

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

STAFF REPORT

**SUBJECT** Implementation of the Sustainable Growth and Agricultural Preservation Act of 2012

**OVERVIEW**

The Sustainable Growth and Agricultural Preservation Act of 2012, also known as Senate Bill 236 (SB 236) or “the septic bill” was passed by the General Assembly in the spring of 2012 and signed by Governor O’Malley. The bill was the culmination of several years of effort statewide to reduce the number of new residential lots being developed using septic fields as opposed to being connected to public sewer lines. The majority of the bill’s provisions are contained within Environmental Article 9-206 of the Annotated Code of Maryland. SB 236 applies to all counties in the state, whether or not amendments to the local regulations are passed to address its contents. In Prince George’s County the applicability begins October 1, 2012 for the subdivision of land.

The mapping of the Sustainable Growth and Agricultural Preservation Act (SGA) tiers is considered voluntary; however, there are serious consequences for local jurisdictions that do not adopt the tier boundaries by December 31, 2012. SB 236 states that if a local jurisdiction does not adopt the SGA tiers by December 31, 2012, the local jurisdiction may not approve major subdivisions (as defined by the locality) served by septic systems until the tiers are approved. The bill also states that only major subdivisions in Tier I (sewer categories 3 or 4 only) and minor subdivisions served by septic systems may be approved without the SGA tiers in place. In other words, no major subdivisions are allowed to be approved in Tier II (sewer category 5) on public sewer and no major subdivisions countywide on septic can be approved until the tiers are adopted. Therefore, staff recommends that Prince George’s County adopt tier boundaries. For reference Appendix 1 contains the definitions of the public water and sewer categories in Prince George’s County.

Implementation of the bill also necessitates amendments to the Subdivision Ordinance (Subtitle 24 of the County Code) to address items such as the process for the approval of minor preliminary plans of subdivision by the Planning Board in Tier IV, and ensuring that the current exemptions from a preliminary plan are retained, while establishing a process to ensure conformance with the restrictions on the number of lots and the allowed uses. The draft subdivision bill is provided in Appendix 2.

This staff report contains three mapping options for the Planning Board’s consideration (Appendix 3). Appendix 4 includes a summary of the comments received at the public information meetings and through correspondence from the public and the Maryland-National Capital Building Industry Association.

**Staff recommends the Planning Board approve staff findings and transmit SGA Mapping Option A and the draft Subdivision Bill to the County Council for their consideration.**

## Summary of SB 236

The following is a summary of the SGA bill's purpose and contents.

There are three main purposes of the bill:

- To reduce the impacts of nitrogen that is deposited in the soil by septic systems and the resulting impacts on the Chesapeake Bay;
- To preserve agricultural and forestry uses in rural areas; and
- To direct growth where public infrastructure already exists such as sewer service, roads, schools, police, and fire in keeping with statewide growth policies.

As noted below, SB 236 was the culmination of several years of efforts to address the issues of nitrogen pollution, preservation of agricultural and forestry uses, and reduction of sprawl at both the county and state levels.

The bill contains provisions that apply statewide as summarized below:

- The bill provides for the establishment of sustainable growth tiers on a voluntary basis subject to the consequences noted above and as further described in Table 1 below. Tiers I, III and IV are required, Tier II is not required.
- The bill requires local jurisdictions to define major and minor subdivisions if a definition does not already exist. In Prince George's, a major subdivision is five or more lots or parcels; a minor subdivision is four or fewer lots in a residential zone. The bill allows jurisdictions to revise their current definition of a minor subdivision as it applies to this bill to as many as seven lots.
- The bill provides for grandfathering existing legally-created lots using the subdivision process or a deed process. It also grandfathers residential subdivision applications that are accepted for review or legal deed divisions recorded in the land records on or before October 1, 2012. The bill does not apply to non-residential subdivisions.
- The bill provides an exemption from the restrictions on new major residential subdivisions on septic fields in Tier IV areas if a local jurisdiction can demonstrate that the areas to be restricted have an "actual overall yield of not more than one dwelling unit per 20 acres." Prince George's County is not eligible for this exemption, because existing zoning allows one dwelling unit per two acres in the R-A zone and one dwelling unit per five acres in the O-S zone. Even if the zoning in the Rural Tier were changed to one dwelling unit per 20 acres, the exemption would not be available because of the combination of the number of existing lots, vacant lots and potential lots through subdivision based on current zoning.
- The bill requires that future subdivision of land in Tier IV be tracked through the use of plat notes, to ensure that the maximum number of lots allowed is not exceeded and the uses are restricted appropriately. SB 236 requires plat notes to track the subdivision of land.
- The bill allows for the creation of a remainder parcel when subdividing land in Tier IV. Remainder parcels must be restricted to agricultural uses and will be indicated on the required final plat.

