

MEMORANDUM

September 6, 2012

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz,  Legislative Attorney
SUBJECT: Subdivision Regulation Amendment (SRA) 12-01, Preliminary Plan – Approval Procedure

Subdivision Regulation Amendment (SRA) 12-01, Preliminary Plan – Approval Procedure, sponsored by Councilmember Rice, was introduced on June 26, 2012. The Council held a public hearing on July 31, 2012. The only testimony received at the public hearing was from the Planning Board. The Planning Board recommended the adoption of SRA 12-01 with amendments.

Background

SRA 12-01 is a response to the Maryland Sustainable Growth and Agricultural Preservation Act of 2012 (SB 236). The following summarizes that Act:

After December 31, 2012, a local jurisdiction that has not adopted Growth Tiers cannot approve major residential subdivisions served by septic systems, community sewerage systems, or shared systems. It may only authorize minor residential subdivisions served by septic systems. SB 236 does not have any effect on subdivisions served by public sewer or subdivisions for non-residential purposes.

The definition of a minor subdivision, which can be amended by counties for the sole purpose of complying with SB 236, may allow up to 7 dwelling units. The limit to the number of units for a minor subdivision applies without regard to the size of the parcel or the zoning of the parcel.¹ A major subdivision is any subdivision that proposes more units than a minor subdivision.

¹ §9-206(A)

(1) In this section, the following words have the meanings indicated.

* * *

(6) “minor subdivision” means:

(i) the subdivision of land:

1. Into new lots, plats, building sites, or other divisions of land

Defined or described as a minor subdivision in a local ordinance or regulation:

A. That is in effect on or before January 1, 2012.; or

B. Adopted on or before December 31, 2012, if a local jurisdiction chooses to create a definition or description applicable solely to this section or if a local ordinance or regulation does not define or describe a minor subdivision under item a of this item, provided that a minor subdivision defined or described in the adopted ordinance or regulation does not exceed seven new lots, plats, building sites, or other divisions of land; or

The adoption of Growth Tiers is not required by SB 236; however, the adoption of Tiers is required if the County wants more flexibility on approving major subdivisions served by septic systems. Tiers can be adopted by the local jurisdiction as an ordinance or regulation before December 31, 2012, or as an amendment to the comprehensive plan thereafter.² If Tiers are not adopted before December 31, 2012 by ordinance or regulation, the Tiers must be adopted in the County's comprehensive plan whenever that plan is amended.

Growth Tiers must satisfy certain criteria and each has a different allowance for septic approvals:

Tier Name	Criteria	Septic Subdivision Restriction
Tier I	served by public sewer	no septic subdivision approvals allowed
Tier II	planned for sewer and need to accommodate growth	only minor septic subdivisions allowed
Tier III	not planned for public sewer; not dominated by farms or forest; not zoned for farms; planned for large lot development	major septic subdivision may be approved
Tier IV	planned for farms; dominated by farms; or subject to conservation easements	generally only minor septic subdivision; however, if the overall zoning yield is 1 dwelling unit for every 20 acres or fewer, major subdivisions may be allowed ³

If Tiers are adopted, it must include Tiers I, III, and IV. Adopting Tier II is optional.

There are grandfathering provisions for subdivisions with percolation test applications filed before July 1, 2012 **and** subdivision applications filed before October 1, 2012 **and** approved before October 1, 2016.

Planning Board Recommendation

The Planning Board recommends approval of SRA 12-01 with amendments. SB 236 allows jurisdictions to define the size of minor and major subdivisions. The Planning Board recommends defining a minor subdivision

2. If a local jurisdiction has not adopted a definition or description of a minor subdivision on or before December 31, 2012, under item 1 of this item, into fewer than five new lots, plats, building sites, or other divisions of land; and

(ii) if the local ordinance or regulation has two multiple definitions or descriptions of a minor subdivision under item (i) of this paragraph, the definition or description of a minor subdivision that is determined by the local jurisdiction to apply for the purposes of this section.

² The Maryland Department of Planning would allow amendments by ordinance after December 31, 2012 until Tiers are adopted in an amendment to the County's General Plan.

³ In testimony before the General Assembly, the Secretary of Planning indicated that Montgomery County could meet the requirements of certification: §9-206...

(H) (1) The limitation of minor subdivisions in subsection (g)(1)(iii) of this section does not apply to a local jurisdiction, if the subdivision and zoning requirements in their cumulative Tier IV areas result in an actual overall yield of not more than one dwelling unit per 20 acres that has been verified by the department of planning.

(2) A local jurisdiction may request, in writing, a verification of the actual overall yield from the department of planning.

(3) The Department of Planning shall verify the actual overall yield after consultation with the Maryland Sustainable Growth Commission, established in § 5-702 of the state finance and procurement article.

as 5 dwelling units or less; a major subdivision for the purpose of SB 236 would be 6 or more units. In addition to other technical amendments, the Board would acknowledge that the Maryland Department of Planning (MDP) may periodically re-verify the density of the Tier IV area. At the Council's public hearing, the Planning Board representative said that MDP changed its position and was no longer insisting that it had the right to periodically review a Tier IV certification, unless the regulation underlying the certification changed.

Post Hearing events

MDP Staff reviewed the Tier Map as introduced and found that it did not conform to the requirements of SB 236.⁴ Planning Staff worked with MDP staff to revise the Tier map. On August 10, Acting Planning Director Rose Krasnow requested certification by MDP that the revised Tier IV area was less dense than one dwelling unit for every 20 acres (see © 15-16). MDP refused to even begin the formal certification process until the Tier areas are adopted (see © 17).

By regulations, MDP has 90 days to certify the density of the Tier IV area. If the Council adopts Tiers in late September, the 90 day period will expire while the Council is on its holiday recess. Major subdivisions served by septic systems will be barred after December 31, 2012 in the Tier IV area unless the Council adopts Tiers and the density of the Tier IV area is certified by MDP.

