

## TESTIMONY OF QUEEN ANNE'S CONSERVATION ASSOCIATION ON THE PROPOSED 2010 COMPREHENSIVE PLAN

Queen Anne's Conservation Association (QACA) urges the County Commissioners to make two changes in the proposed Comprehensive Plan so that it accomplishes at least a part of what the County's citizens have clearly asked for.

We accept for purposes of this testimony that a majority of the County Commissioners have been unwilling follow the recommendation of the Citizens Advisory Committee (CAC) that the Plan provide for agricultural zoning reform without prior conditions. Instead, the Commissioners have publicly stated their support for the Blue Ribbon Panel recommendation that any AG zoning reform must be conditional on the creation of a new TDR (transfer of development rights) program.

Accepting that the current Commissioners remain unwilling to listen to the citizens on this issue, **we recommend (as was recommended without success to the Planning Commission) that the proposed Plan be modified to provide:**

**(1) After allowing 18 months for creation of a new TDR program (or better-funded PDR program: see below), no-exceptions 1/25 AG zoning will automatically go into effect; and**

**(2) During the 18 month period, equal attention will be given by the Planning Commission to a better-funded PDR program as an alternative to a new TDR program.**

These two changes can be easily accomplished by adding a few words to only two of the more than 225 recommendations in this 508-page Plan (plus 46 maps but no executive summary).<sup>1</sup> Nor is it necessary to make any further referral to the Planning Commission as a prerequisite to the County Commissioners making the changes and adopting the Plan.<sup>2</sup> We urge that the changes be made.

---

<sup>1</sup> On page 1-27, in the second line of Recommendation 2, after the word "code", insert "while a better-funded Purchase of Development Rights (PDR) program is implemented, and/or"; and on the same page, in Recommendation 3 after "new TDR Program", add "or better-funded PDR Program" and a new sentence as follows: "Whether or not such recommendation is made, at the end of 18 months no-exceptions 1/25 AG zoning will go into effect." (The same changes should be made when these Recommendations are repeated on pages 5-17 and -18.)

<sup>2</sup> Legal principles governing legislative action, supported by case law, confirm the Article 66B power of "the local legislative body" to make the final decision on Plan issues that have been fully noticed and debated. (The amendment procedures specified in Chapter 18, Article XXIX, apply only to amendments to Chapter 18 and the Zoning Maps, not to updates of the Comp Plan.)

## Discussion of Recommended Change #1 (Action-Forcing Mechanism)

The Plan as proposed by the Planning Commission simply “kicks the can down the road” on rural zoning reform. Making zoning reform in the AG district dependent on prior creation of a new TDR program is a formula for inaction. Creation and implementation of an enhanced TDR program, with its new growth area(s), will be extremely complex, highly controversial, and years in the making, if it can ever be achieved at all -- which we do not believe it can be.

The receiving areas necessitated by a TDR program capable of absorbing several thousands of development rights cannot, as a practical matter, be achieved in this County in the foreseeable future, for several reasons. First, property owners in receiving areas who are contemplating annexation in order to develop will resist having their properties in effect devalued by the new requirement that they must purchase rights in order to develop; if the requirement is nevertheless imposed, they will block annexation by taking it to referendum. Second, many property owners and neighbors in a “new town” east of 301 or other imagined locations will naturally oppose intensive development introduced into their rural neighborhoods. Third, the infrastructure (sewer, schools, roads) does not now exist to support several thousands of new lots either adjacent to municipalities or in places where new town(s) might be created.

The proposed Plan now recites that “the Planning Commission commits itself to recommend the adoption of a new TDR Program within eighteen months of the date of the adoption of this Plan.” No consequences follow if this commitment cannot be fulfilled, as we believe it will not be. The TDR dream of the Planning Commission is just that – a planners’ dream divorced from the realities of this County.

Given the likelihood that the TDR dream will die, the Plan should contain, at a minimum, an action-forcing mechanism to insure rural zoning reform – namely, that no-exceptions 1/25 AG zoning will automatically go into effect in 18 months, whether or not a new TDR program (or a better-funded PDR program: see below) has been created by that time.

## Discussion of Recommended Change #2 (Better-Funded PDR)

Accepting the position of a majority of the County Commissioners, contrary to the CAC, that increased equity-access for farmland owners is a politically necessary prerequisite to AG down-zoning, a new TDR program is not the best option for

providing that access. Much superior to TDR is the option of increasing funding for the County's existing Purchase-of-Development Rights (PDR) program by means of an Open Space Impact Fee (OSIF) on new residential development.<sup>3</sup>

An average-sized new house of 2600 square feet is now paying about \$10,200 in impact fees.<sup>4</sup> An OSIF of \$1-2 per square foot would raise the total impact fees to \$12,800 - \$15,400.<sup>5</sup> In a year in which, say, 200 new houses were built, an OSIF of \$2/sq. ft. would generate over \$1 million for the purchase of farmland development rights – estimated to be the upper limit of the average annual NCD rights purchases 1997-2007. If one does not try to make up the entire NCD shortfall at its high estimate, or uses installment purchase agreements to spread out the dollars required for purchases, the OSIF could be reduced to the range of \$1/sq. ft. or less, or a lower annual house-building rate could be assumed.<sup>6</sup>

We understand that increasing impact fees will also produce controversy and that debate and analysis as to how large the OSIF needs to be will require some time. Nevertheless, increasing funding of the County's existing PDR program is something that can be accomplished in 18 months. Accordingly, the Plan should expressly put better-funded PDR on the table alongside new TDR.

August 16, 2010

---

<sup>3</sup> Existing County law recognizes that new development should contribute its fair share toward expenditures for “public facilities” needed to accommodate new development. “Public facilities” are expressly defined to include “open space”: see § 18:3-1. Definitions. At present, however, expenditures on open space are not funded by a development impact fee.

<sup>4</sup> The current impact fee assessment is \$3.21/sq ft for schools, \$0.37/sq ft for fire and EMS service, and \$0.35 for parks and recreation = \$3.93/sq ft., or \$10,218 for an average 2,600 sq ft home. Impact fees are collected on building permits in both the towns and the unincorporated areas of the County.

<sup>5</sup> This would be high by Maryland standards, but not unique. While most Maryland counties have either no, or lower, impact fees/excise taxes on new development, three counties (Calvert, Charles and Frederick) have fees in the range of \$12,625 to \$14,283 for new houses. See *Maryland Association of Counties – Budget, Tax Rates, and Selected Statistics – FY 2010*, p. 55.

<sup>6</sup> We are providing with this testimony documentation concerning the relative merits of PDR and TDR programs in QAC. For further analysis, see *QAC Comp Plan: Agricultural Viability and Farm Equity* at [www.qaca.org](http://www.qaca.org).