- The bill allows for a transfer of development rights (TDR) program with certain restrictions. Prince George’s County considered a TDR program through a variety of Council Bills between 2006 and 2008 and did not adopt a program.
- The bill requires coordination with adjacent jurisdictions or municipalities. The City of Laurel was the only jurisdiction where coordination was necessary. A letter from the Planning Director of the city is provided in Appendix 6 that states that the city has reviewed the maps and found that all of the mapping options are consistent with the city’s planned annexation.

**Table 1. Summary of the Sustainable Growth Act Tiers  
As Applicable to Residential Subdivisions**

<b>Tier</b>	<b>Major Subdivisions (5 or more lots)</b>	<b>Minor Subdivisions (4 or fewer lots)</b>
<p><b>Tier I:</b> currently <b>served</b> by public sewer and within a municipality that is a Priority Funding Area or currently served by public sewer and mapped locally designated growth areas (sewer categories 3 and 4)</p>	allowed on public sewer	allowed on public sewer
<p><b>Tier II:</b> currently <b>planned</b> for public sewer and in the municipal growth element or mapped locally designated growth areas (sewer category 5)</p>	allowed on public sewer	allowed on public sewer; minors permitted on septic but should be seen as interim systems
<p><b>Tier III:</b> the area is <b>not planned</b> for public sewer and is not dominated by ag or forest land; not planned or zoned for ag or resource protection; and is one of the following:</p> <ul style="list-style-type: none"> <li>- a municipality not served by public system;</li> <li>- a defined rural village;</li> <li>- a mapped locally designated growth area; or</li> <li>- areas planned and zoned for large lot and rural development</li> </ul> <p>(sewer category 6)</p>	allowed using on-site disposal with individual, community or shared facility	allowed on septic
<p><b>Tier IV:</b> the area is <b>not planned</b> for public sewer and is:</p> <ul style="list-style-type: none"> <li>- planned or zoned for ag and resource protection;</li> <li>- dominated by ag and resource areas;</li> <li>- Rural Legacy Areas, Priority Preservation Areas; or</li> <li>- Areas protected to the benefit of the state or local jurisdiction</li> </ul> <p>(sewer category 6)</p>	major subdivisions are not allowed on a septic system of any kind	allowed on septic

## **Background on Previous Rural Conservation Efforts**

There have been a variety of efforts at the state and county levels to reduce the number of new residential developments relying on septic systems and to preserve agriculture and forestry land in rural areas prior to the passage of the 2012 bill.

### **State Level Efforts**

At the state level during the 2011 legislative session, there was a vigorous debate about the issue of curbing new residential developments on septic fields. After the legislative session, Governor O'Malley signed an Executive Order that created the Task Force on Sustainable Growth and Wastewater Disposal from a broad cross-section of representatives from business, agriculture, science, environmental advocacy and government. The task force's final report was presented to the Governor in December 2011. The report makes recommendations for future actions, including several that resulted in legislation in the 2012 legislative session. The details of what later became SB 236 were an outgrowth of that report.

### **County Level Efforts**

The General Plan contains a measureable objective in the Rural Tier of less than one percent of the county's dwelling unit growth by 2025. From 2002 through 2010, the number of new dwelling units added to the Rural Tier has been approximately two percent of the county's overall dwelling unit growth. At the county level there have been efforts to support and preserve agricultural and forestry uses in the Rural Tier since the approval of the 2002 General Plan and the establishment of this measureable objective.

