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MAYOR AND COUNCIL OF BOONSBORO

21 NORTH MAIN STREET ♦ BOONSBORO, MD 21713
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September 26, 2012

Paul Emmart
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore MD 21230-1718

RE: Accounting for Growth Policy & Regulations

Mr. Emmart:

In 2004, the Town of Boonsboro received a mandate from your office for our Wastewater Treatment System to be upgraded to a Bio-Nutrient Removal (BNR) System without the assistance of the Bay Restoration Funding. In order to achieve the upgrade and raise $11 million dollars, the Town annexed properties that would be served by the new upgraded sewage treatment facility. In turn, development would enable the Town to afford the loans needed to finance the construction of the new plant.

A first glance of the Accounting for Growth Policy and Regulations is overwhelming and seems as though the end result will divert development to Pennsylvania and West Virginia, for those of us in Western Maryland, and perhaps even the rest of the State, after December 31, 2014. Applying the offset regulations as proposed adds approximately $30,000 to the cost of a home or as much as $250,000 to the cost of a 20,000 square foot office building. In the Town of Boonsboro, this is in addition to the tap fees of $17,500 required to develop and needed for the Town to pay for the required WWTP upgrade.

While the Town supports the need for the Chesapeake Bay to be restored to maximum health, the proposed policy and regulations will severely limit, if not diminish, the ability to develop within the Town of Boonsboro. The Accounting for Growth Policy states "minimizing loads from new development is essential to the success of the strategy to offset growth. It reduces the need for offsets and helps preserve offsets for physical and economic development that is vital to the State and local jurisdictions. Maryland's Accounting for Growth Strategy will encourage counties and municipalities to manage their growth and help make offsets available for the growth and development they want".

What defines which physical and economic development would be "vital" to the Town of Boonsboro? How will the Town of Boonsboro make offsets available for the development we want? From our perspective, development that pays for our loans to our WWTP that is significantly upgraded to reduce nutrients to the Bay is vital to the Town. If development is too expensive, other areas will reap the economic and physical development that we want,

therefore we will not be able to pick and choose which development, nor will we be able to afford to provide offsets to enhance the feasibility of a development, as suggested in the policy.

Existing legislation and the newly adopted PlanMaryland encourage development to locate within growth areas that are served by public utilities, particularly sewer. The Town of Boonsboro is both a priority funding area and a growth area encouraged for development because of our ability to provide these utilities. The proposed policy and regulations give little relief to development in places with available public utilities; unless this development is considered "redevelopment". For Towns, such as Boonsboro, the historic nature and character of the community limit opportunities for redevelopment. Thus, the proposed policy and regulations conflict with existing legislation that encourages development where utilities have capacity, such as the Town of Boonsboro, because an additional cost would be attributed to new development regardless of whether public utilities are available or not.

The Town of Boonsboro respectfully requests a fiscal analysis be undertaken by the State to determine the impact on development across the State of Maryland- particularly areas that do not have many opportunities for redevelopment- prior to the adoption of the proposed regulations. Should the analysis conclude that development is impacted negatively, we hope the State reconsiders. Municipalities with wastewater capacity, specifically those that have taken on financial burdens to upgrade to an enhanced nutrient removal system, should be able to develop without the additional confines and restraints proposed in the Accounting for Growth policy and regulations.

Thank you for the opportunity to comment and your consideration.

Sincerely,

Charles F. Kauffman, Jr.
Mayor
Town of Boonsboro

CC: Governor Martin O'Malley
Governor's Legislative Office
Governor's Office of Community Initiatives- Christopher D. Uhl
Senator George Edwards
Senator Christopher Shank
Senator Ronald Young
Delegate John Donoghue
Delegate Michael Hough
Delegate Leroy Myers, Jr.
Delegate Neil Parrott
Delegate Andrew Serafini

Randy McClement
Mayor

THE City OF Frederick

Aldermen
Karen Lewis Young
President Pro Tem
Michael C. O'Connor
Shelley M. Aloi
Carol L. Krimm
Kelly Russell

October 3, 2012

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

RE: Proposed Accounting for Growth Policy Regulations

Dear Mr. Emmart,

On behalf of the City of Frederick, I am responding to the request for comments regarding the "Proposed Accounting for Growth Policy Regulations." While the City supports MDE efforts for the restoration of the Chesapeake Bay, we also have a responsibility to the citizens of the City of Frederick to work toward cost-effective solutions to lessen the impact to our residents and business owners.

As you will see in the comments that follow; we feel that we have provided comments and suggestions that support the Chesapeake Bay restoration and will also lessen the burden to City Taxpayers.

We appreciate the opportunity to provide this important feedback and thank you for your consideration of our response.

Sincerely,

Randy McClement
Mayor

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City of Frederick
Comments on Proposed Accounting for Growth (Offset) Regulations from MDE

The City of Frederick recognizes the value of the Chesapeake Bay and we support efforts by MDE to restore its health and vitality. In supporting those efforts, the City also believes that we have a duty to our residents and business owners to promote that restoration utilizing the least cost alternatives and solutions. To that end, we offer the following comments and questions about MDE's proposed Offset Regulations and their place in an effective and cost efficient bay restoration program;

- The City was required to adopt regulations consistent with the 2007 SWM Act for ESD. If implemented fully, ESD reduces the developed characteristics of a site back to woods in good condition. Why is MDE proposing that projects which fully meet extremely stringent ESD requirements only receive 50% of the credit for the ESD they provide? The end result is that a project which meets full ESD requirements must also offset nitrogen which that project has already addressed through ESD. This appears unfair as new projects are being saddled with a requirement to fix the ills of the past.
- Why has MDE chosen to limit the trading areas to within a County for new development outside of a targeted growth area while new development within a targeted growth area can trade anywhere within the TMDL area watershed? While we understand that placing an acre in forest in say Allegheny County may have less of an impact than placing an acre in forest in say Anne Arundel County, we believe that limiting where projects can choose to take advantage of nutrient trading does not further the goal of improving bay health and seems to be a land planning policy decision on the part of MDE (or the State).
- Why are projects expected to take land back to better than "woods in good condition", in other words, why are we choosing to treat the amount of nitrogen that would otherwise runoff of woods in good condition?
- MDE is attempting to link Vehicle Miles Traveled (VMT's) to census population. The City questions the data behind this assumption. Additionally, if development is going to be tasked with mitigating nitrogen from vehicles, then how will MDE account for other forms of air pollution which they have no control over (such as coal fired power plants in adjacent states)? It should be noted that the nitrogen loading rates for developed land already include atmospheric deposition from nitrogen, adding the load from vehicle miles traveled (VMT) appears to be double counting. We believe that the issue of nitrogen delivered due to air deposition should be more fairly placed on those sectors causing the pollution.
- Will MDE expect local jurisdictions to administer these regulations? Additional staff necessary to do so would be overly burdensome to local governments that area already struggling to meet the current needs of our residents and businesses.
- Will credit be given for a project which may reduce nitrogen loads delivered to the bay from an existing farm by converting it to a less impactive use (such as residential housing with all required stormwater management)?
- Currently, there appears to be little availability of credits from farms within the City's TMDL watershed. If projects are required to purchase credits from farms, and very few credits are available, the value of a credit may increase exponentially (based on the laws of supply and demand). A requirement to then purchase these credits in order for a project to move forward could effectively "kill" the project resulting in stifled growth and an eventual loss of tax revenue for local governments and the State as well as the loss of potential improvements to the watershed from the project itself or fee's paid in lieu.
- As the fee-in-lieu price will set the cap for the nutrient trading program, it should be set at a price that is competitive with the program but allows for more cost-effective solutions to be developed. Additionally, cover crops and other annual practices should count toward offsets; otherwise the cost per pound reduced may prohibit economic development.