MDP staff agreed to attend the Committee's September 10 worksession and will provide comments to the Committee. Any written material sent by MDP to the Council will be forwarded to the Committee.

⁴ The growth tiers adopted by a local jurisdiction shall meet the following criteria:

- (1) Tier I areas are areas that are:
 - (i) served by public sewerage systems and mapped locally designated growth areas; or
 - (ii) a municipal corporation that is a priority funding area that is served by public sewerage systems;
- (2) Tier II areas are areas that are:
 - (i)
 1. Planned to be served by public sewerage systems and in the municipal growth element; or
 2. Mapped locally designated growth areas; and
 - (ii) needed to satisfy demand for development at densities consistent with the long-term development policy after consideration of the capacity of land areas available for development, including in-fill and redevelopment, within the local jurisdiction;
- (3) Tier III areas are areas that :
 - (i) are not planned for sewerage service and not dominated by agricultural or forest land;
 - (ii) are not planned or zoned by a local jurisdiction for land, agricultural, or resource protection, preservation, or conservation; and
 - (iii) are one of the following:
 1. Municipal corporations not served by a public sewerage system;
 2. Rural villages as described in § 5-7b-03(f) of the state finance and procurement article;
 3. Mapped locally designated growth areas; or
 4. Areas planned and zoned for large lot and rural development; and
- (4) Tier IV areas are areas that are not planned for sewerage service and are:
 - (i) areas planned or zoned by a local jurisdiction for land, agricultural, or resource protection, preservation, or conservation;
 - (ii) areas dominated by agricultural lands, forest lands, or other natural areas; or
 - (iii) rural legacy areas, priority preservation areas or areas subject to covenants, restrictions, conditions, or conservation easements for the benefit of, or held by a state agency, as defined in § 9-206 of the environment article, or a local jurisdiction for the purpose of conserving natural resources or agricultural land.

Issues

Should the Council adopt Tiers?

Reason not to act

The Maryland Sustainable Growth and Agricultural Preservation Act of 2012 does not require the Council to act. If the Council takes no action, only a septic subdivision of 4 residential lots or fewer could be approved. The limit on the number of units per subdivision is without regard to the size of the property or the zoning of the property.

All of the areas served only by septic systems are outside of the state's priority funding area; it is not smart growth. The occupants of these houses will travel further to jobs, schools, and retail centers than other houses built in the sewer envelope. In the RDT zone, these houses fragment farm land. Unlike the County's Building Lot Termination program, State law makes the subdivision with few roof tops mandatory and the law does provide for compensation.

The action by the Council will increase the number of units that can be approved for subdivisions served by septic systems.⁵

Reasons to act

In the absence of Council action, SB 236 usurps zoning and regulatory authority that heretofore was delegated to the County. The Council's carefully considered zoning and subdivision regulations should be preserved to the maximum extent allowable by law.

SB 236 has negative consequences for landowners unless the Council acts. Action by the Council can neutralize the effects of the law on property owners at best; at worst, action by the Council can minimize its effects. Even if MDP does not certify the County's Tier IV area, larger subdivisions can be allowed in the Tier IV area by legislatively defining a minor subdivision as 7 dwelling units. Adopting Tiers allows major subdivisions in the Tier III area.

If the Council does not wish to act, there is no reason to read further.

Should the Council approve a definition of major and minor subdivisions for the purpose of administering SB 236?

As introduced, SRA 12-01 does not define the major or minor septic subdivision. Any size subdivision, either major or minor, can be approved if the Tier IV area is certified for its low density. The SRA as introduced assumed that the testimony of the Secretary of Planning was accurate and that the County's Tier IV area would be certified.

The Planning Board recommended defining major (6 or more units) and minor (5 or fewer units) subdivisions for the following reasons:

- 1) The provision for a minor subdivision process may be confused with a minor subdivision definition under SB 236.

⁵ Adopting Tiers would allow major septic subdivisions in the Tier III area. A certification of the Tier IV area would allow major subdivisions in the Tier IV area. In addition, the number of units that can be approved in the Tier IV area as a minor septic subdivision can be increased to 7 units.

- 2) The Tier IV may not be certified by MDP.
- 3) The state may apply the definitions of major and minor subdivisions to other laws.

Given MDP's reluctance to certify the Tier IV area in advance of adoption, defining major and minor subdivisions for the purpose of SB 236 is advisable. If the purpose of Council action is to maximize property rights and to retain the authority of the County's zoning and subdivision regulations to the maximum extent possible, **Staff recommends defining a major subdivision should as 8 or more lots. SRA 12-01 should then further be revised to use the term major subdivision.**

Should the Tier areas be revised from the Tier map as introduced?

Planning Staff, after conversations with MDP staff, recommend changes to the Tier map as introduced. The recommended size of the Tier IV area has increased by decreasing the size of the Tier III area. MDP will be available to review their recommendations with the Committee. If the Tier IV area can be certified, then the shape and area of the Tiers does not matter. With certification, a property owner in both Tier III and Tier IV would be allowed to build both major and minor subdivisions that use septic systems.

If the Tier map cannot be certified, then it is to the advantage of landowners to increase the size of the Tier III area and reduce the size of the Tier IV area to the maximum extent allowed by law. In the absence of certification, landowners in the Tier IV area would be prohibited from developing major septic subdivisions. Property owners in the Tier III area would be allowed to build any size subdivision that uses septic systems. Without certification, landowners would want the Council to make the Tier IV area as small as possible.

It would be advantageous to the Council to know whether its proposed Tier IV area will get certification before it acts. MDP refused to certify the proposed Tier IV area before adoption, but has asserted that amendments to the Tier map may be made after December 31, 2012 without a comprehensive plan amendment.