In 2006, CB-75-2006 proposed creation of the Agricultural Open Space Zone (A-O-S), and a Sectional Map Amendment was initiated to rezone properties in the O-S zone to the A-O-S Zone to support agriculture as a long-term, viable industry. The A-O-S zone had a density limit of one dwelling unit per 25 acres. This rezoning proposal was not endorsed due in part to overwhelming opposition from the farming community.

An Agricultural Preservation Work Group was established in 2006 that had two phases. Its purpose was to review and evaluate available agricultural preservation policies and programs and recommend to the County Council useful revisions to existing policies and laws. The Equine Industry Task Force was established in 2010 for the purpose of facilitating the economic development potential of the equine industry in the county. The work of these two groups is ongoing.

An Agricultural Marketing Specialist position was created in 2009 to promote agriculture in Prince George's County. This is being accomplished by improving existing markets and identifying new ones, developing resources for entrepreneurship, and assisting in drafting legislation to create and maintain sustainable agriculture and agribusiness. This position is funded by M-NCPPC in conjunction with the University of Maryland Cooperative Extension.

Legislation that has been passed to advance agricultural preservation in the county includes:

- CB-4-2006, CB-6-2006, CB-32-2008, and CB-33-2008 established the requirements, procedures and standards for conservation subdivisions.
- CB-47-2006 established the Purchase of Development Rights Program to allow the acquisition of conservation easements that extinguish development rights and preserve sensitive natural resources, and CR-82-2006, which approved the Purchase of Development Rights program regulations and procedures.

- CB-24-2007 established the Historic Agricultural Resources Preservation Program (HARPP) for the purpose of providing monetary incentives to preserve historic, agricultural, and natural resources in the Rural Tier.
- CB-039-2009 defines and permits agritourism and bed-and-breakfast inns and CB-036-2009 defines farm wineries and permits this use in residential zones.
- CB-6-2012 established a county policy of promotion, preservation, protection, and enhancement of agricultural operations. It strengthens the Right-to-Farm provision and defines agricultural operations and generally accepted agricultural land management practices.
- CB-7-2012 revised the composition of the Agricultural Resources Advisory Committee (ARAC) which serves as a link between the farming community and the local government, and establishes the Agricultural Reconciliation Subcommittee which advises the ARAC on the farming community regarding government programs that affect agricultural operations, and assists ARAC in advising county government on implementation of state and local initiatives such as Rural Legacy, nutrient management, and smart growth programs.

While these bills and resolutions help to support agriculture, equine and forestry uses, they did not amend the number of residential dwelling units that could be developed in the Rural Tier. With zoning remaining at one dwelling unit per two or five acres, residential development has continued to fragment an area of the county envisioned for preservation and to replace agricultural, equine and forestry uses at a rate approximately double that recommended in the 2002 General Plan.

In July of 2012, the County Council adopted the Priority Preservation Area (PPA) Functional Master Plan as required by a previous state law. This master plan provides goals, policies and strategies for preserving 80 percent of the area designated within the PPA. The PPA does not cover the entirety of the Rural Tier because some areas did not meet the threshold for high quality agricultural and forestry soils or were already so fragmented that meaningful conservation could not be achieved.

Staff recognizes that the restrictions of SB 236 in Tier IV areas may have an impact on certain property values and the owner's ability to borrow money based on the value of the land for residential development. However, there are multiple programs in place that support agricultural and forestry uses in the Rural Tier through the establishment of conservation easements and other mechanisms that provide payments to property owners in exchange for the permanent preservation of land. The Priority Preservation Area Functional Master Plan contains a comprehensive list of these programs. In the future, as growth offsets are needed for implementation of the county's Watershed Implementation Plan, additional opportunities may be available to land owners that will provide financial incentives in exchange for permanent preservation and/or the establishment of additional water quality best practices.

### **SGA Implementation – Public Outreach**

The implementation of SB 236 at the local level requires extensive coordination with the Maryland Department of Planning. Staff from the Planning Department met with MDP staff on several occasions both in person and via teleconference. Planning Department staff also attended statewide briefings held by MDP staff regarding SB 236 implementation.