- MDE has suggested that fee in lieu funds could go to the Bay Restoration Fund. We believe that local governments should receive the fee-in-lieu collected to be used by that the local jurisdiction to address the goals of local total maximum daily loads (TMDLs) and the requirements of their NPDES permit.
- We believe that any pounds reduced from this program in excess of the cap from the reduction of pollution on existing land uses should be allocated to the local governments which are assigned the task of meeting the state's local WIP targets under the Chesapeake Bay TMDL.
- Local government projects such as the construction of libraries, senior centers, schools, and roads should be exempt. Failure on the part of MDE to exempt local government projects will result in more urban jurisdictions being forced to purchase credits outside of their municipal boundaries. This will be costly for the City's taxpayers.
- Requiring four times the offset for development after 2025 if the Chesapeake Bay is not meeting water quality standards as is currently proposed in the draft regulations would likely halt economic development in the state of Maryland, if the Offset Regulation has not already achieved this by that time.

City of Frostburg

W. Robert Flanigan
Mayor

Commissioners

Brian Alderton
Commissioner of Water, Parks and Recreation

Dennis M. Bridges
Commissioner of Public Works

Donald L. Carter, Jr.
Commissioner of Finance

Walter P. Mackay
Commissioner of Public Safety

John R. Kirby, Jr.
City Administrator

October 1, 2012

Mr. Paul Emmart
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, MD 21230-1718

RE: Accounting for Growth – Proposed Offset Policy

Dear Mr. Emmart,

Please find enclosed comments on the proposed Accounting for Growth Offset Policy. These comments were developed by Allegany County, with input from the Allegany County Bay TMDL/WIP Committee, in which Frostburg is an active participant.

The City of Frostburg is committed to partnering with the State to restore the health of the Chesapeake Bay. Over the past ten years the City has actively worked to reduce pollution entering the watershed by separating the stormwater system from the sanitary sewer. Furthermore, several additional commitments by the City are outlined in the Allegany County Phase II Watershed Implementation Plan. As a partner in the Bay cleanup, it is our hope that our comments are thoroughly considered.

Thank you for the opportunity to comment on this draft policy. Should you want to further discuss Frostburg's concerns, please contact Ms. Elizabeth Stahlman at extension 15 or estahlman@allconet.org.

Sincerely,

W. Robert Flanigan, Mayor

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Visit Frostburg on the Internet at http://www.frostburgcity.com

Allegany County Comments – Accounting for Growth: Proposed Offset Policy

September 27, 2012

In response to the Maryland Department of Environment (MDE) call for stakeholder input on the referenced proposed policy, the Board of County Commissioners of Allegany County provides the following comments, which support opposition:

- **Policy Goals are not applicable to Allegany County**

The proposed policy addresses "increased loads from population increase and economic development". While population increase and economic development are real issues with respect to nutrient loading in other parts of the state, they are not in Allegany County. Allegany County's population has decreased from 89,556 in 1950 to 75,087 in 2010, a **16% loss** over the last 60 years. Furthermore, our projected population, prepared by the Maryland Department of Planning (MDP), basically remains static with a nominal 0.1% increase per year over the next 30 years.

Allegany County's geographical and topographical constraints will not allow growth at a magnitude that could result in the problems experienced in the central part of the state. Allegany County knows it's most precious resources are its undeveloped mountains. Our past and current development patterns demonstrate our long-time commitment to protecting these resources.

Steep slopes, flood plains, unsuitable soils, already developed lands and protected lands in Allegany County leave very little land available for future development – only about 6,500 acres or 2.5% of the County's total land mass. Much of the commercial and residential development that is occurring is redevelopment because both topography and existing infrastructure make redevelopment more cost effective.

Further regulation of growth is simply not warranted in Allegany County. All counties are not created equal in terms of development opportunity and should not be treated alike.

- **Delivery factors must be incorporated into load calculations**

Allegany County has been proactive in responding to the Bay TMDL initiative. We have cooperated with State requests in developing our Watershed Implementation Plan (WIP), which was submitted on time and outlines our commitments towards meeting the goals that were given to us by the State. We have been patient in that we do not understand the "science" behind the allocations. Due in part to lack of resources to search out the answers, we have simply had to trust that the State has applied a delivery factor for our load considering our great distance from the Bay. All along we have been assured by MDE Science Service Administration staff that, indeed, this has been accounted for.

This proposed offset policy, however, explicitly states that delivery factors were not incorporated. Although the Bay model allegedly accounts for the attenuation that occurs from the furthest reaches of the Potomac River, MDE has chosen not to apply this factor to the offset policy. When questioned on this decision at the July 24 outreach meeting in Hagerstown, the Panel's response was that delivery

factors were not applied in an effort to "keep things simple". Keeping things simple, however, is to the detriment of a County that already struggles with economic growth in some of the furthest reaches of the Bay watershed.

Furthermore, the proposed policy recognizes that an offset in Allegany County may not be worth as much as an offset closer to the Bay. How can the policy acknowledge an applicable delivery factor on one hand and not on the other?

There must be some science available to support delivery factor applicability in the Bay model. This science should be used to apply a delivery factor to the offset policy, as well.

- **Scientific data should be shared with local government partners**

What is the source of the stormwater nitrogen loading factors, i.e. 15.34 lbs/acre impervious, 10.78 lbs/acre pervious and 3 lbs/ac forested?

