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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**Testimony Regarding SB 294
Comprehensive Plan – Implementation and Review in Priority Funding Areas
Before the Education, Energy, and the Environment Committee
February 14, 2023**

Good afternoon Chair Feldman, Vice-Chair Kagan, and committee members,

Senate Bill 294 purpose of altering the implementation and review of a comprehensive plan within a priority funding area. According to the Maryland Department of Planning, a comprehensive plan¹ is:

a document, officially adopted by the local governing body, which spells out the manner in which a municipality, county or sub-area of a county should develop. Typically, it includes a map showing proposed future land use and anticipated transportation and community facilities. It also contains policies for protecting environmental features and recommendations for amending local development-related ordinances in a manner that helps achieve the comprehensive plan's objectives.... The plan has legal significance in that zoning, provision of water and sewer, and other local actions must be consistent with its recommendations.

The plans also cover every facet from “housing and transportation, to education and environment, to economic competitiveness and equity.”² It is the template of the “systems” at play in our different jurisdictions; that is why they are so important. Senate Bill 294 intends to close what my constituent and witness, Nicholas Stewart, calls the “PFA loophole”.

In the 2008 case, *David Train v. Terrapin Run LLC*¹, a closely divided Maryland Court of Appeals

¹ The comprehensive plan may also be known as a "general plan", "master plan", "master development plan" or "comprehensive master plan"

² Nick Stewart & Pat Keller. [Opinion: Time to overhaul Baltimore County's planning, development review and zoning process.](#) *Maryland Matters*. August 12, 2022.

held that our state's Smart Growth statutes regarding development:

did not require strict conformity with the comprehensive plan for two reasons. First, the plan was a guide for future development of the county, but it had no regulatory effect unless a statute, ordinance, or regulation required compliance with its recommendations. Second, the use of the term "conforms to the plan," which first appeared in amendments to Article 66B in 1970³ and was retained in 1992, had essentially the same meaning as the usage prior to that date, which required that special exceptions should be "in harmony" with the plan. The court went to considerable length in supporting its position that various "Smart Growth" statutes had not mandated that counties have comprehensive plans, or if they did, the state had no power to enforce a conformity clause.³

In response to this decision, the 2009 session of the General Assembly enacted the Smart Growth and Sustainable Development Act, essentially overturning Terrapin Run. A new Section 1.02 of Article 66B was adopted requiring "consistency" with a master plan when reviewing a special exception or adopting zoning and development ordinances and regulations.

However, as noted by Professor Hanson, the General Assembly "made an exception that swallowed a substantial length of the rule." The statute did not require actions taken in Priority Funding Areas to be consistent with plans with regard to land uses and densities or intensities.⁴ Couple that with our jurisdictions viewing comprehensive plans as mere guidance ultimately undermine plans' utility, especially in jurisdictions where large swaths of the jurisdiction where development should occur are designated Priority Funding Areas. Baltimore County is a good example of this; our County Code states that our plan "shall be made with the *general purpose of guiding* and accomplishing a coordinated, adjusted, and harmonious development of the county and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development and maintenance of property values previously

³ Consistency with Comprehensive Plans: Does Maryland Law Mean What it Says, or Say What it Means. Royce Hanson, page 120. In fact, the Court wrote: "Accordingly, we find ,nothing in the history of the 1992 legislation that remotely indicates that the Legislature believed that it was establishing that the use of the word 'conform' in the 1970 statute and as stated in Article 66B, without additional restrictive language which was not added, imposed any stricter standard on such land use decisions than the traditional 'in harmony with' language of the pre-1970 statute or our pre-and post-1970 cases meant the same thing." Terrapin Run at 569.

⁴ Hanson, pg. 121-122.

established.”⁵ Obviously, guidance is not mandatory.

In order to move us from a guidance framework to a regulatory framework, SB 294 repeals §1-304 and makes §1-303 controlling. This is significant as it elevates comprehensive plans from mere guidance to actual mandated plans. For a jurisdiction like Baltimore County this change is necessary, as priority funding areas encompass “almost all of the land within the developable parts of [the] county,”⁶ and currently designates the county council members as arbiters of land use decisions within their councilmanic district rather than allowing for a more wholistic, “comprehensive” plan taking into account the whole jurisdiction.⁷ Senate Bill 294 will transform comprehensive plans from mere “aspirational documents that can be ignored by local decision-makers, at their discretion, into a controlling document that governs future map amendments”⁸ This is the right first step in providing transparent, collaborative, sustainable and equitable development. I ask you to vote to report SB 294 out from this Committee favorably.

⁵ County Code 32-2-202(a). See also <https://www.wtplaw.com/news-events/baltimore-county-master-plan-2020-and-comprehensive-zoning>. As noted by By The People, “Despite the heightened importance of growth planning, the county (through the county council) has regularly made decisions in a way that is (a) on-demand, ad-hoc and project-by-project, and (b) often political, parochial and emotional. This has been contrary to the various master plans adopted by the county since the first one was adopted in 1975, but the law has allowed the county to do this.” See [Microsoft Word - Equitable Growth White Paper \(FINAL\) \(wethepeoplebaltco.com\)](#), pg. 1.

⁶ But also in Maryland’s “five metropolitan counties.” Hanson, *supra* note 4, pg. 10. This is also known as the Urban Rural Demarcation Line. Stewart & Keller, *supra* note 1.

⁷ Stewart & Keller, *supra* note 1.

⁸ [Microsoft Word - Equitable Growth White Paper \(FINAL\) \(wethepeoplebaltco.com\)](#), pg. 4.