impose new restrictions limiting the number of new lots on septic development, landowners should not have a defined timeframe to exercise the maximum lots allowed.	Approved
<i>Estate Tax Reform</i> Work for estate tax reform so that farms will continue to remain in agriculture and therefore reduce the possibility of development in rural areas. This should be put forward as a separate piece of legislation.	Approved
<i>Transferable Development Rights (TDR) Pilot</i> The State should consider sponsoring a TDR interjurisdictional pilot project for which a County and municipalities or together with other counties can volunteer. MDP could offer its insights and assistance, and the State could offer funding, if needed, for a consultant to do local market studies to help determine sending and receiving rates.	Approved
<i>Impact on Agricultural Production</i> The State should study the effect on prime farmland of reforestation/afforestation regulations, mitigation requirements for habitat and wetland loss, best management practices, etc. Many acres are taken out of agricultural production to accommodate these programs, laws and regulations.	Approved
<i>Bay TMDL Deadline Extension</i> Extend Maryland's timeframe for meeting its TMDL	Approved

obligations from 2020 to the 2025 date required by EPA with additional accountability measures.	
<i>Increase BRF Revenue</i> Increase BRF revenue as follows in order to cover existing shortfall in major WWTP ENR upgrades and essentially close the funding gap for implementing other WIP requirements from developed lands: • Increase average annual residential fee rate to \$60/year/dwelling unit beginning in SFY13 and \$90/year/dwelling unit beginning in SFY15. Increase average non-residential fee rates and cap accordingly. • Annually increase the residential and commercial fee rates to equal to the Consumer Price Index (CPI) beginning in SFY16. There will be an annual increase minimum of 1% and annual increase maximum of 3%. • Conduct a thorough evaluation of progress to date in 2017 and restructure the fee rates accordingly if progress to meet our TMDL obligations by 2025 is not being met. • Sunset the rate increases back to an average annual residential fee of \$30/year/dwelling unit beginning in 2030 if TMDL obligations are met and any remaining debt is retired: or consider eliminating the fee entirely. Sunset average non-residential rates and cap similarly.	Approved (Senator Brinkley opposed)
<i>Revise Authorized Uses of the BRF Fund</i> Amend BRF enabling statute to permit funding of stormwater retrofits as an authorized use of the BRF funds. Amend the BRF enabling statute to permit use of the fund for technical assistance grants to local governments for the purpose of providing planning, design and project management support for implementation projects which reduce sediment and nutrients from urban lands that are consistent with accepted Chesapeake Bay TMDL watershed implementation plans.	Approved

<i>Maximize Cost Effectiveness</i> Maximize cost effectiveness and efficiencies of state-funded projects utilizing BRF revenue through competition, targeting, and leveraging funds: • BRF funds should be awarded to local governments through a competitive process in which awards are determined primarily on the goal of maximizing the pounds of nitrogen, phosphorus, and sediment reduced per state dollar expended. • Pounds of nitrogen, phosphorus, and sediment reduced for septic systems and stormwater projects should be based on scientifically defensible analysis of watershed areas with the highest septic or stormwater loads and immediacy of delivery of nutrients to the Bay. Maps resulting from the above two analyses should be published and made readily available to applicants. • Competitive grants for 10 major/minor WWTPs upgrades to ENR should be prioritized based first on those areas of the State in which growth is projected to occur without the availability of public sewer, and secondarily on resulting nitrogen, phosphorus, and sediment reduction benefits.	Approved (Senator Brinkley opposed)
<i>Expenditure of BRF Funds</i> Change the current 100% BRF funding requirement for failing septic systems in the Critical Area to match the income based scale currently used for septic systems outside of the Critical Area. The State should provide between 25% - 100% of upgrade to BAT dependent upon income. The State should continue to provide \$13,000 (average cost of a BAT upgrade) toward connection of a failing septic system to an ENR WWTP. State should provide up to 50% cost share for stormwater retrofit projects based on the above competitive priority ranking system (See <i>Maximize Cost Effectiveness</i> recommendation above).	Approved

State should continue to allow up to 10% of total BRF revenue to go to ENR WWTP operations and maintenance, but with a cap of \$5 million per year.	
<i>Exception Process</i> The Workgroup recommends that MDE and MDP develop an exception process, and recommend the necessary statutory changes, to allow the use of BRF funds for septic hookups in areas outside a PFA where it is consistent with Smart Growth and Bay goals and will not result in sprawl development.	Approved
<i>Option for Billing Authorities</i> Provide billing authorities the option to base BRF fee structures on water usage (vs current flat rate) but not on income.	Approved (Senator Brinkley and Bob Mitchell opposed)
<i>Guarantee Grants to Implement Stormwater BMPs</i> Guarantee grants to local governments from the increased BRF to implement stormwater BMPs. Beginning in FY13, local governments will annually receive 15% of the non-cover crop BRF revenue generated in their jurisdiction for implementation of approved stormwater BMPs as per conditions below. Beginning in FY18, and subject to recommendations of the BRF Advisory Committee in 2017, the percentage that local governments will annually receive will increase to 25% of the gross BRF revenue generated in their jurisdiction. Submission by local governments and subsequent approval by MDE of an annual implementation plan. Projects identified in the implementation plan must: • be limited to implementation of authorized stormwater BMPs for meeting Phase II WIP requirements • be targeted by practice and geography to realize greatest nitrogen, phosphorus, and sediment benefits to the bay per state dollar as identified in State targeting protocols	Approved (Senator Brinkley opposed)