It would go a long way for this and other scientific information to be shared with local governments. As partners in this unprecedented effort to restore the health of the Bay, it would be helpful to understand the science that supports these proposed policies and initiatives. This policy will impose significant costs and sacrifices to the citizens of Maryland and yet the policy outreach does not include the scientific reasoning. If local governments are expected to partner with the State, as implied by the WIP initiative, then we should be treated as partners, with the respect of sharing the data that is the basis for decisions that will have such a significant impact on our citizens.

- **Environmental Site Design (ESD) credit should be scientifically supported**

The proposed policy gives only a 50% credit to new development projects that implement ESD. When questioned on this decision at the July 24 outreach meeting in Hagerstown, the Panel's response was that this credit is conservative and may increase as the policy is further developed. There was no reference to a particular study that resulted in this number, which suggests it is no more than arbitrary.

Three years ago, local jurisdictions were required to adopt and administer ESD regulations. At that time, ESD was presented as "the answer" for a developed site to mimic woods in good condition. This would suggest that the post-development load mimics the pre-development load, or may even decrease the load in the case of a non-wooded pre-development condition.

What science supports only a 50% credit for the offset policy? Why do developers not get full credit for implementing ESD, which "mimics woods in good condition"? Again, if science supports the assumption, information sharing would go a long way. If there is no supporting science, then the 50% credit is arbitrary and unfounded and is not supported by this partner in the restoration efforts.

- **Forested loads should not be required to be offset**

The proposed policy requires offsets for the entire post-development load rather than the difference between pre- and post-development. A nitrogen load from a forested acre is natural and should be recognized as a baseline load for a developed site.

Furthermore, a nitrogen load of 3 lbs per forested acre in the post-development condition is required to be offset. So, the forested load in the pre-development condition is treated as "negligible", i.e. not worth subtracting from the post-development load, yet the same forested load in the post-development condition is considered significant enough to calculate and warrant offset. Either the forested load should be treated as negligible or it should be recognized – and the decision should be justified.

- **Analysis on land available for offsets is warranted**

What thought has been given to land availability for offsets? Most land uses are developed, used for agriculture or mining, or already forested. Has an analysis been done to determine how much undeveloped unforested land is available? An example 4-acre minor subdivision of 7 half-acre lots on BAT septic resulted in **64 lbs** of nitrogen to be offset. According to the Bay model (specifically, Maryland Assessment Scenario Tool or MAST), only 3.6 lbs of nitrogen is reduced by tree plantings on 1 acre. This would require 18 acres of tree plantings to offset a 4-acre minor residential subdivision. Where can these plantings take place? If it takes place on agricultural land, then we lose our farmers and our food source. Is there a significant amount of land available that is not already developed, used for agriculture or already wooded? This example requires greater than 4X the land for offsets than would be developed, which shows that analysis of available land is warranted.

- **Trading Geographies**

The Discussion Draft document dated July 12, 2012 outlines three potential trading geographies, in all of which, Allegany County is included in the Potomac River basin. Allowing trades within the Potomac River basin lumps Allegany County, the County with the lowest median household income in the state, with some of the wealthiest counties in the state: Montgomery and Frederick. [1]

Nutrient trading is not an environmental policy, but rather an economic policy; a government sanctioned economic policy of this nature will have detrimental effects to the way of life in Allegany County. As a hypothetical example, a 4.2 acre lot in Frostburg near the interchange of I-68 and MD 736 is designated for commercial development in the Comprehensive Plan, Zoning Ordinance, and Water & Sewerage Plan. A developer, Mr. Frost, has secured funding after demonstrating a market need for a new restaurant and a small extended-stay hotel to support the growth at Frostburg State University and the new business park, as well as accommodate interstate travelers. Mr. Frost knows his profit margin will be small, but is local to Frostburg and wants to invest in the community. During the permit process, Mr. Frost learns he will need to take additional measures to offset the nitrogen pollutants for his project, despite implementing ESD to the MEP for stormwater management and a public sewerage

[1] SAIPE 2010, Maryland Department of Planning, http://planning.maryland.gov/msdc/hhinc_median&mean.shtml

connection to a modern ENR WWTP. The costs associated with the offsets further reduce the profit margin. Then, Mr. Frost finds out about the urban nutrient trading program – and realizes he can forest his 4.2 acres and record a protective easement for a relatively small investment and then sell nutrient credits to a central Maryland developer looking to construct a new shopping center near Rockville, and make a larger profit with less risk. Mr. Frost, known to be a prudent business man, decides to move forward with the latter option. The valuable land suited for development has been lost and the residents of Allegany County receive no benefit from the transaction.

Trading geographies must remain small, i.e. within County only, to preserve the true value of land.

- **Alternative approach – provide an exemption**

Give credit where credit is due. For static growth counties with very little opportunity for development due to other factors, provide an exemption. Do not regulate growth where growth regulation is not warranted. Allegany County is 75% forested and remaining developable land is a nominal 2.5%. Our population has declined over the last 60 years and is projected by MDP to basically remain static for the next 30. Our developers are generally small business folks trying to make a small profit while investing in their community. Allegany County risks losing what little opportunity we have to develop due to artificially inflated land values related to offset trading with wealthy developers in the central part of the state. While we are willing to be proactive partners in cleaning up the Bay, as demonstrated in our Phase II WIP, we are not willing to make the sacrifice that this policy proposes.

Gaithersburg
A CHARACTER COUNTS! CITY

September 26, 2012

Paul Emmart
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore MD 21230-1718

Dear Mr. Emmart:

The City of Gaithersburg is committed with the State of Maryland to improving the overall environment and the health of the Chesapeake Bay. Acknowledging the importance of addressing impacts related to future growth, The City offers the following comments related to the proposed draft Growth Offset Policy and Regulations:

Planning

- It is noted that the draft regulation and policy document state that redevelopment projects will not be required to offset post-development nonpoint source loads, but this is not accurate and should be clarified. Indirect Nitrogen load offsets are required regardless and only for residential uses.
- In redevelopment areas, residential is accountable for offsetting atmospheric deposition; however, commercial is not. Current redevelopment emphasis within the City is for mixed-use/transit-oriented developments (TOD) which would reduce vehicle dependence and auto emissions. Commercial redevelopments should be accountable also in that they generate far more vehicle trips than residential uses. Not only do employees travel to work, but clients, delivery vehicles, waste management, etc. travel daily as well. Putting the burden solely on residential based upon an assumption of vehicle miles traveled (VMT) is unfair and may have impacts to housing development targeting certain economic demographics. By increasing development costs on residential alone, developers may propose projects comprised of higher price point housing options and not necessarily moderately priced units.
- The City has concerns that residential loads are based upon a standard statewide VMT when there is a geographic disparity in travelling patterns. A VMT based calculation does not reflect geographic commuting differences within the State. For example, Silver Spring has a different VMT in relation to Aberdeen and there is no method to credit the pollution reduction. The VMT data is only collected with Census and thus will not be able to react to the impacts of new mixed-use/ TOD developments projects. The State should be more responsive and potentially use American Community Survey data rather

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Michael A. Sesma
Ryan Spiegel

ACTING CITY MANAGER
Tony Tomasello

than Census data for VMT calculation; to better respond to commuting patterns and revise average land use nitrogen loads on a yearly rather than every 10-year cycle.