Planning Department staff coordinated with the Prince George's County Department of Environmental Resources and the Health Department. Written comments and questions were received from DER and have been addressed. Health Department staff attended the public meetings and responded to written and verbal questions.

In June of 2012, two public informational meetings were held, one in Largo to address countywide concerns and one in Baden to address the specific concerns of the Rural Tier residents. Notification of the meetings was through the publication of a flyer that was distributed using the following email lists: the parties that are regularly notified of new subdivision and development review cases; the parties who had attended the public meetings on the PPA and the Rural Villages Study; and the Maryland-National Capital Building Industry Association. It was also distributed to all Planning Department staff for distribution to groups with which they were working, in addition to being placed prominently on the Planning Department's website. The Planning Board Chairman's office issued a media advisory on the public meetings to ensure that the press was aware of the upcoming meetings. A web page was set up on the Planning Department's web site that provided information specific to this project.

The presentations provided by staff from MDP and the Planning Department were the same at both public meetings. The presentations were followed by question and answer sessions. A map was provided of a preliminary mapping of possible tier boundaries, a copy of which is provided in Appendix 5. The attendees were primarily residents of the Upper Marlboro, Bowie, Brandywine, Baden, Aquasco and Croom communities, which cover the majority of the residential communities in the Rural Tier. A contact list was developed from the attendee sign in sheet so staff has been able to keep attendees apprised of the progress of the project.

In early August of 2012, a draft subdivision bill was distributed via email using the same lists as the public meeting notice and the contacts that were generated by the public meetings. The draft bill and the three refined mapping options were posted on the Planning Department's web page set up specifically for this project. The written comments received are summarized in Appendix 4.

Two weeks prior to the public hearing, this staff report was posted on the project web page. It included the report and all appendices. The mapping options included the existing property lines so that a determination could be made regarding which properties are proposed to be designated in each tier. The maps can be zoomed in and out to provide the desired level of detail. Interested parties were notified of the update to the web page through an email that was sent to the email lists noted above and to parties who had expressed interest but were not part of previous communications.

## **FINDINGS AND REASONS FOR STAFF RECOMMENDATION**

### **Mapping Options**

During the public input process, a draft map was presented for discussion purposes. A copy of this map is provided in Appendix 5. After receiving input and discussing mapping options with MDP, staff generated three mapping options for consideration. The following is a description of each map. It should be noted that SB 236 requires each jurisdiction to include Tiers I, III and IV when mapping. Tier II is not required because these areas are planned for future public sewer and some jurisdictions in the state may not contain areas for future growth on public sewer. Tier II areas in Prince George's County are those that are planned for future public water and sewer service in category 5.

The Tier I and II areas are the same on all three mapping options. Each option differs in the amount of land proposed as Tiers III and IV.

On the draft maps that were made public after the public meeting but prior to the publication of this staff report, areas of three potential "Rural Villages" were noted on the maps. The maps included a notation that should the areas be officially designated as Rural Villages through an action of the County Council in the

future, they would be placed in Tier III. These areas are no longer shown on the maps because they have not been officially designated and more analysis of this concept is needed.

### **Mapping Option Recommendation**

**Mapping Option A is recommended by staff because it maximizes the area of Tier IV and results in the best possible scenario for the preservation of agricultural and forestry uses in the Rural Tier while meeting the growth targets of the General Plan and controlling costs of public infrastructure and services.**

Mapping Option B is also a viable option because the area of Tier III is limited to land that is primarily currently subdivided and is therefore no longer viable for agricultural preservation. However, staff recommends Option A because Option B results in an 83 percent increase in land area in Tier III over Option A, and the associated increase in potential dwelling units is significant.

Mapping Option C contains the largest areas of Tier III and may not meet the intent of SB 236 with regard to the definition of areas contained within Tier III. This option would result in the need to provide extensive offsets for new development proposed in Tier III. Staff recommends Option A over Option C because Option C results in a 95 percent increase in land area in Tier III over Option A, and the associated increase in potential dwelling units is not only significant but also may not be affordable given the necessary public infrastructure costs.

The following is a detailed analysis of the three mapping options.

