

## CHAPTER 177

(House Bill 294)

AN ACT concerning

### **Smart, Green, and Growing – Local Government Planning – Planning Visions**

FOR the purpose of revising the planning visions for the State’s Economic Growth, Resource Protection, and Planning Policy and for local comprehensive planning; requiring local jurisdictions to report on certain restrictions that are the result of an adequate public facilities ordinance; specifying the contents of the local jurisdiction’s report; requiring the Department of Planning to prepare a report on the statewide impacts of adequate public facilities ordinances; specifying the contents of the Department’s report; authorizing a certain local legislative body to establish a transfer of development rights program within a priority funding area to assist in the purchase of land for public facilities; requiring the proceeds of the sale of ~~the development right~~ certain development rights to be used to assist in the purchase of the ~~site land on which the public facility will be located~~ site or the construction of the facility; requiring that, for schools and educational facilities, the proceeds of the sale of development rights be used to assist in the purchase of the land on which the school or educational facility will be located; limiting the transfer of development rights to a priority funding area; prohibiting the sale or transfer of development rights associated with certain public land owned by a local jurisdiction on a certain date under certain circumstances; providing for the timing of certain reports; defining certain terms; and generally relating to local government planning.

BY repealing and reenacting, with amendments,  
Article – State Finance and Procurement  
Section 5–7A–01  
Annotated Code of Maryland  
(2006 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, with amendments,  
Article 66B – Land Use  
Section 1.01, 10.01, and 11.01  
Annotated Code of Maryland  
(2003 Replacement Volume and 2008 Supplement)

#### Preamble

WHEREAS, The “Eight Visions” that form the basis of planning in Maryland were first adopted by Maryland in the 1992 Economic Growth, Resource Protection, and Planning Act; and

WHEREAS, Local jurisdictions are required to implement the visions through the Plan and § 4.09 of Article 66B of the Code requires that jurisdictions “shall ensure that the implementation of the provisions of the plan that comply with §§ 1.01 (visions) and 3.05(a)(4)(vi) and (viii) (the land use and sensitive areas elements) are achieved through the adoption of applicable zoning ordinances ... subdivision ordinances ? and other land use ordinances ? that are consistent with the plan”; and

WHEREAS, The visions are a now–familiar touchstone of Maryland land use law and policy and have been in place without significant amendment for 16 years; and

WHEREAS, The visions have never been modernized to reflect and keep pace with current growth and development patterns and trends or Maryland’s commitment to Smart Growth; and

WHEREAS, The Task Force on the Future of Growth and Development in Maryland recommended that a new set of visions to guide growth and development in Maryland be adopted to help achieve Smart and Sustainable Growth; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

### **Article – State Finance and Procurement**

5–7A–01.

The State Economic Growth, Resource Protection, and Planning Policy is [that] **THE FOLLOWING:**

- [(1) development shall be concentrated in suitable areas;
- (2) sensitive areas shall be protected;
- (3) in rural areas, growth shall be directed to existing population centers and resource areas shall be protected;
- (4) stewardship of the Chesapeake Bay and the land shall be a universal ethic;
- (5) conservation of resources, including a reduction in resource consumption, shall be practiced;
- (6) to encourage the achievement of paragraphs (1) through (5) of this subsection, economic growth shall be encouraged and regulatory mechanisms shall be streamlined;

(7) adequate public facilities and infrastructure are available or planned in areas where growth is to occur; and

(8) funding mechanisms shall be addressed to achieve this policy.]