Given Secretary Hall's statements to the State Senate that Montgomery County could get certification, **staff recommends using the boundaries of Tier areas recommended by MDP.** If the Council relies on the boundaries recommended by MDP and then does not get certification, it would be up to Secretary Hall to explain the discrepancy to the General Assembly. Once adopted by the Council, with the appropriate website address in the SRA, changes to the map (if any or by the adoption of a comprehensive plan amendment) should only occur with Council approval.

When should SRA 12-01 be effective?

As introduced, SRA 12-01 would be effective 20 days after enactment. The Council may allow for an effective date immediately upon enactment.⁶ **Staff recommends an immediate effective date for all provisions; however, the provision that allows major subdivisions in the Tier IV area should be effective the day that MDP certifies the density of the Tier IV area.**

<u>This packet contains:</u>	<u>Circle #</u>
SRA 12-01 Revised	1 – 5
Planning Board Recommendation	6 – 7
Amended SRA as recommended by the Planning Board	8 – 10
Planning Staff Report and Recommendation	11 – 15
Planning Staff submission to MDP	16 – 18
Letter from MDP Staff	19

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⁶§50-6A(e) Subdivision regulation amendments become effective twenty (20) days after the date of council adoption or ten (10) days after the date of council adoption following disapproval by the executive, unless otherwise stated in the ordinance.

Ordinance No.:
Subdivision Regulation Amend. No.: 12-01
Concerning: Preliminary Plan – Approval
Procedure
Revised: 9/6/12; Draft No. 2
Introduced: June 26, 2012
Public Hearing: July 31, 2012
Adopted:
Effective:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Rice

AN AMENDMENT to the Subdivision Regulations to:

- (1) establish growth tiers under Maryland’s Sustainable Growth and Agricultural Preservation Act of 2012;
- (2) add provisions for the approval of subdivisions within the growth tiers; and
- (3) generally amend provisions concerning the subdivision of land to avoid negative consequences to landowners from the implementation of Maryland’s Sustainable Growth and Agricultural Preservation Act of 2012.

By amending

Montgomery County Code
Chapter 50. SUBDIVISION OF LAND.
Section 50-35. Preliminary subdivision plan—Approval procedure.

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 **Sec. 1. Section 50-35 is amended as follows:**

2 **Sec. 50-35. Preliminary subdivision plan—Approval procedure.**

3 * * *

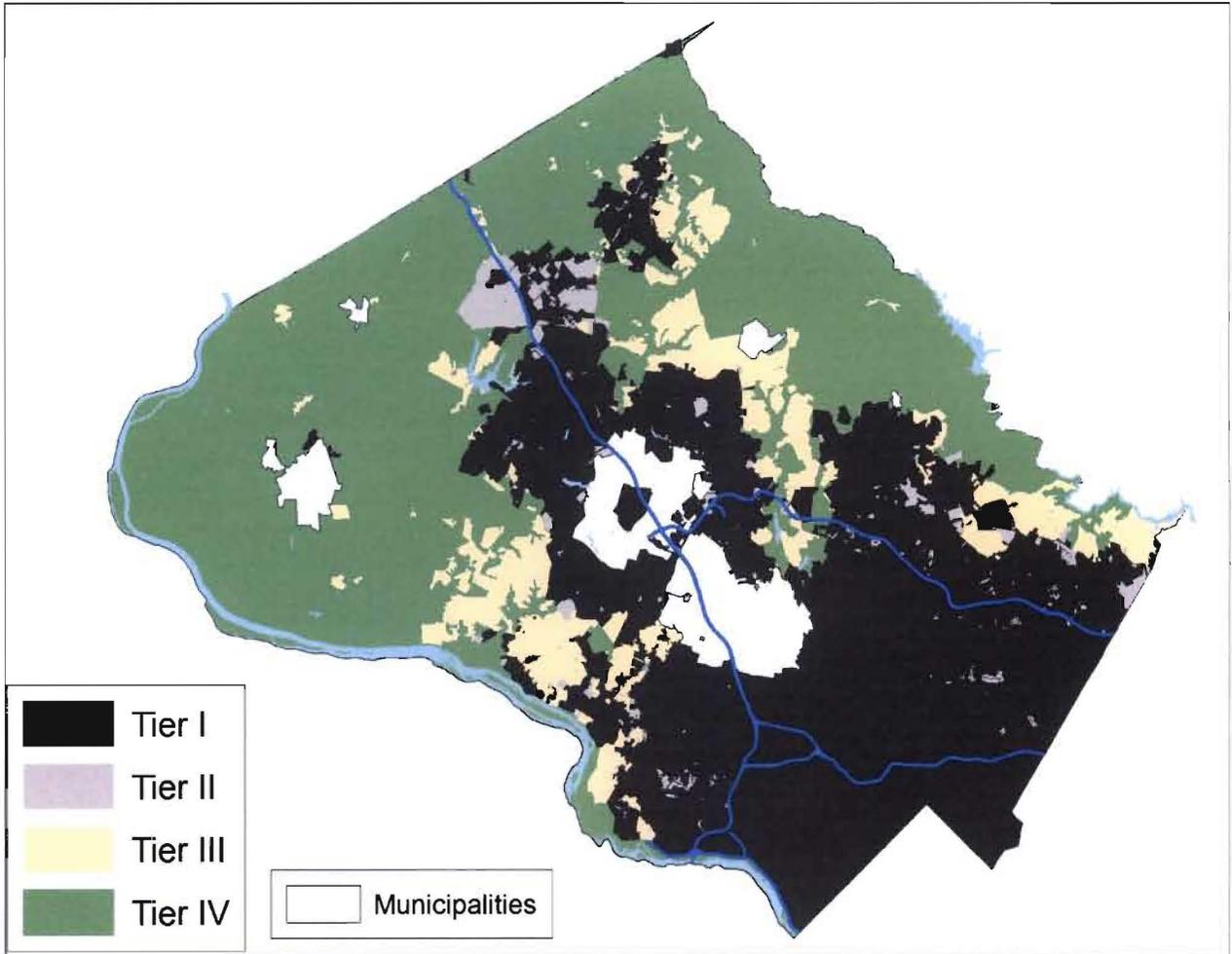
4 (e) *Wells and septic systems.* Before the Board approves a plan for lots with
5 individual wells or septic systems, the plan must be approved by the
6 Department of Permitting Services. The Board must review [[the]] any plan
7 that includes residential lots under the Maryland Sustainable Growth and
8 Agricultural Preservation Act of 2012 (Sections 9-206 and 9-1110 of the
9 Environment Article, and Section 1-401 and Subtitle 5 of the Land Use
10 Article).