#### **Mapping Option A**

This option maximizes the area of Tier IV and provides two Tier III areas: one in Broad Creek and one adjacent to the Rocky Gorge Reservoir. These areas are proposed for Tier III designation because while they are within the Rural Tier they are isolated from the areas designated as Tier IV. The character of large lot subdivisions within Tier III is consistent with adjacent existing development in these communities. The statistics for Mapping Option A are provided in Table 2 below.

Maximizing Tier IV areas has several advantages:

- Limiting the amount of properties in Tier III may reduce growth in the Rural Tier to levels closer to those prescribed in the 2002 General Plan
- Limiting the amount of properties in Tier III could help the county to meet the growth targets in other areas such as the Developed Tier, Centers and Corridors.
- Limiting the number of new major residential subdivisions in the Rural Tier reduces the burden on the county to provide public services such as sewer service, roads, schools, and police and fire protection to serve these new residents.
- Designating too much land in Tier III could jeopardize the county's certification application to the Maryland Land and Agricultural Preservation Foundation (MALPF), a major goal of the Priority Preservation Area Functional Master Plan. If certification is achieved, 75 percent of agricultural transfer taxes generated from conversion of land for development from agricultural assessments in the county would be retained by the county to be used to preserve additional agricultural land (the current percentage returned is 33.3 percent). Between 2004 and 2006, over \$4.7 million has been

lost that could have been retained had the county been certified by MALPF. If MALPF certification can be achieved, these funds could be used to offset the effect of SB 236.

- If a future transfer of development rights program is developed, the larger the area of Tier IV, the larger the “sending area” is to serve the program. This would benefit all properties in Tier IV that have development rights remaining.
- Maximizing the area of Tier IV and limiting the amount of Tier III reduces the burden of providing development offsets for increased pollutant loads. The Maryland Department of the Environment (MDE) recently stated that the overall growth offset regulations will address all new septic systems and not just those in Tier III areas. Each new septic system in the state will be required to be constructed using “best available technology” or “BAT” in addition to providing growth offsets for any nitrogen that is being discharged. The greater the number of septic systems, the higher the amount of growth offsets that will be required.

The Maryland Department of the Environment has not published the regulations regarding growth offsets to date; however, it is clear that either the property owner or the county will be required to provide growth offsets for all new development. Although the final outcome remains unclear, the nitrogen loads from septic systems will likely affect the overall pollutant load in the county’s Watershed Implementation Plan (WIP). Therefore, limiting the area of Tier III and keeping the definition of minor subdivisions at four lots will limit the amount of nitrogen that will require offsets.

**Table 2. Mapping Option A Statistics**

<b>General Plan and SGA Tiers</b>	<b>Acreage</b>	<b>Percentage of Developed and Developing Tiers</b>	<b>Percentage of Rural Tier</b>
<b>Developed and Developing Tiers</b>	204,574	100	----
Tier I	168,962	82.6	----
Tier II	35,612	17.4	----
<b>Rural Tier</b>	103,356	----	100
Tier III	776	----	0.8
Tier IV	102,580	----	99.2

**Mapping Option B**

This option retains the same areas of Tier III as Option A and adds three additional areas to Tier III as described below, increasing the land area in Tier III to 4,604 acres. The statistics for Mapping Option B are provided in Table 3.

- South of US 50 and east of US 301 in the vicinity of the City of Bowie, an area of Tier III is proposed outside the Priority Preservation Area (PPA). These properties are bounded to the north by an approved shopping center that includes approximately 600,000 square feet of commercial space and a 150-room hotel. To the west of these properties is a subdivision that was approved prior to the requirement that new subdivisions in the Rural Tier use the conservation subdivision

approach. Because of these two previous approvals, the character of this area has shifted from rural to suburban making the designation in Tier III appropriate.

- An area south of MD 4 and west of US 301 in the Upper Marlboro area is part of the Rural Tier, but is currently subdivided, apart from several large parcels that are currently used for community serving agriculture. US 301 provides the dividing line in this area between areas characterized by subdivisions to the west and rural character to the east. The designation of SGA tier boundaries in this area seeks to further affirm US 301 as the boundary between these two types of community character.
- An area that includes properties along Accokeek and Danville Roads and generally north and east of Danville Road. The majority of this area has already been subdivided while maintaining a rural character overall.