**(1) QUALITY OF LIFE AND SUSTAINABILITY: A HIGH QUALITY OF LIFE IS ACHIEVED THROUGH UNIVERSAL STEWARDSHIP OF THE LAND, WATER, AND AIR RESULTING IN SUSTAINABLE COMMUNITIES AND PROTECTION OF THE ENVIRONMENT;**

**(2) PUBLIC PARTICIPATION: CITIZENS ARE ACTIVE PARTNERS IN THE PLANNING AND IMPLEMENTATION OF COMMUNITY INITIATIVES AND ARE SENSITIVE TO THEIR RESPONSIBILITIES IN ACHIEVING COMMUNITY GOALS;**

**(3) GROWTH AREAS: GROWTH IS CONCENTRATED IN EXISTING POPULATION AND BUSINESS CENTERS, GROWTH AREAS ADJACENT TO THESE CENTERS, OR STRATEGICALLY SELECTED NEW CENTERS;**

**(4) COMMUNITY DESIGN: COMPACT, MIXED-USE, WALKABLE DESIGN CONSISTENT WITH EXISTING COMMUNITY CHARACTER AND LOCATED NEAR AVAILABLE OR PLANNED TRANSIT OPTIONS IS ENCOURAGED TO ENSURE EFFICIENT USE OF LAND AND TRANSPORTATION RESOURCES AND PRESERVATION AND ENHANCEMENT OF NATURAL SYSTEMS, OPEN SPACES, RECREATIONAL AREAS, AND HISTORICAL, CULTURAL, AND ARCHEOLOGICAL RESOURCES;**

**(5) INFRASTRUCTURE: GROWTH AREAS HAVE THE WATER RESOURCES AND INFRASTRUCTURE TO ACCOMMODATE POPULATION AND BUSINESS EXPANSION IN AN ORDERLY, EFFICIENT, AND ENVIRONMENTALLY SUSTAINABLE MANNER;**

**(6) TRANSPORTATION: A WELL-MAINTAINED, MULTIMODAL TRANSPORTATION SYSTEM FACILITATES THE SAFE, CONVENIENT, AFFORDABLE, AND EFFICIENT MOVEMENT OF PEOPLE, GOODS, AND SERVICES WITHIN AND BETWEEN POPULATION AND BUSINESS CENTERS;**

**(7) HOUSING: A RANGE OF HOUSING DENSITIES, TYPES, AND SIZES PROVIDES RESIDENTIAL OPTIONS FOR CITIZENS OF ALL AGES AND INCOMES;**

**(8) ECONOMIC DEVELOPMENT: ECONOMIC DEVELOPMENT AND NATURAL RESOURCE-BASED BUSINESSES THAT PROMOTE EMPLOYMENT OPPORTUNITIES FOR ALL INCOME LEVELS WITHIN THE CAPACITY OF THE**

**STATE'S NATURAL RESOURCES, PUBLIC SERVICES, AND PUBLIC FACILITIES ARE ENCOURAGED;**

**(9) ENVIRONMENTAL PROTECTION: LAND AND WATER RESOURCES, INCLUDING THE CHESAPEAKE AND COASTAL BAYS, ARE CAREFULLY MANAGED TO RESTORE AND MAINTAIN HEALTHY AIR AND WATER, NATURAL SYSTEMS, AND LIVING RESOURCES;**

**(10) RESOURCE CONSERVATION: WATERWAYS, FORESTS, AGRICULTURAL AREAS, OPEN SPACE, NATURAL SYSTEMS, AND SCENIC AREAS ARE CONSERVED;**

**(11) STEWARDSHIP: GOVERNMENT, BUSINESS ENTITIES, AND RESIDENTS ARE RESPONSIBLE FOR THE CREATION OF SUSTAINABLE COMMUNITIES BY COLLABORATING TO BALANCE EFFICIENT GROWTH WITH RESOURCE PROTECTION; AND**

**(12) IMPLEMENTATION: STRATEGIES, POLICIES, PROGRAMS, AND FUNDING FOR GROWTH AND DEVELOPMENT, RESOURCE CONSERVATION, INFRASTRUCTURE, AND TRANSPORTATION ARE INTEGRATED ACROSS THE LOCAL, REGIONAL, STATE, AND INTERSTATE LEVELS TO ACHIEVE THESE VISIONS.**

### **Article 66B – Land Use**

1.01.