11 (1) The official map displaying the Growth Tier areas as allowed under
12 the Maryland Sustainable Growth and Agricultural Preservation Act
13 of 2012 is on the Planning [[Board]] Department website at
14 <http://www.montgomeryplanning.org/development/>.
15 [[The map may be amended by the Council's approval of a general
16 plan amendment that adopts Tier areas.]] The Council may amend the
17 official map either by:

18 (A) adopting Tiers in a General Plan Amendment; or

19 (B) by an amendment under Section 50-6A.

20 The following is a representation of the map [[(June 20, 2012)]] as of
21 September 18, 2012:



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- (2) The Board must not approve any subdivision located in the Tier I area if the lots will that would be served by a septic system one or more septic systems on land located in the Tier I area.
- (3) The Board must not approve any residential major subdivision that would be served by one or more septic systems on land located in the Tier II area for 5 or more residential lots served by septic systems].
- (4) The Board may approve a subdivision for any number of residential lots that would be served by one or more septic systems on land located in the Tier III area or Tier IV areas].
- (5) The Board may approve a minor subdivision that would be served by

35 one or more septic systems on land located in the Tier IV area.

36 (6) The Board may approve a major subdivision that would be served by
37 one or more septic systems on land located in the Tier IV area.

38 (7) In this subsection:

39 (A) a major subdivision is a subdivision that would create 8 or more
40 residential building lots;

41 (B) a minor subdivision is a subdivision that would create 7 or
42 fewer residential building lots.

43 * * *

44 **Sec. 2. Certification of Tier 4 density.** [[The]] Within 5 days after this
45 ordinance becomes law, the Planning Director must submit the Tier Map to the
46 Maryland Department of Planning, with all data required by Maryland's
47 Sustainable Growth and Agricultural Preservation Act of 2012, to certify that the
48 average density of the Tier IV area is no greater than one unit for every 20 acres.
49 [[This certification would exempt the County from the limits under the Maryland
50 Sustainable Growth and Agricultural Act of 2012 on the approval of subdivisions
51 using septic systems in the Tier IV area.]]

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53 **Sec. 3. Effective date.** This ordinance takes effect [[20 days after the date
54 of Council adoption.]] as follows:

55 (a) Except for Section 50-35(e)(6), this ordinance takes effect on
56 the date the ordinance becomes law;

57 (b) Section 50-35(e)(6) takes effect on the date the Maryland
58 Department of Planning certifies the Tier IV area as being less
59 dense than one dwelling unit for every 20 acres.

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

July 24, 2012

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Subdivision Regulation Amendment No. 12-01

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Subdivision Regulation Amendment No. 12-01 at our regular meeting on July 19, 2012. By a vote of 5:0, the Planning Board recommends approval of the text amendment as modified by the Board to clarify the effect of this legislation. The Board also recommends a technical clarification.

The modifications by the Board to this SRA include: (1) changing the webpage link reference to the Planning Department, where the on-line Tier Areas Map will be located; (2) changes to clarify the Tier Areas update process as it relates to the adoption of the Tiers as part of the General Plan as required under SB 236; (3) changes to add definitions of major and minor subdivision (as allowed under SB 236) to clarify the effect of this legislation, to avoid confusion that may otherwise arise with the County's minor subdivision process, which allows subdivisions of 5 or fewer lots in the RDT without submitting a preliminary plan, and to ensure retention of local control in the event of future state law that relies on the distinction between major and minor subdivisions; (4) changed language to refer to the definition of major subdivision; and (5) changes to clarify that the Tier IV exemption for major subdivisions on septic, as allowed under SB 236, is contingent on maintaining a Tier IV density of less than 1 unit per 20 acres.

The text amendment language as modified by the Board is included as an attachment to this memorandum, separate from the technical staff report.

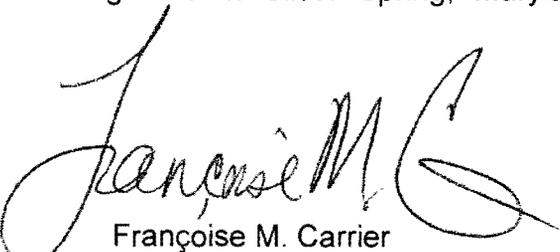
The Board believes that it is important to clarify the Tier Areas Map update process in light of the SB 236 requirement that the Tier Areas be incorporated within the General Plan within six years. If the General Plan is not so amended, the State will not consider the County to have fully adopted the Tier Areas as required under SB 236. Until incorporated into the General Plan, the Tier Areas may continue to be updated administratively. After incorporation within the General Plan, the Tier Areas may only be amended as part of a General Plan amendment.

SB 236 allows a local jurisdiction to provide its own definitions of major and minor subdivisions until December 31, 2012. Distinguishing between major and minor subdivisions is not necessary so long as the County meets the exemption in Tier IV. However, for the following three reasons, the Planning Board recommends that the SRA define major and minor subdivisions during this limited window of opportunity. First, the County has a minor subdivision process that allows subdivisions of 5 or fewer lots in the RDT without submitting a preliminary plan may cause confusion in conjunction with the definition of minor subdivision (4 or fewer lots) as provided by SB 236. Second, current calculations of the Tier IV density indicate that the County is just within the exception allowance. Third, the state continues to insert itself into local planning through legislative initiatives to implement Plan Maryland, and it is possible that the state could change its definition of major and minor subdivisions, or apply it to other law.

The Planning Board also believes that it is important for the SRA to clarify (as stipulated in SB 236) that the Tier IV exemption that allows major subdivision on septic in Tier IV is contingent on maintaining an actual Tier IV density of less than 1 unit per 20 acres. Because of this, the Tier IV density will need to be periodically re-verified and confirmed by the State in the future, in order to maintain the exemption.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, July 19, 2012.


Françoise M. Carrier
Chair

1 **Sec. 1. Section 50-35 is amended as follows:**

2 **Sec. 50-35. Preliminary subdivision plan—Approval procedure.**

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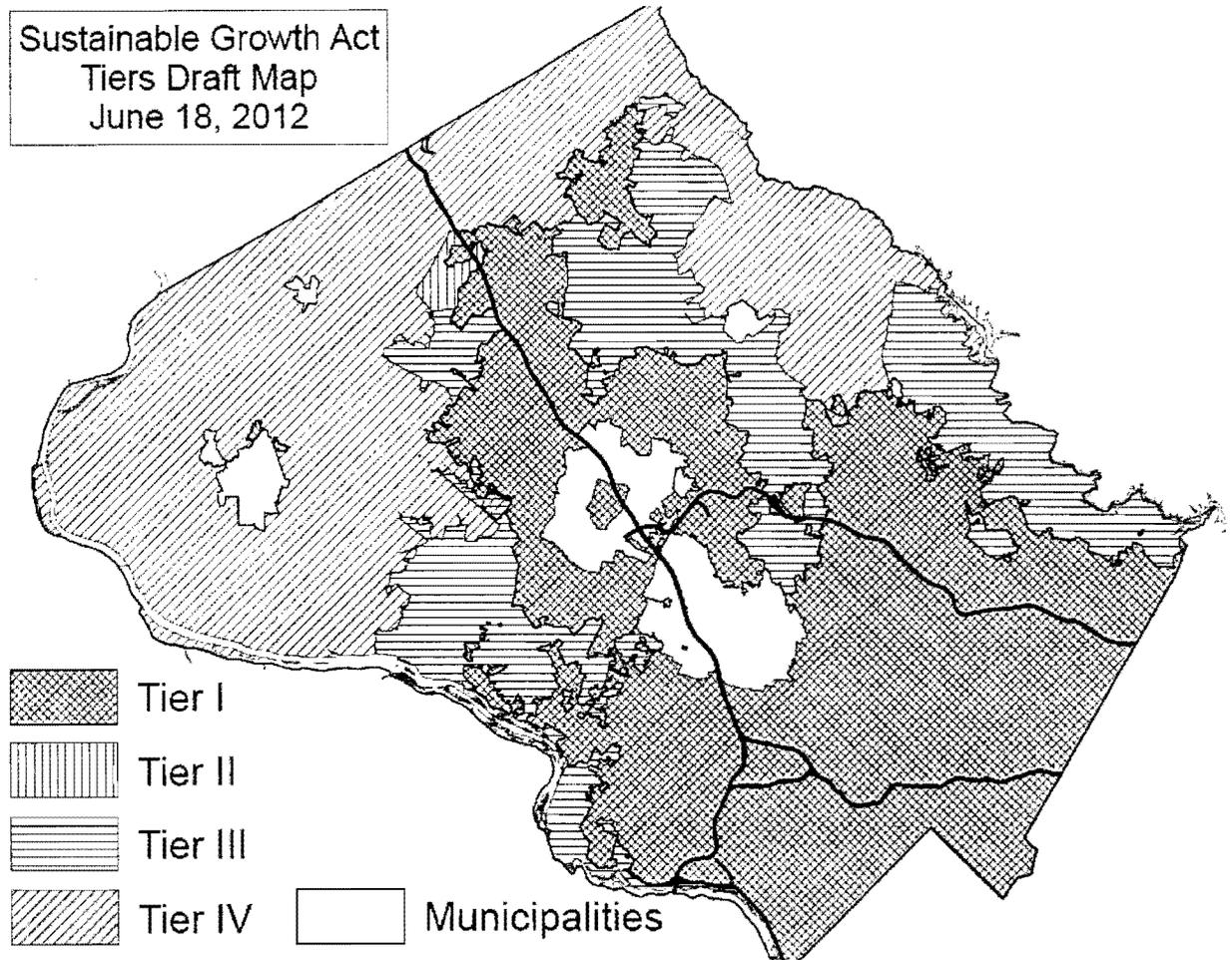
4 (e) *Wells and septic systems.* Before the Board approves a plan for lots with
5 individual wells or septic systems, the plan must be approved by the
6 Department of Permitting Services. The Board must review the plan under
7 the Maryland Sustainable Growth and Agricultural Preservation Act of
8 2012.

9 (1) The official map displaying the Growth Tier areas as allowed under
10 the Maryland Sustainable Growth and Agricultural Preservation Act
11 of 2012 is on the Planning [[Board]] Department website at
12 <http://www.montgomeryplanning.org/development/>.