• include no more than 1.5% administrative overhead. Funds will be received by the Comptroller's Office via the billing authorities as per current practice, and then reallocated to the local jurisdictions consistent with above conditions. There is no match requirement for jurisdictions to receive the funds. Jurisdictions may use the received funds as match for state funded projects (see below). The remaining 85% (beginning in FY13) and 75% (beginning in FY18) non-cover crop BRF revenue retained by the State will be allocated in the following priority: • completion of ENR upgrades to the remaining six major WWTP plants and retirement of associated debt obligation • to local jurisdictions through a competitive and targeted process for: - o upgrades of major/minor WWTPs - o septic system upgrades to BAT - o septic system connections to WWTPs, and - o stormwater BMPs. • Funds will be granted on a competitive and targeted process based on nutrient and sediment benefits to the bay per state dollar as per the <i>Maximize Cost Effectiveness and Expenditure of BRF Funds</i> recommendations above. A portion of the state retained funds should also be reserved to provide technical assistance to local governments for BMP implementation. The Maryland Association of Counties and Maryland Municipal League will develop and recommend by mutual agreement how the grants for stormwater retrofits shall be distributed to municipalities.	
<i>Maryland Environmental Service</i> The Funding Workgroup recommends pursuing with	Approved

Maryland Environmental Service several statutory changes to streamline and clarify their current authorities to assist local governments in implementing the urban practices addressed in the workgroup report.	
<i>Reduction of the BRF Fee</i> The Funding Workgroup recommends that any statutory change authorizing an increase in the BRF fee structure also authorize regulations to be developed by MDE that allow for reduction of the BRF fee to individual property owners based on implementation of approved stewardship practices that reduce nutrient and sediment loads to the Bay. A working group consisting of representatives of state government, local governments, and non-government interests should develop specific implementation proposals and submit to MDE by July 1, 2012 for consideration and promulgation of regulations. The goal of the resulting regulations should be to provide a system of credits for existing best practices and the implementation of new practices that minimize impacts to the Bay.	Approved
<i>BNR Upgrades for Major-Minor Plants</i> Expand BRF funding to include the state's 50% share of BNR upgrade costs for 10 major-minor plants that are targeted by the State for subsequent ENR upgrades.	Approved

The table below provides an estimate of the local government allocations for stormwater BMPs available through implementation of the *Guarantee Grants to Implement Stormwater BMPs* recommendation:

Table 1. Estimated Local Government Allocations for Stormwater BMPs

By County Geography	FY10 BRF Revenue ¹		Estimated Cumulative Allocations ²		
	\$ Generated	% of Statewide Total	FY13 - FY17 (15%)	FY18 - FY25 (25%)	Total FY13 – FY25
Allegany	\$1.0 M	1.51%	\$2.0 M	\$6.8 M	\$8.7 M
Anne Arundel	\$6.0 M	9.21%	\$12.1 M	\$41.1 M	\$53.2 M
Baltimore County	\$10.5 M	16.29%	\$21.4 M	\$72.7 M	\$94.1 M
Baltimore City	\$6.5 M	9.97%	\$13.1 M	\$44.5 M	\$57.6 M
Calvert	\$0.7 M	1.11%	\$1.5 M	\$4.9 M	\$6.4 M
Caroline	\$0.3 M	0.49%	\$0.7 M	\$2.2 M	\$2.9 M
Carroll	\$1.5 M	2.38%	\$3.1 M	\$10.6 M	\$13.7 M
Cecil	\$1.0 M	1.55%	\$2.0 M	\$6.9 M	\$8.9 M
Charles	\$1.4 M	2.22%	\$2.9 M	\$9.9 M	\$12.8 M
Dorchester	\$0.5 M	0.79%	\$1.0 M	\$3.5 M	\$4.6 M
Frederick	\$2.4 M	3.65%	\$4.8 M	\$16.3 M	\$21.1 M
Garrett	\$0.5 M	0.70%	\$0.9 M	\$3.1 M	\$4.0 M
Harford	\$2.5 M	3.86%	\$5.1 M	\$17.2 M	\$22.3 M
Howard	\$3.2 M	4.89%	\$6.4 M	\$21.8 M	\$28.3 M
Kent	\$0.3 M	0.43%	\$0.6 M	\$1.9 M	\$2.5 M
Montgomery/P.G.	\$19.8 M	30.65%	\$40.3 M	\$136.8 M	\$177.1 M
Queen Anne's	\$0.6 M	0.86%	\$1.1 M	\$3.8 M	\$5.0 M
St. Mary's	\$1.1 M	1.63%	\$2.1 M	\$7.3 M	\$9.4 M
Somerset	\$0.3 M	0.39%	\$0.5 M	\$1.8 M	\$2.3 M
Talbot	\$0.6 M	0.85%	\$1.1 M	\$3.8 M	\$4.9 M
Washington	\$1.6 M	2.51%	\$3.3 M	\$11.2 M	\$14.5 M
Wicomico	\$1.2 M	1.85%	\$2.4 M	\$8.3 M	\$10.7 M
Worcester	\$1.4 M	2.21%	\$2.9 M	\$9.9 M	\$12.8 M
	\$64.7 M	100.00%	\$131.5 M	\$446.2 M	\$577.7 M
% of Stormwater BMP Funding Goal³:			8%	27%	35%

NOTES:

¹ Represents total FY10 BRF revenue generated by county geography minus portion allocated by statute to cover crop implementation.

² Estimates are based on, 1) BRF revenue increases as per *Increase BRF Revenue* Recommendation and 2) FY10 BRF revenue distribution by county geography.

³ Estimate is based on stormwater BMP funding goal of \$1.64 B (Phase 1 and Phase 2 MS4 retrofits on 262,000 acres at a state-share cost of \$6,250/acre).



State of Maryland

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor