

*Martin O'Malley*  
Governor

*Anthony G. Brown*  
Lt. Governor



*Maryland Department of Planning*

*Richard E. Hall*  
Secretary

*Matthew Power*  
Deputy Secretary

June 12, 2008

Ms. Donna Landis-Smith  
Agricultural Land Preservation Administrator  
Queen Anne's County Dept. of Planning and Zoning  
160 Coursevall Drive  
Centreville, MD 21617

Dear Ms. Landis-Smith:

The Maryland Department of Planning and the Maryland Agricultural Land Preservation Foundation would like to thank you for submitting Queen Anne's County's annual report for the Agricultural Certification Program, covering the FY 2005-2007 period. The County's report also served as its application for recertification. The report was comprehensive and well organized, and we appreciate the effort you made to comply with the regulations of the Certification program.

We are pleased to recertify the Queen Anne's County program for the period July 1, 2007 – June 30, 2009 in recognition of its impressive accomplishments in easement acquisition and the County's commitment to preservation. There are, however, some program issues it will be important for the County to address when the new requirements for Priority Preservation Areas for certified counties go into effect after July 1, 2008. However, they must be addressed in your application for recertification, which is due in October of 2008. These were established by the Agricultural Stewardship Act of 2006. We hope to work with you and your staff to see that the County has the opportunity to meet the new requirements in a timely manner. To that end, please review the new requirements, discussed below, with appropriate staff and County officials, and contact us as soon as possible for any questions or clarification. We would be happy to meet with you, and with anyone else you wish, on the subject.

**Existing Issues**

We have enclosed the checklist used to review the County's annual report. The checklist itemizes each of the reporting requirements and our comments on the information provided in the report. We ask that you review the checklist and our comments, and advise us if you have any questions, or if we have misunderstood your program in any way.

A number of indicators show the ways in which the County's land preservation program is functioning well:

- The use of MALPF, two Rural Legacy areas, MET, local conservation groups, and TDRs to preserve over 40,000 acres.
- Increase in the acreage goal to 80,000.

- A rate of land conversion since 1990—i.e., acreage subject to agricultural land transfer tax—that is far below the state average (see graph on page 6 of the Checklist).

There are, however, several aspects of the program that we feel could be improved to make the program more effective, specifically concerning high levels of development in rural Queen Anne's County:

- Since 1998, the trend line for land conversion has been upward, and in three of those years the rate of conversion in Queen Anne's County exceeded the state average (see graphs on Checklist pages 6 and 7).
- Since 1997, about 54% of the new building lots approved were located outside of designated growth areas. We understand that the percentage would be lower if some stalled projects in the growth areas had been built. However, the trend line for lots outside of growth areas has risen sharply over the past decade (see the graph on Checklist page 9).
- A number of development options appear to make possible much greater capacity for residential lots in the agricultural zone than we understood. Unless we misunderstand them, these options include:
  - The option to cluster at 1 lot per 8 acres.
  - The sliding scale option allowing one extra unit per 100 acres.
  - Non-contiguous cluster subdivision allows the developed portion of the receiving parcel to be developed at a high density, apparently as high as well, septic, and environmental restrictions allow.
  - Provisions that allow rights that could not be developed on sending parcels to nevertheless be transferred and developed on receiving parcels.
  - Preserved open space is not necessarily permanent. We are uncertain if this impermanence is restricted to remainders from cluster subdivisions which can become receiving sites for non-contiguous transfers, or if it extends to other situations as well.

In general, it appears that under these provisions, a strong market has developed to create substantial subdivisions in proximity to preserved land. Unless such development is the exception rather than the rule, it will greatly compromise the rural landscape for farming, as it affects farmers' ability to farm, undermines supporting agricultural infrastructure, raises land prices beyond the reach of most farmers, and undermines State goals for preservation and certification.

Accordingly, we are concerned that demand for the type of development allowed by County zoning and land use tools may be resulting in increasingly widespread development that is incompatible with the goals for the Foundation and the certification program.

Two years ago we asked that the next certification report include the following, which we have not yet received. Please have this information available to review when we meet with you, at your earliest convenience, to discuss the County's application for recertification under the new regulations:

An evaluation of the degree to which the Counties land use tools are allowing development that is compromising State preservation investment, addressing the concerns articulated above.

- 1) In the evaluation, please include provisions for clustering; non-contiguous transfer; sliding scale development rights; transferable development rights from parcels lacking corresponding development capacity; permanence or impermanence of County open space; and the cumulative effect of all provisions.
- 2) Please include the following data and explanations in the report:
  - The number of parcels on which non-contiguous transfer has occurred, their location on a map, the number of units on them, and the acreage that remains permanently open as a result of the non-contiguous transfer remainder.
  - The number, location, and acreage of open space parcels that exist as a result of the cluster option and that can be used as a non-contiguous receiving area.
  - The number, location, and acreage of open space parcels that have been built on as a result of the non-contiguous cluster option.
  - Clarification of County laws and procedures regarding County open space parcels: how much land must be preserved and is it permanently preserved or not.

Finally, the report should include the steps the County is taking to correct shortcomings in the ability of the program to manage subdivision and development, consistent with the requirements of the certification program.

### **New Requirements**

As you know, the Agricultural Stewardship Act of 2006 (HB 2), passed by the Maryland Legislature, requires certified counties to establish Priority Preservation Areas (PPAs) in their comprehensive plans and manage them according to certain criteria. The PPA must:

- Contain productive agricultural or forest soils, and be capable of supporting profitable agricultural and forestry enterprises;
- Be governed by local policies, ordinances, regulations, and procedures that stabilize the agricultural and forest land base, support working farms and normal farming activities, and provide time to achieve State preservation goals before resource land is excessively compromised by development;
- Be of a size that is appropriate in relation to countywide preservation goals for both the number of acres of agricultural land and the agricultural industry.
- Be accompanied by the County's acreage goal for land to be preserved through easements and zoning in the PPA equal to at least 80% of the remaining undeveloped areas of land in the area.

The comprehensive plan must do the following:

- Establish appropriate goals for the amount and types of agricultural resource land to be preserved in a PPA.
- Include maps showing the County PPA.
- Describe the County's strategy to support normal agricultural and forestry activities in conjunction with the amount of development permitted in the PPA.

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- Describe the ordinances, regulations, and procedures the County is using in the PPA to support the ability of working farms to engage in normal agricultural and forestry activities.
- Describe the way in which preservation goals will be accomplished in the PPA, including:
  - The County's strategy to protect land from development through zoning;
  - Preserve the desired amount of land with permanent easements;
  - And maintain a rural environment capable of supporting the kind of production intended.
- Include an evaluation of the ability of the County's zoning and other land use management practices to do the following:
  - Limit the impact of subdivision and development
  - Allow time for easement purchase; and
  - Achieve the goals of the Maryland Agricultural Land Preservation Foundation (MALPF) program before they are irreparably undermined or impaired by development.

On the second and third pages of this letter, we listed concerns about the effectiveness of the County's program. These matters must be addressed when the County applies for certification under the new regulations, specifically for the areas the County chooses to include in its Priority Preservation Area. How the County addresses these issues will affect its ability to stabilize land use in the PPA to limit development and provide time for easement programs to preserve the area and achieve goals before they are compromised.

Again, we appreciate the hard work you have put into the County's farmland preservation program, and the strides the program has made in recent years as a result. We look forward to working with you in the future, and will call you soon to set up a meeting where we can discuss with you and other interested parties the County's application for recertification under the new regulations.

Sincerely,

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Joseph F. Tassone, Coordinator  
Agricultural Certification Program

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James A. Conrad, Exec. Director  
Maryland Agricultural Land Preservation Foundation

Cc: Mr. Richard E. Hall, Secretary, Maryland Department of Planning  
Mr. Roger Richardson, Secretary, Maryland Department of Agriculture  
Hon. Eric S. Wargotz, M.D., President, Queen Anne's County Commissioners  
Mr. Steve Cohoon, Director, Queen Anne's Dept. of Land Use, Growth Management and the Environment  
Mr. David Denny, Chairman, Queen Anne's Co. Agricultural Land Preservation Advisory Bd.