In addition to the requirements of § 3.05(c) of this article, a commission shall implement the following visions through the plan described in § 3.05 of this article:

- (1) Development is concentrated in suitable areas.
- (2) Sensitive areas are protected.
- (3) In rural areas, growth is directed to existing population centers and resource areas are protected.
- (4) Stewardship of the Chesapeake Bay and the land is a universal ethic.
- (5) Conservation of resources, including a reduction in resource consumption, is practiced.

(6) To assure the achievement of items (1) through (5) of this section, economic growth is encouraged and regulatory mechanisms are streamlined.

(7) Adequate public facilities and infrastructure under the control of the county or municipal corporation are available or planned in areas where growth is to occur.

(8) Funding mechanisms are addressed to achieve these visions.]

**(1) QUALITY OF LIFE AND SUSTAINABILITY: A HIGH QUALITY OF LIFE IS ACHIEVED THROUGH UNIVERSAL STEWARDSHIP OF THE LAND, WATER, AND AIR RESULTING IN SUSTAINABLE COMMUNITIES AND PROTECTION OF THE ENVIRONMENT;**

**(2) PUBLIC PARTICIPATION: CITIZENS ARE ACTIVE PARTNERS IN THE PLANNING AND IMPLEMENTATION OF COMMUNITY INITIATIVES AND ARE SENSITIVE TO THEIR RESPONSIBILITIES IN ACHIEVING COMMUNITY GOALS;**

**(3) GROWTH AREAS: GROWTH IS CONCENTRATED IN EXISTING POPULATION AND BUSINESS CENTERS, GROWTH AREAS ADJACENT TO THESE CENTERS, OR STRATEGICALLY SELECTED NEW CENTERS;**

**(4) COMMUNITY DESIGN: COMPACT, MIXED-USE, WALKABLE DESIGN CONSISTENT WITH EXISTING COMMUNITY CHARACTER AND LOCATED NEAR AVAILABLE OR PLANNED TRANSIT OPTIONS IS ENCOURAGED TO ENSURE EFFICIENT USE OF LAND AND TRANSPORTATION RESOURCES AND PRESERVATION AND ENHANCEMENT OF NATURAL SYSTEMS, OPEN SPACES, RECREATIONAL AREAS, AND HISTORICAL, CULTURAL, AND ARCHEOLOGICAL RESOURCES;**

**(5) INFRASTRUCTURE: GROWTH AREAS HAVE THE WATER RESOURCES AND INFRASTRUCTURE TO ACCOMMODATE POPULATION AND BUSINESS EXPANSION IN AN ORDERLY, EFFICIENT, AND ENVIRONMENTALLY SUSTAINABLE MANNER;**

**(6) TRANSPORTATION: A WELL-MAINTAINED, MULTIMODAL TRANSPORTATION SYSTEM FACILITATES THE SAFE, CONVENIENT, AFFORDABLE, AND EFFICIENT MOVEMENT OF PEOPLE, GOODS, AND SERVICES WITHIN AND BETWEEN POPULATION AND BUSINESS CENTERS;**

**(7) HOUSING: A RANGE OF HOUSING DENSITIES, TYPES, AND SIZES PROVIDES RESIDENTIAL OPTIONS FOR CITIZENS OF ALL AGES AND INCOMES;**

**(8) ECONOMIC DEVELOPMENT: ECONOMIC DEVELOPMENT AND NATURAL RESOURCE-BASED BUSINESSES THAT PROMOTE EMPLOYMENT OPPORTUNITIES FOR ALL INCOME LEVELS WITHIN THE CAPACITY OF THE STATE'S NATURAL RESOURCES, PUBLIC SERVICES, AND PUBLIC FACILITIES ARE ENCOURAGED;**