**Table 3. Mapping Option B Statistics**

<b>General Plan and SGA Tiers</b>	<b>Acreage</b>	<b>Percentage of Developed and Developing Tiers</b>	<b>Percentage of Rural Tier</b>
<b>Developed and Developing Tiers</b>	204,574	100	----
Tier I	168,962	82.6	----
Tier II	35,612	17.4	----
<b>Rural Tier</b>	103,356	----	100
Tier III	4,604	----	4.5
Tier IV	98,752	----	95.5

### **Mapping Option C**

Option C proposes an addition of 15,051 acres to Tier III more than Option A for a total of 15,827 acres in Tier III. Option C shows all of the areas of the Rural Tier outside the Priority Preservation Area as proposed Tier III areas, with the exception of M-NCPPC land in the Bowie area, which is shown in Tier IV. Of the three options, Option C places the largest amount of land within Tier III and the least amount within Tier IV. The statistics for Mapping Option C are provided in Table 4 below.

It should be noted that the definition of Tier IV in SB 236 is not limited to the properties designated as PPA and includes land planned or zoned for agricultural and resource protection, land dominated by agricultural and resource areas, Rural Legacy Areas, Priority Preservation Areas, and areas protected to the benefit of the state or local jurisdiction. It could be argued that the large area of Tier III in this option that is located in the center of the southeastern portion of the Rural Tier is planned and zoned for agricultural and resource protection and is dominated by agricultural and resource areas. Selection of Mapping Option C may result in comments from MDP and the need for an additional public hearing to address those comments.

**Table 4. Mapping Option C Statistics**

<b>General Plan and SGA Tiers</b>	<b>Acreage</b>	<b>Percentage of Developed and Developing Tiers</b>	<b>Percentage of Rural Tier</b>
<b>Developed and Developing Tiers</b>	204,574	100	----
Tier I	168,962	82.6	----
Tier II	35,612	17.4	----
<b>Rural Tier</b>	103,356	----	100
Tier III	15,827	----	15.3
Tier IV	87,529	----	84.7

**Mapping Option Build-Out Analysis**

In order to provide a method for comparing the mapping options, staff conducted an analysis of past trends, the existing stock of properties without dwelling units (DUs) and several build-out analyses. This research used the State of Maryland’s tax assessor’s files and a set of assumptions that would eliminate properties that do not contain development rights such as government-owned land and land permanently preserved through conservation easements. This analysis does not exclude land that does not currently support septic systems or areas protected from development because of the presence of sensitive environmental features including soil types. All the figures in these analyses are based on the best available data and should be considered approximate.

Between 2002-2010 (inclusive) there have been 701 DUs added to the Rural Tier which represented two percent of the overall number of dwelling units added countywide. The addition of 701 dwelling units over a nine year period resulted in an average of 77.9 DUs added per year to the Rural Tier.

Currently, there are 1,239 residentially-zoned lots or parcels without a DU that could be built upon by right without the need to apply for a preliminary plan of subdivision. This represents almost 16 years’ worth of residential construction based on the historic annual average of added DUs that could occur without the need to subdivide existing properties. This represents a potential of a 26 percent increase in the total number of DUs in the Rural Tier.

To evaluate the effects of the existing zoning, an analysis was conducted that assumed that the Rural Tier is built-out in the future without the restrictions of SB 236. There were, as of December 31, 2011, approximately 4,730 existing DUs in the Rural Tier. The analysis found that 3,581 new DUs could be developed in the Rural Tier without any changes in zoning or from the restrictions of SB 236, resulting in a total of 8,311 DUs in the Rural Tier, a 43 percent increase in the total number of DUs over the number that existed as of December 31, 2011.

Next, an analysis was conducted to evaluate the restrictions of SB 236 that included a build-out in the Tier III areas that allows major subdivisions under existing zoning and the limitation on minor subdivisions in Tier IV to a maximum of four lots. This analysis was conducted for the configuration of the Tier III and IV areas shown on each mapping option (see Appendix 3 for mapping options). This analysis also included build-out to a maximum of seven lots under a minor subdivision process. It should be noted that the analysis in Table 5 includes Tier III areas that are allowed to develop using major subdivisions (five or more lots using the current definition).