- Residential uses in a mixed-use/TOD development should be exempted from the mobile sources loads, at least up to a certain share of the project. The intent of these types of developments is to reduce dependency on the single occupancy vehicle and promote a multi-modal transportation system. The City believes basing loads on VMT does not accurately reflect the outcome of these developments or the function of the transportation system.
- Reflecting the previous point, there is little flexibility built into the program. There should be a credit system to account for proximity to transit when calculating the required offset for residential redevelopment.

Development Impacts

- As noted, the proposed system would increase the cost of development for residential uses and could impact housing costs and the availability of affordable units. It is possible that developers may choose to redevelop under a commercial option to avoid the increased costs and requirements in areas where a residential or mixed use would be more appropriate.
- It is not clear how the timing of discharge permits from MDE will function, and it may delay development as these are required prior to the commencement of land disturbing activities. The proposed policy suggests that offsets will be required to be obtained prior to any zoning approvals. Developers will be forced to outlay capital for offsets prior to receiving any final subdivision approval or site plan entitlements and may not be able to secure financing for these additional costs without having said approvals. This process appears to put the "cart before the horse" and does not work within the stormwater management/subdivision approval process.
- Another City concern relates to large-scale multi-phased, multi-year projects. This policy does not appear to respond to or address changes that may occur over time to an original approval that reduces equivalent dwelling unit (EDU) density. The developer will then have paid for offsets that are not required. What will be the process for amending offset contracts and the corresponding discharge permits?
- How will MDE be processing discharge permits? Does MDE have enough staff to process permits? Localities may not be able to make up any MDE staffing shortfalls and delays to development projects will be unacceptable.
- The City supports that "Grandfathering" should occur for those multi-phase, multi-year projects that are already in the development process.

Credits within Offset Program

- It is not clear that there are enough offsets available to accommodate projected growth, or how many credits will be required to match projected growth. The City is concerned that an offset program should not be implemented without confirmation that enough offsets will be available to cover projected development through 2040.

- It does not appear that there is any system to verify that the offsets are fully functioning and being well maintained. The defined role of the offset banker/broker and subsequent contract will not ensure future performance. Local governments cannot be expected to take on the role of inspection and maintenance, especially when BMPs may be located outside of its jurisdictional boundaries.
- This regulation has no enforcement penalties if BMPs are found not to be in place or operating effectively. How will the State address occupied developments that are found to have failed BMP offsets years after completion?
- The Soil Conservation Service will certify agricultural offsets, but through what process will offsets be certified in urban areas or those banked by local governments?
- The City feels the word "permanent" needs to be clearly defined in the regulation.
- In the draft regulation (.07B, Expiration of Nutrient Credit Certification), the proposed expiration dates will conflict with multi-year, multi-phase projects. For this policy to be effective, it must respond to the realities of development timelines. While the regulations state extensions may be granted, no criteria are proposed to allow MDE to extend the certification of a credit. Further, if the State intends to follow the "*Maryland Policy For Nutrient Cap Management And Trading In Maryland's Chesapeake Bay Watershed Phase II – B Guidelines For The Exchange Of Nonpoint Credits Maryland's Trading Market Place*," the extension of certification is disallowed altogether. The State must resolve this conflict.

<u>Brokers/Credit Banking System</u>

- How does the State intend for the offset banking system to begin from nothing? Prior to the effective date of the proposed regulation, will the State begin prescreening potential banks/brokers and make this list available to local jurisdictions?
- The City believes the Public Service Commission or other similar State agency or commission should be involved and set price limits on broker fees. The City's concern is that free market priced offsets will not self regulate. Unregulated costs per offset will probably be different in Hampstead than in Bethesda. This may lead to development moving to the suburbs just on economics and go against the goals of Plan Maryland and Priority Funding Areas.
- Local jurisdictions should not be required to be a third party on contracts between developers and offset providers. The City is concerned that claiming third party status on contracts between developers and offset providers may be construed as giving de facto approval on development entitlements before a project has gone through a public development review process. The third party should either be the bank/broker or the State. Any liability assurances would then be handled by the third party.
- Oversight of banks and brokers should be required to ensure consistent operating practices throughout the state, given that there will be many situations where the offset BMP is located in a jurisdiction separate from the development. The City believes the State should create a registry where all banks and brokers should be licensed and bonded.
- There needs to be a mechanism or process to address grievances among banks/brokers, and offset buyers and sellers.

- MDE should be the regulating/oversight agency for nutrient cap management and trading of growth offset credits.

Fee-in-Lieu Program

- The City would support a fee-in-lieu system operated similar to DNR's forest conservation program. As with forest conservation fee-in-lieu, funds would be kept in a dedicated fund and not a jurisdiction's General Fund. The State should set a base fee-in-lieu amount per pound of nitrogen that is established yearly. Local jurisdictions may charge above the state-mandated limit.
- These funds should only be used to further the intent of the growth offset regulation.
- The City supports that MDE should be the oversight agency for a fee-in-lieu program. The funds collected and administered at the local level should be used to bank offsets, purchase or construct additional offsets/BMPs, and inspect and maintain existing offsets.
- As discussed previously, local jurisdictions should have the ability to bank offsets over years.

Impacts to Local Authorities

- The State has suggested that local governments take over some administrative responsibilities for the program, including enforcement authority for the offsets connected to their jurisdictions. Many local governments are not equipped for the responsibility of inspecting and maintaining distant BMPs.
- Will the City be financially responsible for obtaining offsets if a HOA can't afford to maintain their offsets if a BMP is found to have failed on the agricultural land?
- The program as outlined presents many logistical, legal, and financial challenges that are left to localities to deal with.

