

Walker-Bey, James T.

From: Greg Smith <gpsmith@igc.org>
Sent: Monday, February 19, 2024 11:58 PM
To: Clerk of the Council; Brown, Donna J.
Cc: sustainhyattsville@gmail.com
Subject: Suffrage Point DSP 21001 - Corrected - Revised Request to Deny Approval
Attachments: Suffrage Point DSP 21001 - Revised Request to Deny DSP and Variances - Final - G Smith - 20240219.pdf

Importance: High

Follow Up Flag: Follow up
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Dear Ms. Brown,

Please confirm receipt of the attached corrected revised comments.

Sincerely,

Greg Smith
(240) 605-9238

February 19, 2024

Donna J. Brown
Clerk of the County Council
Wayne K. Curry Administration Building
1301 McCormick Drive
Largo, MD 20774

Via electronic delivery

Item: Suffrage Point – Detailed Site Plan 21001

Amended Comments and Exceptions

Request that the District Council Reverse the Prince George’s County Planning Board’s Approval of Detailed Site Plan 21001 (PGCPB 2023-15A)

Dear Ms. Brown,

For the reasons stated below, I respectfully request that the District Council reverse the Prince George’s County Planning Board’s approval of Suffrage Point – Detailed Site Plan 21001 (DSP 21001), and deny approval of Werrlein’s application.

I file these comments for protective and cautionary reasons, and this filing does not preclude the raising of these and any other issues before the District Council.

I serve on the Board of Save Our Sustainable Hyattsville, Inc. (Sustainable Hyattsville), which is an all-volunteer, community-based non-profit organization that engages in public-interest research, education, and advocacy to protect communities and the environment, and to promote sustainability, good government, and civic participation. Sustainable Hyattsville’s members have participated at every stage of the Prince George’s County Planning Board’s and District Council’s administrative reviews of the Suffrage Point-Magruder Pointe project.

Incorporated by Reference

As before, we incorporate by reference the following documents, many of which we are submitted to the Planning Board:

1. Comments and exhibits submitted to the Planning Board by Sustainable Hyattsville and other project opponents prior to and during the Board’s first hearings of DSP 21001.
2. Comments and exhibits submitted to the District Council by Sustainable Hyattsville and other project opponents – including local residents and Sustainable Hyattsville members Julie Wolf and Allison Kole – prior to and during the Council’s May 2023 hearing of DSP 21001. Ms. Kole attached to her comments public records that Sustainable Hyattsville obtained from

M-NCCPC in September 2022. Those records include numerous relevant emails between Planning staff and Werrlein attorney Norman Rivera regarding the questions of how to calculate density and how many houses and townhouses might be allowed through CSP 18002 and DSP 18005. They are highly relevant to the Planning Board's review of DSP 21001. Although Sustainable Hyattsville requested those public records in April 2022, M-NCCPC did not provide them until September 2022, well after the time that Sustainable Hyattsville could have used them in its comments on PPS 4-21052, and M-NCCPC did not include any records generated after early April 2022.

3. Legal memoranda filed by Carroll Holzer, *Esq.* on behalf of Sustainable Hyattsville and Hyattsville residents in CAL 19-22819, our challenge to District Council's June 2019 approval of CSP 18002, in our appeal to the Court of Special Appeals, and related to the previous District Council's 2022 consideration of CSP 18002 on remand.
4. Comments submitted to the Maryland Department of the Environment (MDE) by Sustainable Hyattsville, the Anacostia Riverkeeper, and Neighbors of the Northwest Branch, opposing Werrlein's belated July 2021 application for authorization to disrupt the 100-year floodplain, a nearby non-tidal wetland, and the adjacent tributary to the Northwest Branch;
5. MDE's 45-day comments letter regarding Werrlein's defective application for the authorization; where MDE asked Werrlein to provide missing essential information, and asked Werrlein to explain how it came to be operating in the floodplain without the required authorization;
6. The 2004 Gateway Arts District Sector Plan, and the City of Hyattsville requests during the development of that Sector Plan to rezone the lower parcel and properties to Open Space because they lie in the floodplain and should be developed;
7. Various Anacostia Watershed Restoration Plans and Agreements to which Prince George's County and/or the State of Maryland are signatories, and which generally call for protecting and floodplains and wetlands, and protecting and expanding forests and wetlands;
8. Relevant county Functional Master Plans, including the Green Infrastructure Plan;
9. The City of Hyattsville's statements opposing CSP 18002, PPS 4-18001, DSP 18005, PPS 4-21052, and DSP 21001;
10. Comments submitted by the Anacostia Riverkeeper, Neighbors of Northwest Branch, and individual opponents of DSP 21001.
11. The County's Climate Action Plan, which, as a priority, calls for prohibiting construction in the 100-year floodplain;
12. The New Normals climate data set published by the National Oceanographic and Atmospheric Administration (NOAA) in 2021, which show that annual rainfall between 1990 and 2020 had risen significantly relative to annual rainfall between 1980 and 2010.