**(9) ENVIRONMENTAL PROTECTION: LAND AND WATER RESOURCES, INCLUDING THE CHESAPEAKE AND COASTAL BAYS, ARE CAREFULLY MANAGED TO RESTORE AND MAINTAIN HEALTHY AIR AND WATER, NATURAL SYSTEMS, AND LIVING RESOURCES;**

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**(11) STEWARDSHIP: GOVERNMENT, BUSINESS ENTITIES, AND RESIDENTS ARE RESPONSIBLE FOR THE CREATION OF SUSTAINABLE COMMUNITIES BY COLLABORATING TO BALANCE EFFICIENT GROWTH WITH RESOURCE PROTECTION; AND**

**(12) IMPLEMENTATION: STRATEGIES, POLICIES, PROGRAMS, AND FUNDING FOR GROWTH AND DEVELOPMENT, RESOURCE CONSERVATION, INFRASTRUCTURE, AND TRANSPORTATION ARE INTEGRATED ACROSS THE LOCAL, REGIONAL, STATE, AND INTERSTATE LEVELS TO ACHIEVE THESE VISIONS.**

10.01.

(a) To encourage the preservation of natural resources or the provision of affordable housing and to facilitate orderly development and growth, a local jurisdiction that exercises authority granted by this article may enact, and is encouraged to enact, ordinances or laws providing for or requiring:

(1) The planning, staging, or provision of adequate public facilities and affordable housing;

(2) Off-site improvements or the dedication of land for public facilities essential for a development;

(3) Moderately priced dwelling unit programs;

(4) Mixed use developments;

(5) Cluster developments;

- (6) Planned unit developments;
- (7) Alternative subdivision requirements that:
  - (i) Meet minimum performance standards set by the local jurisdiction; and
  - (ii) Reduce infrastructure costs;
- (8) Floating zones;
- (9) Incentive zoning; and
- (10) Performance zoning.

(b) Notwithstanding any other provision of law, a local legislative body that exercises authority granted by this article may enact ordinances or laws providing for the transfer, with or without consideration, of real property belonging to the local jurisdiction to a public or private entity, to use in developing or preserving affordable housing.

(c) The authority provided under this section is not intended to limit a local jurisdiction's authority to:

- (1) Exercise any planning and zoning powers not expressly authorized under this section; or
- (2) Adopt other methods to:
  - (i) Facilitate orderly development and growth;
  - (ii) Encourage the preservation of natural resources; or
  - (iii) Provide affordable housing.

**(D) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

**(II) "PRIORITY FUNDING AREA" HAS THE MEANING STATED IN § 5-7B-02 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

**(III) "RESTRICTION" MEANS A RESTRICTION, MORATORIUM, OR CAPACITY LIMITATION IMPOSED ON DEVELOPMENT AS A RESULT OF AN ORDINANCE OR LAW ADOPTED UNDER THIS SECTION.**

**(2) (I) IF AN ADEQUATE PUBLIC FACILITY ORDINANCE HAS RESULTED IN A RESTRICTION WITHIN A PRIORITY FUNDING AREA, A LOCAL JURISDICTION SHALL REPORT ON THE RESTRICTION ON OR BEFORE JULY 1 EVERY 2 YEARS TO THE DEPARTMENT OF PLANNING.**

**(II) THE REPORT REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL INCLUDE:**

- 1. THE LOCATION OF THE RESTRICTION;**
- 2. THE TYPE OF INFRASTRUCTURE AFFECTED BY THE RESTRICTION;**
- 3. THE PROPOSED RESOLUTION OF THE RESTRICTION, IF AVAILABLE;**
- ~~3~~ 4. THE ESTIMATED DATE FOR THE RESOLUTION OF THE RESTRICTION, IF AVAILABLE;**
- ~~4~~ 5. IF A RESTRICTION WAS LIFTED, THE DATE THE RESTRICTION WAS LIFTED; AND**
- ~~5~~ 6. THE RESOLUTION THAT LIFTED THE RESTRICTION.**