13 The map may be periodically updated, except that once [[amended
14 by]] the Council has approved a general plan amendment that adopts
15 Tier areas, the Tier areas may only be amended as part of a general
16 plan amendment. The following is a representation of the map (June
17 20, 2012):

Subdivision Regulation Amendment No.: 12-01
with Planning Board Recommended Amendments

Sustainable Growth Act
Tiers Draft Map
June 18, 2012



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(2) The Board must deny any subdivision located in the Tier I area if the lots will be served by a septic system.

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(3) The Board must deny any major residential subdivision for lots served by septic systems located in the Tier II area [[for 5 or more residential lots served by septic systems]].

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(4) The Board may approve a subdivision for any number of residential lots served by septic systems on land located in the Tier III area, or the Tier IV area[[s.]] providing the density in the Tier IV area does not exceed 1 unit for every 20 acres.

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(5) For application of this section, a major subdivision is 6 or more residential lots.

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Subdivision Regulation Amendment No.: 12-01
with Planning Board Recommended Amendments

31 (6) For application of this section, a minor subdivision is 5 or fewer
32 residential lots.

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34 **Sec. 2. Certification of Tier 4 density.** The Planning Director must submit
35 the Tier Map to the Maryland Department of Planning, with all data required by
36 Maryland's Sustainable Growth and Agricultural Preservation Act of 2012, to
37 certify that the average density of the Tier IV area is no greater than one unit for
38 every 20 acres. This certification, to be periodically re-verified in the future,
39 would exempt the County from the limits under the Maryland Sustainable Growth
40 and Agricultural Act of 2012 on the approval of subdivisions using septic systems
41 in the Tier IV area.

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43 **Sec. 3. Effective date.** This ordinance takes effect 20 days after the date of
44 Council adoption.

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date



Subdivision Regulation Amendment (SRA) No. 12-01, Preliminary Plan – Approval Procedure



Mark Symborski, Planner Coordinator, Functional Planning & Policy Division, mark.symborski@montgomeryplanning.org, 301-495-4636



Mary Dolan, Chief, Functional Planning & Policy Division, mary.dolan@montgomeryplanning.org 301-495-4552

Completed: 07/12/12

Description

The Maryland General Assembly approved the Sustainable Growth and Agricultural Preservation Act of 2012 (SB 236) also known as the “septics bill”, during the 2012 General Assembly session. The purpose of the bill is to protect agriculture, control growth in rural areas, promote growth in areas that have infrastructure in place for it, and reduce nitrogen from septic systems—a primary pollutant of the Chesapeake Bay.

SB 236 stipulates that a local jurisdiction may not approve major subdivisions on septic systems unless it adopts Tier areas before December 31, 2012 (see Tier definitions and subdivision approval criteria in the table below). SRA 12-01 is designed to comply with the state law by adopting Tiers and providing other language as necessary until such time as the General Plan can be amended to incorporate them.

Summary

Staff recommends approval of SRA 12-01 with the following amendments (see Attachment 1).

- Line 11: See proposed edits to correctly refer to the Department’s webpage, where the Tier Areas map is located.
- Line 13 and 15: The SRA sentence beginning on line 13 could be taken to imply that the Tier Areas could not be changed except through an amendment of the General Plan that adopts the Tier Areas, when, in fact, we will be updating the map on our website periodically until the General Plan is amended. See proposed added text to clarify this issue.
- Lines 20, 21, and 26-29: Add definitions of major and minor subdivision and change language to refer to the definition of major subdivision.

As written, SRA 12-01 does not define what major or minor subdivisions are, as allowed under SB 236. As a result, because the County does not currently define these types of subdivisions, the County would default to the State’s definition of major and minor subdivision contained in SB 236: major = 5 units or more, minor = 4 units or less. The County does not currently define major or minor subdivisions, although it does have a minor subdivision process. Staff believes that the SRA should be amended to define major and minor subdivisions in order to: 1) clarify the effect of this legislation, 2) avoid

confusion caused by our minor subdivision process and 3) assure that our desired definition is established during this window of opportunity (before December 31, 2012). The proposed language is shown in Attachment 1 on:

- Lines 20 and 21: See proposed text changes.
- Lines 26-29: See proposed text additions.

The Four Tier Areas:

Tier	Major Subdivisions as defined by SB 236: (5 or more lots)	Minor Subdivisions as defined by SB 236: (4 or fewer lots)
Tier I: currently served 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	allowed on public sewer	allowed on public sewer
Tier II: currently planned for public sewer AND in the municipal growth element OR mapped locally designated growth areas	allowed on public sewer	allowed on public sewer; also allowed on septic—but should be seen as interim systems
Tier III: the area is not planned 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: <ul style="list-style-type: none"> - a municipality not served by public system; - a defined rural village; - a mapped locally designated growth area OR <ul style="list-style-type: none"> - Areas planned and zoned for large lot and rural development. 	allowed using on-site disposal with individual, community or shared facility	allowed on septic
Tier IV: the area is not planned for public sewer and is: <ul style="list-style-type: none"> - planned or zoned for Ag and resource protection OR - dominated by Ag and resource areas OR - Rural Legacy Areas, Priority Preservation Areas OR - Areas protected to the benefit of the state or local jurisdiction 	major subdivisions are not allowed on a septic system of any kind (Unless exempted, see below.)*	allowed on septic

***Tier IV major subdivision exemption:** If the “actual overall yield” in cumulative Tier IV areas is 1 unit per 20 acres or less (1:20), and this is properly demonstrated to the Maryland Department of Planning (MDP), major subdivisions would be allowed in Tier IV. This calculation is done periodically to ensure continued conformance with the 1:20 density in Tier IV.

Other Key SB 236 Provisions

Definition of Subdivision in SB 236

Subdivision is defined in SB 236 as the division of a tract or parcel of land into at least two lots for the immediate or future purpose of sale or building development.