**Table 5. Potential Rural Tier Build-Out Under SB 236**

Mapping Option	Potential DUs using 4 lot limit	Potential DUs using 7 lot limit
A	2,095	2,504
B	2,144	2,535
C	2,260	2,600

Comparing the combination of Option A and the existing minor subdivision definition of four lots to Option C and raising the definition to seven lots, there is an increase of 505 additional lots in the latter scenario. Using a simple analysis of the percentage of R-A and O-S zoned properties in the Rural Tier, the additional 505 lots could result in an additional 2,000 acres of land that is no longer available for agricultural preservation if Option C is chosen and minor subdivisions are allowed to include up to seven lots. (Note: This is an approximation and a conservative estimate because it assumes lots will be at the minimum lot sizes of two and five acres in the R-A and O-S zones.)

## **OVERVIEW OF THE SUBDIVISION BILL**

In order to establish a clear and transparent process for the residential subdivision of land, and to ensure that the county conforms to the state mandate, staff is recommending amendments to Subtitle 24 as detailed in Appendix 2.

**Staff recommends that the definition of minor subdivisions remain at four lots or fewer for the reasons stated in this section.**

The proposed subdivision bill is intended to implement SB 236 and not go beyond the state mandate. SB 236 prohibits major subdivisions in Tier IV and restricts the number of residential lots that can be created using septic fields. The limitation on the number of residential lots is based on the county's definition of a minor subdivision. The bill also contains provisions that clarify the difference between a preliminary plan and final plat.

Currently in Prince George's County, a subdivision of four or fewer lots in a residential zone can utilize a minor subdivision process that does not require public notice or a public hearing. In addition, certain deed divisions of land are exempt from the requirement to file a preliminary plan of subdivision and a final plat. For example, the creation of any number of lots can occur to linear decedents and antecedents through the intra-family transfer process through the use of a deed without a preliminary plan of subdivision or a final plat.

The current exemptions from the preliminary plan of subdivision and plat processes are primarily for residential uses and are used most often in the Rural Tier for intra-family transfers of newly created lots. Currently these subdivisions of land are performed by the recordation of a deed, and then only reviewed later when an application for building permit is submitted. This can often occur years after the original division of land. The existing intra-family transfer provision is not limited in the number of lots that can be created, except by the number of linear decedents or antecedents. Once the division occurs the lots can be immediately sold to unrelated people. On or after October 1, 2012, these divisions of land are subject to

SB 236. In other words, an existing legal parcel of land or lot as of October 1, 2012, cannot be subdivided beyond four residential lots in perpetuity in Tier IV. The ability to track the division of land in the future becomes imperative to ensure conformance to SB 236.

Therefore, the exemptions from filing a preliminary plan and final plat of subdivision that exist in the current code in Section 24-107 are proposed to be modified for residential and agriculture subdivisions in Tier IV. To ensure conformance with the restrictions on the number of lots and proposed uses required in SB 236, staff is recommending that the exemptions from filing a preliminary plan of subdivision be retained and require only a minor final plat, instead of eliminating the exemptions altogether. The plat process will enable the county, as well as an existing or perspective property owner, clear notice of the restrictions on the use and further subdivision of the land. SB 236 requires "plat notes" which will ensure that over time the cumulative number of lots and use of the property does not exceed that permitted by SB 236.

Currently, a minor preliminary plan of subdivision may be approved by the Planning Director and requires no public notice. Minor subdivisions are currently not approved by the Planning Board. If a minor subdivision requires a Planning Board action it is converted to a major subdivision for which public notice and posting is required. However, SB 236 does not allow major subdivisions in Tier IV; therefore, staff is recommending the creation of a process which would allow a minor subdivision to be approved by the Planning Board when necessary. Minor subdivisions that require Planning Board approval include applications with a variation or other situations where a public hearing is deemed by the Planning Director to be necessary or appropriate. The minor subdivisions that are approved by the Planning Board will be processed similar to a major subdivision with all the applicable provisions including public notice and a public hearing.