**(3) (I) THE DEPARTMENT OF PLANNING SHALL PREPARE AND PUBLISH A REPORT ON THE STATEWIDE IMPACTS OF ADEQUATE PUBLIC FACILITIES ORDINANCES ON OR BEFORE JANUARY 1 EVERY 2 YEARS.**

**(II) THE REPORT REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL INCLUDE THE IDENTIFICATION OF:**

- 1. GEOGRAPHIC AREAS AND FACILITIES WITHIN PRIORITY FUNDING AREAS THAT FAIL TO MEET LOCAL ADEQUATE PUBLIC FACILITY STANDARDS; AND**
- 2. IMPROVEMENTS TO FACILITIES SCHEDULED OR PROPOSED IN THE LOCAL JURISDICTION'S CAPITAL IMPROVEMENT PROGRAM.**

11.01.

**(A) A local legislative body that exercises authority granted by this article may establish a program for the transfer of development rights to:**



- (1) Encourage the preservation of natural resources; and
- (2) Facilitate orderly growth and development in the State.

(B) (1) (I) IN THIS SUBSECTION, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(II) “~~PRIORITY~~ PRIORITY FUNDING AREA” HAS THE MEANING STATED IN § 5-7B-02 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(III) “PUBLIC FACILITY” INCLUDES:

1. RECREATIONAL FACILITIES;
2. TRANSPORTATION FACILITIES AND TRANSIT ORIENTED DEVELOPMENT; AND
3. SCHOOLS AND EDUCATIONAL FACILITIES.

(2) A LOCAL LEGISLATIVE BODY THAT EXERCISES AUTHORITY GRANTED BY THIS ARTICLE MAY ESTABLISH A PROGRAM FOR THE TRANSFER OF DEVELOPMENT RIGHTS WITHIN A PRIORITY FUNDING AREA TO ASSIST A LOCAL JURISDICTION IN THE PURCHASE OF LAND FOR ~~A SCHOOL OR THE CONSTRUCTION OF A PUBLIC FACILITY~~ WITHIN A PRIORITY FUNDING AREA.

(3) (I) PROCEEDS EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, PROCEEDS OF THE SALE OF DEVELOPMENT RIGHTS SHALL BE USED TO ASSIST ~~A LOCAL JURISDICTION~~ IN:

~~(I)~~ 1. THE PURCHASE OF THE ~~PUBLIC SITE LAND ON WHICH THE PUBLIC FACILITY WILL BE LOCATED~~ PUBLIC SITE; OR

~~(II)~~ 2. THE CONSTRUCTION OF THE ~~PUBLIC~~ FACILITY.

(II) FOR SCHOOLS AND EDUCATIONAL FACILITIES, PROCEEDS OF THE SALE OF DEVELOPMENT RIGHTS SHALL BE USED TO ASSIST IN THE PURCHASE OF THE LAND ON WHICH THE SCHOOL OR EDUCATIONAL FACILITY WILL BE LOCATED.

(4) ANY DEVELOPMENT RIGHTS SOLD UNDER THE AUTHORITY OF THIS SUBSECTION SHALL ONLY BE TRANSFERRED WITHIN A PRIORITY FUNDING AREA.

**(5) DEVELOPMENT RIGHTS ASSOCIATED WITH EXISTING PUBLIC LAND THAT IS OWNED BY A LOCAL JURISDICTION ON OCTOBER 1, 2009, MAY NOT BE SOLD OR TRANSFERRED UNDER THIS SUBSECTION.**

SECTION 2. AND IT BE FURTHER ENACTED, That, as required by Article 66B, § 10.01, as enacted by Section 1 of this Act, a local jurisdiction's initial report shall be submitted on or before July 1, 2010, and the Department of Planning's initial report shall be prepared and published on or before January 1, 2011.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.

**Approved by the Governor, May 7, 2009.**