



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



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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)
<p>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</p>	<p>allowed on public sewer</p>	<p>allowed on public sewer</p>
<p>Tier II: currently planned for public sewer AND in the municipal growth element OR mapped locally designated growth areas</p>	<p>allowed on public sewer</p>	<p>allowed on public sewer; also allowed on septic—but should be seen as interim systems</p>
<p>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:</p> <ul style="list-style-type: none"> - a municipality not served by public system; - a defined rural village; - a mapped locally designated growth area <p>OR</p> <ul style="list-style-type: none"> - Areas planned and zoned for large lot and rural development. 	<p>allowed using on-site disposal with individual, community or shared facility</p>	<p>allowed on septic</p>
<p>Tier IV: the area is not planned for public sewer and is:</p> <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 	<p>major subdivisions are not allowed on a septic system of any kind <i>(Unless exempted, see below.)*</i></p>	<p>allowed on septic</p>

***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

Ordinance No.:
Subdivision Regulation Amend. No.: 12-01
Concerning: Preliminary Plan – Approval
Procedure
Revised: 6/19/12; Draft No. 1
Introduced: June 26, 2012
Public Hearing:
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.**

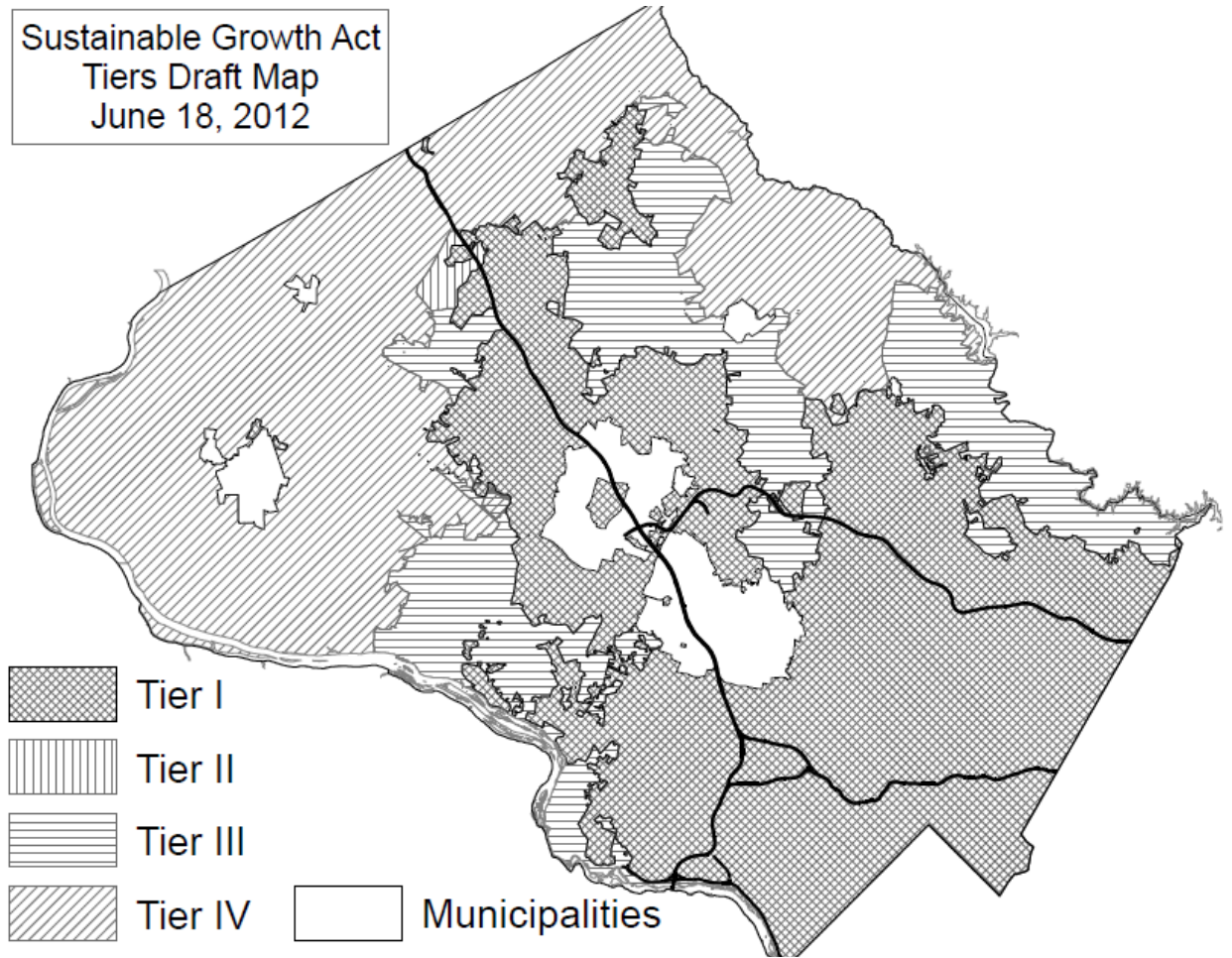
3 * * *

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 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):

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.
- (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]].
- (4) The Board may approve a subdivision for any number of residential lots served by septic systems on land located in the Tier III or Tier IV areas.
- (5) For application of this section, a major subdivision is 6 or more residential lots.
- (6) For application of this section, a minor subdivision is 5 or fewer

31 residential lots.

32 * * *

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

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

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date