Staff is recommending the expansion of the definition of a minor subdivision to include remainder agricultural parcel(s). Remainder agricultural parcels are specifically allowed by SB 236 in addition to the number of lots allowed by the county's definition of a minor subdivision. Remainder parcels are restricted to agricultural uses in perpetuity by SB 236. These remainder parcels may be re-subdivided but must remain in agricultural uses, which would also be noted on the minor final plat each time the parcel is further subdivided.

As discussed above, the amendments proposed to Subtitle 24 are intended to be narrowly focused to integrate SB 236 into the County Code. Some of the comments received during the public comment period included a desire to increase the definition of a minor subdivision from four to seven lots. SB 236 states as the first option the use of the definition that existed as of January 1, 2012, which in Prince George's County is four lots.

Staff is not recommending that the definition of a minor subdivision be changed from four to seven lots, but recognizes that this change may be considered. If the change is considered it should be limited to the areas designated as Tier IV, because properties in Tiers I, II and III will continue to have the ability to apply for a major subdivision with the number of lots being limited only by the current zoning.

Regarding this issue staff offers the following considerations:

1. Approved minor residential subdivisions comprised of four or fewer lots accepted for review between the years of 2000 to 2010 resulted in 164 applications and 421 additional lots (or an average of 38.3 additional lots per year countywide). Small major subdivisions, between five and seven lots in size, resulted in 51 applications and an additional 300 lots (or an average of 27.3 lots per year). Staff believes that if the definition of a minor subdivision were changed, the volume of

applications using this method would likely increase annually because of the shorter and simpler process when approved by the Planning Director.

2. A minor subdivision approved by the Planning Director does not require public notice or a public hearing. An increase in the number of lots permitted from 4 to 7 would result in a 75 percent increase in the number of lots that could be created without public notice or a public hearing.
3. In the Rural Tier there are approximately 1,239 existing residentially-zoned lots and parcels that are available for construction without the need to subdivide or record a plat. Using the average of number of dwelling units per year that were added between 2002 and 2010 of 77.9 dwelling units, it would take almost 16 years to build out the existing residential lots without any new subdivisions.
4. The build-out of the Rural Tier under the various mapping scenarios is provided in Table 5 based on the three mapping options. The mapping options were analyzed using a minor subdivision definition of four lots and seven lots. Increasing the definition of a minor subdivision from four to seven lots could result in an additional 300 to 400 residential lots in the Rural Tier, depending on the mapping option approved. This many additional lots is highly land consumptive and results in further fragmentation of areas intended for preservation.
5. Current development in the Rural Tier in Prince George's County already exceeds the state's preferred development density of no more than 1 dwelling unit per 20 acres. Further increasing the number of lots allowed in a minor subdivision may not be consistent with the goals of SB 236 for Prince George's County. Staff is concerned that this may jeopardize the ability of the county to become certified by the state's Maryland Agricultural and Land Preservation Foundation (MALPF). Certification is one of the primary goals of the Priority Preservation Area Functional Master Plan and could bring much needed monies to the land owners who may be affected by SB 236.
6. The current definition of a minor subdivision of four lots results in a de minimus transportation impact of 3.6 trips based on the *Guidelines for the Analysis of the Traffic Impact of Development Proposals*. Seven lots would result in a transportation impact greater than what is defined as de minimus, or 6.3 trips, resulting in a requirement for a transportation analysis. It is important to note that this definition would apply to all residential subdivisions of land in Tier IV including properties exempt from a preliminary plan of subdivision and therefore not subject to a transportation analysis. If the definition of a minor subdivision is raised to seven lots, the transportation impacts could be significant in the long run, and the impacts would not be analyzed for subdivisions which are exempt such as intra-family transfers.

## RECOMMENDATION

Staff recommends the Planning Board approve staff findings and transmit **SGA Mapping Option A** and the draft **Subdivision Bill** to the County Council for their consideration.

## Appendices

Appendix 1 – Water and Sewer Category Definitions

Appendix 2 – Draft Subdivision Bill

Appendix 3 – Draft Mapping Options

Appendix 4 – Summary of Public Comments

Appendix 5 – Draft Map Used in Public Process

Appendix 6 – Letter from the City of Laurel