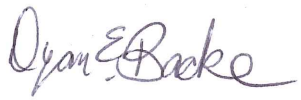
General Critiques

- Clearly define who the "department" is in the draft regulation.
- The proposal does not appear to be fully realized and seems to be more reactionary than proactive. The City would prefer that MDE delay implementation to fully vet all the comments received.
- There has appeared to be a lack of equity and transparency in this program, including a lack of ability to comment and receive feedback before final adoption of rules from those most impacted, i.e. the development community.
- What is the definition of "redevelopment?" The current definition is not consistent with the definition in other adopted State policy/regulation documents. It appears that little agency coordination went into the development of this offset policy in that consistent conflicts have been identified with other approved regulatory documents.
- The policy document repeatedly recommends the conversion of dry stormwater ponds to wet ponds. The use of wet ponds has been disallowed under current SWM regulations, adopted by the State in 2007. This is yet another example of not fully vetting the proposed policy and regulation prior to implementation.

- All comments received regarding the draft policy and regulation should be made available to the public and jurisdictions through a centralized portal prior to any final actions.

The City of Gaithersburg appreciates the opportunity to comment on this policy and looks forward to continuing to work with the State on this endeavor. Should you have any questions or wish to further discuss these comments, please contact me at 301-258-6330 or dbacke@gaithersburgmd.gov.

Sincerely,



Dyan E. Backe, AICP
Environmental Planner

cc: Mayor and City Council
Tony Tomasello, Acting City Manager
John Schlichting, Director of Planning and Code Administration
Bob Hoyt, Director, Montgomery County Department of Environmental Protection
Meosotis Curtis, Manager, Stormwater Permit Coordination, Montgomery County Department of Environmental Protection
Diane Schwartz Jones, Director, Montgomery County Department of Permitting Services
Mark Charles, Chief, Rockville Environmental Management Division
Andrea Mansfield, Legislative Director, Maryland Association of Counties
Candace L. Donoho, Government Relations Director, Maryland Municipal League

CITY OF HAGERSTOWN, MARYLAND

Robert E. Bruchey II
Mayor

September 24, 2012

Mr. Paul Emmart
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, MD 21230-1718
email: afg@mde.state.md.us

RE: Proposed WIP/Growth Allocation Offsets Regulations

Dear Mr. Emmart:

The City of Hagerstown has been participating on the Washington County WIP II Team for the past 18 months. We have been growing increasingly concerned with the continuing layers of regulations being proposed to protect the bay that could adversely affect economic development in our community. We feel that the most recent proposal, the draft Growth Allocation Offset regulations, is the last straw that could shut down development completely on infill parcels in Hagerstown.

Please consider adjustments to the regulations to address the following sections of the draft regulations that we are concerned will adversely affect urban development:

1. The way the regulations are crafted, it would appear that the only offset solution that will be available to Hagerstown's urban infill sites will be purchasing credits.

    a. We do not have septics to convert, so there is no way to achieve this offset credit.

    b. Our commercial and industrial sites are relatively small and they rarely contain "forest buffer" that could be used for offset credit. Most of our sites use street trees and payment in lieu as their remediation solution for the forest conservation ordinance.

    c. The City does not have a SWM utility fee nor would we be in a position to take over maintenance responsibilities for private stormwater management facilities, so this credit is not available. If we were to adopt a SWM utility fee, the funds collected would need to be earmarked for retrofitting the urban stormwater collection system, not spreading it even thinner with take-overs of private retrofits.

2. Attached are four modeling exercises that demonstrate the financial impact that could be felt by development projects in Hagerstown. Our residential subdivision example shows an increase in cost per dwelling unit of $31,848. Our commercial examples show an increase in cost per project or these 1.04-3 acre sites ranging from $94,130-$238,715. This is in addition to excise tax fees, off-site transportation improvement costs (if required), forest conservation payment in lieu fees, and all the development construction costs associated with complying with our *existing*

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stormwater and development requirements. We believe it would be extremely important for the State to conduct a fiscal impact analysis so that everyone has a realistic understanding of the financial ramifications of these development regulations.

3. The proposed regulations provide one concession for new development in Targeted Growth and Revitalization Areas - developers may look further afield to purchase offset credits. This is not a true concession, since developers must still add significant cash outlays into the project budget, which could tip the scales to "not feasible."

4. A more significant concession that would allow for infill projects, acceptance of septic conversions from the Urban Growth Area, and entering into the Nutrient Credit Program would be to increase the total permitted yearly pounds of nitrogen and phosphorous allotted to Hagerstown's Wastewater Treatment Plant. We would suggest increasing this allotment to a point that matches the increase of average daily flow in our plant capacity which resulted from the increase in capacity from 8 MGD to 10.5 MGD which occurred in January 2011.

5. While we appreciate the concession granted for redevelopment projects, if we do not provide concessions for urban infill sites, we foresee two possible negative consequences in Hagerstown:

   a. pushing development out to suburban or rural greenfield sites; or

   b. placing considerable redevelopment pressure on our historic resources which is more likely to result in demolition than rehabilitation.

6. Time is money for developers. When State agencies are added into the local development review process, it adds considerable time to that process. Is MDE prepared to respond to these new review submittals in a timely fashion?

7. The "nitrogen from mobile sources offset requirement" includes a concession for urban areas for which few areas of Maryland will be eligible. The City of Hagerstown contains 39,662 citizens in an 11 square mile area. City staff calculated the citizens per square mile in three census tracts that cover the City Center and found that only one tract met that threshold. If we had control over census tract boundaries, we could re-draw them to make more of the city fall within that 10,000 persons per square mile threshold - but we do not have that control. Not only can we not meet that threshold, we would posit that such a threshold does not provide a true statement of the types of mobility (e.g., personal automobile vs. transit) that are used by urban residents. Poverty level also plays a role and Hagerstown is 5% higher in poverty level than the recently posted national average.

8. These regulations propose a radical escalation of the regulations by the end of 2025 if the water quality of the Bay has not improved to projected thresholds. Even if everyone in Maryland was stringently following all of the stormwater and WIP regulations and working diligently to retrofit impervious areas with modern SWM techniques, the Bay could still remain below the projected thresholds due to factors occurring outside of our state. Quadrupling Maryland's regulations in this situation will not improve the Bay, but it will shut down growth in Maryland.

We respectfully request that greater consideration be given to our State's Smart Growth goal to direct development to urban centers as you finalize these new regulations. The WIP implementation regulations need to provide "true" incentives or concessions that make development of our urban infill sites feasible. Setting up higher and higher hurdles for potential developers will only continue to push development out to larger greenfield sites which have fewer challenges and more room to accommodate required environmental protection facilities and features. As drafted, these regulations have the real potential of shifting Maryland from a Smart Growth state to a Green Sprawl state.