Major Subdivision Definition

The bill defines a "major subdivision" as how a local jurisdiction defines a major subdivision in a local ordinance or regulation (1) already in effect by January 1, 2012; or (2) adopted by December 31, 2012, if a jurisdiction either chooses to create a new definition solely for this bill or if a local ordinance or regulation had not defined a major subdivision by January 1, 2012. Otherwise, if a jurisdiction has not defined a major subdivision by December 31, 2012, then a major subdivision is defined as the subdivision of land into five or more new lots. Since this language is in the state law, if we do not define this term for Montgomery County, we could be subject to subsequent changes in state law.

Minor Subdivision Definition

The bill similarly defines a "minor subdivision" as how a local jurisdiction defines a minor subdivision in a local ordinance or regulation (1) already in effect by January 1, 2012; or (2) adopted by December 31, 2012, if a jurisdiction either chooses to create a new definition solely for this bill or if a local ordinance or regulation had not defined a minor subdivision by January 1, 2012. However, a definition of a minor subdivision may not exceed seven new lots. Otherwise, if a jurisdiction has not defined a minor subdivision by December 31, 2012, then a minor subdivision is defined as fewer than five lots.

Restrictions on Further Subdivision of Residential Minor Subdivisions

SB 236 also includes prohibitions against further subdividing residential minor subdivisions or associated remainders in Tiers II, III, or IV, unless the land is in a Primary Funding Area (PFA) and designated for public sewer within 10 years. Land may still be subdivided in stages if the number of total lots, plats, and building sites are fixed in the initial subdivision. A remainder parcel or tract of land may also be subdivided for nonresidential agricultural purposes.

Relationship to General Plans

Under SB 236, local jurisdictions that adopt Tier Areas must incorporate them within their General Plans within six years.

Changes to the Tiers over Time

Until the Tiers are included in the general plan, a local jurisdiction can change the Tiers administratively. Once the Tiers are included in a general plan, the Tiers can only be officially changed through a local jurisdiction's general plan amendment process. Language changes are proposed to clarify this aspect of the mapping.

New Shared or Community Sewerage Systems

New shared facilities and community sewerage systems can only be approved if they are managed, operated, and maintained by a controlling authority or third party under contract with the controlling authority. This applies to all new shared systems even if no new subdivision is proposed.

Grandfathering Provision

Under SB 236, if an applicant submits a preliminary plan with all lots by October 1, 2012 and receives plan approval by October 1, 2016, then the limitations on wastewater disposal systems do not apply. However, this should not affect Montgomery County if MDP certifies existing density in Tier IV as 1:20 dwelling units per acre or less, as is expected.

SRA 12-01

To comply with SB 236, and avoid a moratorium on major subdivisions on septic systems, Planning Department staff has been working with County Council staff and the County Executive to amend the Subdivisions Regulations, which can be accomplished within the state law time frame. Council staff has created a Subdivision Regulation Amendment (SRA 12-01) to meet this need until such time as the General Plan can be amended.

As written, SRA 12-01 does not define what major or minor subdivisions are, as allowed under SB 236. As a result, because the County does not currently define these types of subdivisions, the County would default to the State's definition of major and minor subdivision contained in SB 236: major = 5 units or more, minor = 4 units or less. The County does not currently define major or minor subdivisions, although it does have a minor subdivision process. Staff believes that the SRA should be amended to define major and minor subdivisions in order to: 1) clarify the effect of this legislation, 2) avoid confusion caused by our minor subdivision process and 3) assure that our desired definition is established during this window of opportunity (before December 31, 2012). The proposed language is shown in Attachment 1.

SRA 12-01 revises the preliminary subdivision plan approval procedure to adopt Tier Areas, establishes septic regulations in those Tier Areas that are consistent with the County's current practices, and provides for certification by the Maryland Department of Planning that the average density of the Tier IV Area is no greater than one unit for every 20 acres—which will allow the County to approve major subdivisions on septic systems in Tier IV.

As the SRA indicates, the official Tier Areas map will be maintained on the Planning Department website, and will eventually be incorporated into the General Plan. The map in the introduced SRA is a representation of the draft map as of 6/18/12. If adopted, the SRA will contain the latest representation of the Tier Areas Map available at that time. The Tier Areas Map may continue to change per further discussions with MDP, the Planning Board and the County Council in the coming months. Those changes, and any subsequent to those discussions will be reflected in the Tier Areas Map located on the Planning Department's website, and ultimately, in an amendment to the General Plan. Clarifying language has been recommended to the SRA regarding this issue.

Draft Tier Areas Map and Tier IV Density Calculations

The draft Tiers Map in the attached SRA shows the location of the four Tiers in the County. As indicated above, if the actual density of Tier IV is less than one dwelling unit per twenty acres, then the State will grant an exemption to the prohibition of major subdivisions on septic systems in Tier IV. Following State guidance, the calculation of actual density in Tier IV is based on the total area of Tier IV RDT zoning, minus parks and land under Agricultural Easement divided by the number of existing homes (not counting tenant houses). Our draft calculations indicate that the current density is 1:26, and that Montgomery County should qualify for an exemption.

The State is currently meeting with local jurisdictions on an informal basis to review their draft Tier Areas maps. The County's draft Tier Areas map and Tier IV density calculations will be reviewed by MDP on July 18, 2012. At that meeting the State will either give an unofficial approval, or indicate to us what we would need to change to meet the requirements of the law. The Tier Areas Map will be maintained on the Planning Department's webpage, and will be updated as necessary. The Tiers Area Map will eventually be incorporated in the General Plan, and will subsequently be updated periodically as required by the State, probably every six years.

Under SB 236, once the Tier Areas are adopted by a local jurisdiction, MDP may comment on them. If MDP so comments on any of the Tiers or on an area within one of the Tiers, the Planning Board shall hold at least one public hearing on MDP's comments and recommend that either the Tiers or an area within the Tiers be changed or that the adopted Tiers remain unchanged.