Thank you for consideration of these concerns. City staff are available to discuss these issues in more detail, if you so desire.

Sincerely,

THE CITY OF HAGERSTOWN

Robert E. Bruchey, II
Mayor

Attachments
c: Hagerstown City Council
Bruce Zimmerman, City Administrator
John Lestitian, Director, Department of Community & Economic Development
Kathleen A. Maher, Planning Director
Rodney Tissue, City Engineer
Jim Bender, Assistant City Engineer
Mike Spiker, Utilities Director
Julie Pippel, Washington County Division of Environmental Management
Rich Josephson, Maryland Department of Planning
Senator Christopher B. Shank
Delegate John P. Donoghue
Delegate Leroy E. Myers, Jr.
Delegate Andrew A. Serafini
Delegate Neil C. Parrott
Senator George C. Edwards
Representative Roscoe Bartlett
Les Knapp, MACO
Candace Donoho, MML

Per Development and Per Household Offset Calculation
RESIDENTIAL ONLY

DRAFT

Required Information Section

Project Name:	Hagers Crossing Phase 1
Number of Dwelling Units (DU):	353
Total Acreage:	79.7
% Impervious:	36
% Pervious:	64
In census track with population greater than 10,000 persons/sq. mi: (Yes/No)	No
Waste Water Treatment type: (Choose from Drop Down List)	ENR WWTP with capacity

Calculated Information Section

Average Density of Development (DU/acre)	4.4
% Forest	0.0
Total Septic Offset	0.0
Total WW Offset	0.0
Total Stormwater Offset	495.0
Total NOx Offset	353.0
Total Offset/HH	2.4

Total Needed Offset 848.0

Stormwater BMPs	Cost per # N*	Total Offset Cost	
Bioretention / Rain Garden	$4,014.94	$3,404,669.12	
Dry Detention	$56,672.00	$48,057,856.00	<-- max. cost
Extended Detention	$13,223.47	$11,213,502.56	
Forest Conservation	$4,718.05	$4,000,906.40	
MS4 Retrofit	$12,183.78	$10,331,845.44	
Stormwater by era 1985 - 2002	$26,007.69	$22,054,521.12	
Stormwater by era 2002 - 2010	$10,017.78	$8,495,077.44	
Urban Filtering Practices	$8,414.93	$7,135,860.64	
Urban Infiltration Practices (no sand/vegeta	$4,767.21	$4,042,594.08	
Urban Nutrient Management	$32,351.53	$27,434,097.44	
Wet Ponds & Wetlands	$7,848.43	$6,655,468.64	
Bio-swale	$3,542.00	$3,003,616.00	
Impervious Urban Surface Reduction	$9,418.50	$7,986,888.00	
Permeable Pavement (no sand or veg. with	$28,800.71	$24,423,002.08	
SWM to the MEP	$4,808.53	$4,077,633.44	<- most likely cost for new constr.
Street Sweeping Mechanical Monthly	$13,634.45	$11,562,013.60	
Urban Forest Buffers	$2,916.94	$2,473,565.12	<-- min. cost
Urban Stream Restoration (interim) per 100'	$5,056.80	$4,288,166.40	
Vegetated Open Channel -Urban	$3,498.75	$2,966,940.00	

Average Total Offset Cost = $11,242,538.08

Average Cost per Unit = $31,848.55

* "Cost per # N" taken from WIP Phase II Final Report

HAGERS CROSSING
PHASE 1
79.7 ACRES
SINGLE FAMILY UNITS = 92
TOWNHOUSE UNITS = 261
TOTAL UNITS = 353
UNITS PER ACRE = 4.4±
% IMPERVIOUS = 36±
BUELL CT.
ATLANTA CT.
HAGERS CROSSING DRIVE
BARTOW DRIVE
WAL MART
HOME DEPOT

Per Development and Per Household Offset Calculation
Commercial ONLY

DRAFT

Required Information Section

Project Name:	Bright Eyes Day Care
Number of Equivalent Dwelling Units (EDU):	2.95
Total Acreage:	1.04
% Impervious:	63
% Pervious:	37
Type of Commercial Property: (Choose from Drop Down List)	Medical Office Buildings
Gross Square footage of Establishment:	8,400
Waste Water Treatment type: (Choose from Drop Down List)	ENR WWTP with capacity

Calculated Information Section

Average Density of Development (DU/acre)	2.8
% Forest	0.0
Total Septic Offset	0.0
Total WW Offset	0.0
Total Stormwater Offset	7.1
Total Offset/HH	2.4

Total Needed Offset 7.1

Stormwater BMPs	Cost per # N*	Total Offset Cost	
Bioretention / Rain Garden	$4,014.94	$28,506.07	
Dry Detention	$56,672.00	$402,371.20	< max. cost
Extended Detention	$13,223.47	$93,886.64	
Forest Conservation	$4,718.05	$33,498.16	
MS4 Retrofit	$12,183.78	$86,504.84	
Stormwater by era 1985 - 2002	$26,007.69	$184,654.60	
Stormwater by era 2002 - 2010	$10,017.78	$71,126.24	
Urban Filtering Practices	$8,414.93	$59,746.00	
Urban Infiltration Practices (no sand/vegetati	$4,767.21	$33,847.19	
Urban Nutrient Management	$32,351.53	$229,695.86	
Wet Ponds & Wetlands	$7,848.43	$55,723.85	
Bio-swale	$3,542.00	$25,148.20	
Impervious Urban Surface Reduction	$9,418.50	$66,871.35	
Permeable Pavement (no sand or veg. with u	$28,800.71	$204,485.04	
SWM to the MEP	$4,808.53	$34,140.56	< most likely cost for new const.
Street Sweeping Mechanical Monthly	$13,634.45	$96,804.60	
Urban Forest Buffers	$2,916.94	$20,710.27	< min. cost
Urban Stream Restoration (interim) per 100' c	$5,056.80	$35,903.28	
Vegetated Open Channel -Urban	$3,498.75	$24,841.13	
	Average Total Offset Cost =	$94,129.74	

* "Cost per # N" taken from WIP Phase II Final Report

Per Development and Per Household Offset Calculation
Commercial ONLY

DRAFT

Required Information Section

Project Name:	Bergman Eye Center
Number of Equivalent Dwelling Units (EDU):	1.55
Total Acreage:	3.12
% Impervious:	64
% Pervious:	36
Type of Commercial Property: (Choose from Drop Down List)	Medical Office Buildings
Gross Square footage of Establishment:	20,000
Waste Water Treatment type: (Choose from Drop Down List)	ENR WWTP with capacity

Calculated Information Section

Average Density of Development (DU/acre)	0.5
% Forest	0.0
Total Septic Offset	0.0
Total WW Offset	0.0
Total Stormwater Offset	21.4
Total Offset/HH	13.8

Total Needed Offset 21.4

Stormwater BMPs	Cost per # N*	Total Offset Cost	
Bioretention / Rain Garden	$4,014.94	$85,919.72	
Dry Detention	$56,672.00	$1,212,780.80	< max. cost
Extended Detention	$13,223.47	$282,982.26	
Forest Conservation	$4,718.05	$100,966.27	
MS4 Retrofit	$12,183.78	$260,732.89	
Stormwater by era 1985 - 2002	$26,007.69	$556,564.57	
Stormwater by era 2002 - 2010	$10,017.78	$214,380.49	
Urban Filtering Practices	$8,414.93	$180,079.50	
Urban Infiltration Practices (no sand/vegetatio	$4,767.21	$102,018.29	
Urban Nutrient Management	$32,351.53	$692,322.74	
Wet Ponds & Wetlands	$7,848.43	$167,956.40	
Bio-swale	$3,542.00	$75,798.80	
Impervious Urban Surface Reduction	$9,418.50	$201,555.90	
Permeable Pavement (no sand or veg. with ur	$28,800.71	$616,335.19	
SWM to the MEP	$4,808.53	$102,902.54	< most likely cost for new constr.
Street Sweeping Mechanical Monthly	$13,634.45	$291,777.23	
Urban Forest Buffers	$2,916.94	$62,422.52	< min. cost
Urban Stream Restoration (interim) per 100' of	$5,056.80	$108,215.52	
Vegetated Open Channel -Urban	$3,498.75	$74,873.25	

Average Total Offset Cost = $283,714.99

* "Cost per # N" taken from WIP Phase II Final Report

Per Development and Per Household Offset Calculation
Commercial ONLY

DRAFT

Required Information Section

Project Name:	Sheetz
Number of Equivalent Dwelling Units (EDU):	10.9
Total Acreage:	2.2
% Impervious:	51
% Pervious:	49
Type of Commercial Property: (Choose from Drop Down List)	Service Stations
Gross Square footage of Establishment:	5,739
Waste Water Treatment type: (Choose from Drop Down List)	ENR WWTP with capacity

Calculated Information Section

Average Density of Development (DU/acre)	5.0
% Forest	0.0
Total Septic Offset	0.0
Total WW Offset	0.0
Total Stormwater Offset	14.4
Total Offset/HH	1.3

Total Needed Offset 14.4

Stormwater BMPs	Cost per # N*	Total Offset Cost	
Bioretention / Rain Garden	$4,014.94	$57,815.14	
Dry Detention	$56,672.00	$816,076.80	< max. cost
Extended Detention	$13,223.47	$190,417.97	
Forest Conservation	$4,718.05	$67,939.92	
MS4 Retrofit	$12,183.78	$175,446.43	
Stormwater by era 1985 - 2002	$26,007.69	$374,510.74	
Stormwater by era 2002 - 2010	$10,017.78	$144,256.03	
Urban Filtering Practices	$8,414.93	$121,174.99	
Urban Infiltration Practices (no sand/vegetatio	$4,767.21	$68,647.82	
Urban Nutrient Management	$32,351.53	$465,862.03	
Wet Ponds & Wetlands	$7,848.43	$113,017.39	
Bio-swale	$3,542.00	$51,004.80	
Impervious Urban Surface Reduction	$9,418.50	$135,626.40	
Permeable Pavement (no sand or veg. with ur	$28,800.71	$414,730.22	
SWM to the MEP	$4,808.53	$69,242.83	< most likely cost for new constr.
Street Sweeping Mechanical Monthly	$13,634.45	$196,336.08	
Urban Forest Buffers	$2,916.94	$42,003.94	< min. cost
Urban Stream Restoration (interim) per 100' of	$5,056.80	$72,817.92	
Vegetated Open Channel -Urban	$3,498.75	$50,382.00	

Average Total Offset Cost = $190,911.02

* "Cost per # N" taken from WIP Phase II Final Report

City of Rockville
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September 28, 2012

Paul Emmart
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, MD 21230-1718

Re: City of Rockville Comments on Maryland's Proposed Growth Offset Policy

Dear Mr. Emmart:

The Maryland Department of Environment (MDE) solicited public comments on Maryland's proposed growth offset policy under the State's Phase II Watershed Implementation Plan (WIP) for the Chesapeake Bay Total Maximum Daily Load (TMDL) by October 1, 2012. As a NPDES permitee, the City of Rockville understands the importance of accounting for new growth in meeting the TMDL requirements so that there is no net increase in the amount of nutrient and sediment pollution entering the Bay from these sources.

Given that the proposed policy could have significant impacts on planning and land use in Maryland, we appreciate the opportunity to comment on the proposal prior to the promulgation of the regulation. We support the provisions that no offsets be required for stormwater in redevelopment or wastewater discharged to a wastewater treatment plant (WWTP) operating below its NPDES nutrient cap. This encourages redevelopment and concentrated smart growth in dense areas served by enhanced nutrient removal wastewater treatment plants (ENR WWTP).

The City has major concerns regarding the residential mobile source offset requirement, policy administration and enforcement, the role of local jurisidictions, costs, grandfathering, fee-in-lieu, trading geographies, and offset calculations. The comments below describe our concerns with the current proposal.

Mayor Phyllis Marcuccio | Councilmembers John F. Hall, Jr., Tom Moore, Bridget Donnell Newton, Mark Pierzchala
Acting City Manager Jennifer Kimball | Acting City Clerk Brenda Bean | City Attorney Debra Yerg Daniel

1. **Residential mobile offsets.** While we understand the intention behind the proposed growth offset for mobile emissions to reduce atmospheric deposition, we are concerned that the current proposal will ultimately inhibit "smart" high-density residential redevelopment and infill. The proposed census tract density threshold only accounts for current population densities and does not consider planned residential redevelopment and infill in targeted growth areas with multimodal transportation options. Given that one of the goals of PlanMaryland and the growth offset policy is to encourage growth in mixed-use, compact urban centers that capitalize on existing infrastructure and multimodal transit assets, the offset policy should be revised to take into account *location*, *planned density*, and *accessibility*. The City of Rockville has invested significant resources in establishing innovative land use, transportation, stormwater management, water and sewer, and green building requirements to support smart growth and pollution reduction goals. Given that urban residential redevelopment and infill projects already incur high costs to satisfy these community requirements, including additional mobile emission offset costs per housing unit would not only impede these developments, but also reduce the affordability of these housing units for future residents. Rockville strongly recommends that the policy be revised to exempt mobile emission offset requirements for "smart" high-density residential redevelopment with multimodal transportation options, as specified in the comprehensive plan, state-local collaborative plans, zoning and transportation plans.