MS/MD/kr

ATTACHMENT

1. SRA 12-01 as modified by staff



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

August 10, 2012

Mr. Richard Hall
Secretary
Maryland Department of Planning
301 West Preston Street, Suite 1101
Baltimore, Maryland 21201

Dear Secretary Hall:

I am writing to request an official certification of a Tier IV Exemption for Residential Major Subdivisions on Septic Systems for Montgomery County, as we discussed in our email of August 3, 2012. The Planning Board has recommended, and the County Council introduced, an amendment to our Subdivision Regulations to adopt the Tiers. The amendment includes a draft map of the Tier areas, including Tier IV, which will be revised as part of the County Council review process. I have included a revised map that we believe conforms to the direction we have received from your staff since the amendment's introduction and the guidance document dated August 1, 2012 (see Attachment 1). While the Council is willing to revise the map in accordance with the guidance provided, they will be reluctant to adopt a specific map without assurance that the Tier IV area shown meets the criteria for an exemption.

Montgomery County has been a leader in land preservation and has concentrated development in areas that can be served by public sewer systems that feed into treatment plants that meet the highest standards in the state, reducing the pollutant contribution of septic systems to a minimum. Areas outside the sewer envelope are generally zoned either for:

- agricultural preservation with transfer of development rights and building lot termination programs to further protect agricultural land and natural resources, or
- low density with the encouragement to cluster and preserve natural resources or agricultural areas in Homeowners Association or easements.

The first area, known as the Agricultural Reserve, has been protected since 1980 by the Agricultural and Rural Open Space Master Plan. The Plan and its zoning elements are designed to protect farmland and agriculture and encompass 93,000 acres – almost a third of the county's land resources – along the county's northern, western, and eastern borders. A

combination of protective zoning and County programs has helped to retain more than 500 farms in the Reserve.

From 1971 to 1980, when the transfer of development rights (TDR) program was created, an average of 2,700 acres of agricultural land was subdivided annually in the area later designated the Reserve. From 1981 to 2007, after the TDR program was implemented, that figure declined to less than 500 acres per year. Since 2007, only 52 lots have been approved. Many of these subdivisions retained substantial acreage in farming, clustering small lots in less productive areas and/or near roadways.

The Tier IV area we are proposing includes the Agricultural Reserve and Rural Legacy Areas, as well as areas dominated by forest and agriculture based on the layers provided by your staff. The latter areas were trimmed to align with property lines and exclude individual subdivided lots where it was clear that the majority of the property was residential in nature and no further subdivision was anticipated. The area shown includes approximately 84,000 acres, 82.5% of which is zoned RDT or 1 unit per 25 acres. Approximately 12% of the area is zoned RC or Rural at 1 unit per 5 acres, with the remainder in an assortment of other zones. Due to the development that occurred prior to the establishment of the Agricultural Reserve, the actual density of the area zoned RDT (excluding Parks and easements) is approximately one unit per 22 acres. If we include all parks and easements and all land in Tier IV, regardless of zone, the density is approximately one unit per 28 acres.

The excerpts from the Zoning Code and Subdivision regulations are shown in Attachment 2. Please be aware that we are in the process of re-writing our Zoning Code, but the intent is not to change the permitted density of the zones in Tier IV.

Databases in the form of GIS layers are located on our FTP site. See Attachment 3 for instructions to access the site. The files will be found in a folder labeled "Tiers Mapping." These include:

- Preliminary Plans (including date of Planning Board approval)
- Wetlands
- Steep Slopes
- Stream Buffer areas (Sensitive Areas)
- Parkland
- Agricultural Easements

Mr. Richard Hall
August 10, 2012
Page 3

- Forest Conservation Easements

Development potential is very difficult to estimate. Since the Planning Board has approved only 52 lots in the RDT zone in the last 5 years, it is unlikely that we will approve the 280 units that would cause us to exceed 1:20 density in the foreseeable future (using the RDT zones, excluding parks and easements).

We trust this information is sufficient to achieve the certification. If you need additional information, please contact Mark Symborski, of my staff, at 301-495-4636.

Sincerely,



Rose G. Krasnow
Acting Planning Director

RK:MD/am
Attachments



Maryland Department of Planning

Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor

Richard Eberhart Hall
Secretary
Matthew J. Power
Deputy Secretary

August 29, 2012

Rose G. Krasnow
Acting Planning Director
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, Maryland 20910

Dear Ms. Krasnow,

Thank you for your August 10 letter and supporting information requesting a Tier IV exemption from the provisions of the Sustainable Growth and Agricultural Preservation Act of 2012, otherwise known as Senate Bill 236.

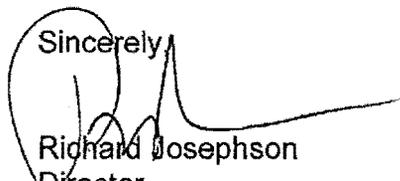
We commend the County and your staff for the progress you have made in addressing the provisions of the bill, for the work you have done in identifying the Growth Tiers, and for the analysis you have completed to date for consideration of an exemption from the residential major subdivision restrictions in your proposed Tier IV area.

Montgomery County has been a leader in smart growth and resource protection and preservation. Your Agricultural Reserve has been a nationally known and recognized area for land preservation for many years. The Reserve, along with your Rural Legacy Areas, provides a sound basis for your Tier IV area.

SB 236 is clear in that the Tiers are to be adopted first, prior to approval of any exemption. We look forward to working with you and your staff to complete our evaluation of your Tier IV exemption request as expeditiously as possible once your Tier maps are adopted.

Please feel free to contact me should you have any questions.

Sincerely,



Richard Josephson
Director
Planning Services