   Should an exemption not be feasible, an alternative should be devised that calculates mobile offsets based on site-level vehicle trip generation, instead of proposed dwelling units and existing density. Air quality, transportation, and planning agencies have used models that estimate the number of vehicle trips generated by a proposed project to estimate transportation and environmental impacts. For example, some models adjust the Institute for Traffic Engineers' (ITE's) average trip generation rates to account for the impact of a development's location, physical characteristics, and transportation demand management programs (TDM) on reducing automobile trips. Developments can earn trip reduction credits by locating close to transit, providing high densities and a mix of uses, implementing TDM programs, limiting parking supply, and improving bike and pedestrian network connectivity. Devising an alternative based on vehicle trip generation with adjustments for trip reduction measures provides an opportunity to encourage transit-oriented, mixed-use projects that minimize their transportation and environmental impacts.

2. **Policy administration and enforcement.** The policy and nutrient trading program should not be launched until the State has adequate resources and procedures for implementation. For example, MDE will need resources to process applications and verify offsets in a timely, transparent, and efficient manner so that development projects are not unnecessarily delayed. MDE should also clarify exactly when the offset credits (either purchased, constructed, or planted) are required to be completed in the development process so that this can be factored into project financing and permitting. It is also essential that developers in each trading geography have access to robust trading markets at the start of the offset requirements to prevent backlogs and delays. Finally, MDE should establish administrative provisions that ensure that offsets are adequately constructed, monitored, maintained, and renewed as necessary.
3. **Role of local jurisdictions.** The role of local jurisdictions is not described in the current proposal and Rockville is concerned that some of the administration, monitoring, and/or enforcement of the proposed offset policy will be conveyed to local governments. Rockville opposes the imposition of another unfunded mandate. Even if this is not the intent of the State, local governments still need to know how this policy is expected to fit into our planning, development review, and permitting processes. As currently described in the proposal, MDE will issue a General Discharge Permit for the offsets and the developer is required to calculate the load, obtain permanent offsets, and file for the general permit. The proposal is silent on many items, including: whether local jurisdictions are expected to verify that the offset and General Discharge Permit requirements have been met prior to issuing local site construction, building, or occupancy permits; whether onsite offset credits need financial assurances to ensure they are completed; whether the State or local jurisdiction has the authority and/or obligation to ensure that onsite offsets are built, operated, and maintained correctly; and how the State intends to handle project abandonment.
4. **Cost estimates.** A comprehensive evaluation of the proposed policy and offset ratios is not possible until the State provides cost projections. The State should not only provide a reasonable range for the cost per pound of nitrogen reduction anticipated in the market, but also identify other ancillary program costs. For example, it should be made clear whether the State will impose fees for permit administration, credit verification, certification, monitoring, and annual inspections. Other transaction costs for trading in the nutrient credit market should also be estimated, such as costs to establish contracts, broker fees, and insurance.
5. **Grandfathering.** While it is noted that the proposed effective date of the policy is December 31, 2014, additional information on grandfathering provisions should be fully described. Rockville recommends that projects that have received preliminary

plan approval by December 31, 2014 or projects seeking renewal of coverage under an existing permit should be grandfathered.

6. **Fee-in-lieu.** While the State has presented information on Phase I (point source) and Phase II (agricultural) nutrient trading, there has not been any information on Phase III (urban) non-point source trading or the capacity to generate or purchase such urban offsets. For urban areas, it is not clear how fee-in-lieu could be used to offset nitrogen in a cost-effective manner. If the fee-in-lieu could be used by a local government for additional MS4 programs and projects, then it may be beneficial. Otherwise, local governments should not be expected to administer another new program.

7. **Trading Geography.** The proposal allows new development in *Targeted Growth and Revitalization Areas (TGRA*) served by an ENR WWTP to obtain offsets anywhere allowed by the Nutrient Trading Policies (such as within the Potomac basin). However, new development outside of TGRA is restricted to purchasing credits in the same county as the development. First, it is not clear if there are specific trading geography requirements for redevelopment. We would support flexibility to encourage redevelopment. Second, under ideal market conditions, this approach appears reasonable; however, we are concerned that there may be a shortage of credits in our county. Given that a large portion of Montgomery County is a priority funding area where redevelopment and development is encouraged, it may generate more offset credit demand than supply. This inadequate offset credit market could create a de facto development moratorium. Therefore, the policy should be refined to include alternatives for trading geographies within priority funding areas.

8. **Offset calculations.** Rockville recommends that the offset calculator include a way to calculate the "net offset needed," which factors in the nitrogen offset benefit of additional onsite stormwater management (SWM) practices that exceed State requirements. Given that some local jurisdictions have stricter stormwater management requirements than the State's baseline, the developer should receive offset credits for achieving higher onsite nutrient reduction levels than the baseline requirements. For example, Rockville requires developers to provide SWM for adjacent right-of-ways, and to manage the entire site (if more than 1/2 of the site is disturbed). Both of these requirements exceed State law. Therefore, the developer should be allowed to receive credit for the nitrogen reduction associated with these increased onsite SWM measures (when comparing city to State SWM requirements).

Rockville recognizes the importance of this proposal to achieve nutrient reductions required by the Chesapeake Bay TMDL and appreciates the opportunity to share our perspective on the proposed policy. Given that we are lacking some critical information on this policy and the nutrient trading program, we hope that MDE will provide stakeholders with additional information so that all parties can fully evaluate the next phase of the proposal. We look forward to revisiting these items during rule promulgation. Should you be interested in following up on our comments, please contact me at (240) 314-8871, or contact Erica Shingara of my staff at (240) 314-8872.

Sincerely,

Mark D. Charles, Chief
Environmental Management Division
30 Courthouse Square, Suite 100
Rockville, Maryland 20850-2302
(240) 314-8871

cc: Craig Simoneau, Rockville Public Works Director
Susan Swift, Rockville Community Planning and Development Services Director
Heather Gewandter, Rockville Stormwater Manager
Erica Shingara, Rockville Sustainability Coordinator
Bob Hoyt, Montgomery County Department of Environmental Protection
Meosotis Curtis, Montgomery County Department of Environmental Protection
Karl Berger, Metropolitan Washington Council of Governments
Dyan Backe, Gaithersburg Environmental Services