13. *Developing Future Projected Intensity-Duration-Frequency (IDF) Curves: A Technical Report on Data, Methods, and IDF Curves for the Chesapeake Bay Watershed and Virginia*, which was published by RAND, which the Maryland Department of the Environment prominently cites on its web site.
14. The hearing and case records for CSP 18002, PPS 4-18001, DSP 18005, and PPS 4-21052.
15. Relevant provisions of the Clean Water Act, applicable Maryland laws, and County's Water Resources Protection and Grading Code.
16. The 2016 effective FEMA Flood Insurance Study for Prince George's County.

Summary of Issues and Objections.

- Werrlein still lacks the required state-federal floodplain authorization to alter the floodplain, nontidal and therefore fails to meet a mandatory condition imposed twice – in 2019 and again in 2022 – by the District Council. Werrlein, therefore fails to comply the mandatory condition that the District Council has imposed twice – in its June 2019 Final Decision and Order approving CSP 18002 and in its October 2022 Final Decision and Order approving CSP 18002 on remand from the Maryland Court of Special Appeals.
- Werrlein has never presented a legally valid density calculation, and therefore has not demonstrated conformity with the Zoning Ordinance, the Sector Plan, or the cap that the District Council imposed in its October 2022 re-approval of CSP 18001. Therefore, Planning Board should have denied approval.
- Calculated in compliance with the Zoning Ordinance's clear definitions of "Density" and "Net Lot Area", and based upon alley, floodplain, and detached house acreages that Werrlein has presented in previous plans, the actual townhouse densities on the lower parcel, upper parcel, and entire property would radically exceed the maximum density allowed by the Zoning Ordinance, the 12.3 townhouse units per net acre approved by the District Council in October 2022, and any density found in adjacent or nearby R-55 communities.
- The Planning Board failed to take a close, hard look at whether the floodplain delineations for property are current, accurate, and protective.
- Werrlein's Applications and Plans, and County Approvals, Fail to Account for Climate Change
- Werrlein's Plans, DPIE's Approvals, and the Planning Board's Approvals Failed Account for Climate Change and Apply the Best Available Science
- The Planning Board failed to take a close, hard look at whether the stormwater management plans rely on precipitation data and assumptions that probably are obsolete and non-protective, in light of climate change and other factors.
- The Planning Board failed to give adequate weight to Werrlein's History of Environmental Violations and DPIE's failure to inspect, enforce, or even require Werrlein to obtain required county, state, and federal approval before commencing work on the upper parcel in 2019 and then across the entire property in 2021..

- Based upon the errors outlined above, the Planning Board could not credibly find that regulated environmental features would be preserved or restored to the fullest extent possible.
- Based upon the errors outlined above, the Planning Board could not credibly find that the DSP 21001 would fulfill the purposes of the Zoning Ordinance, General Plan, Sector Plan, the Clean Water Act, applicable Maryland laws, County’s Water Resources Protection and Grading Code, and plans and agreements to restore the Anacostia River and Chesapeake Bay.
- Werrlein has presented no clear plan how land that will be retained by the HOA but made available for public use will be maintained.

I. Werrlein still lacks the required state-federal floodplain authorization and therefore fails to meet a mandatory condition imposed twice – in 2019 and again in 2022 – by the District Council. Therefore, the Planning Director should not have accepted Werrlein’s application as “complete”, and the Planning Board should have denied approval.

In its June 2019 Final Decision and Order approving CSP 18002, the District Council stipulated that, at the time of the Detailed Site Plan, Werrlein must demonstrate that it has all required floodplain authorizations. The Council imposed that same condition in its October 2022 Final Decision and Order re-approving CSP 18002.

As of this writing, MDE has not issued the required authorization to alter or disturb the 100-year floodplain, the adjacent nontidal wetland (the Trumbule Trail Bog), or the adjacent tributary to stream to the Northwest Branch. The requirement for this state-federal approval is clearly laid out in the County’s Water Resources Protection and Grading Code (Subtitle 32), the Maryland Environment Article, the Code of Maryland Regulations, and the federal Clean Water Act.

On this basis alone, the Planning Board should have denied DSP 21001, and the Planning Director never should have accepted Werrlein’s application as “complete” and ready for formal review. Similarly, the Planning Board and the District Council should have denied DSP 18005 in 2020, and the Planning Director never should have accepted that application as “complete.” (DSP 18005 covered house and townhouse construction on the upper parcel, and infrastructure on the lower parcel.)

Any assertion that the original Floodplain Waiver Letter issued by the County’s Department of Permitting, Inspections, and Enforcement (DPIE) in September 2018 or the new Floodplain Waiver Letter issued by DPIE in July 2023 satisfies this mandatory condition is incorrect. While that waiver is necessary, it clearly is not sufficient to meet the condition.

County Agency Statements Demonstrating that DPIE’s Floodplain Waiver Letters Are Necessary But Not Sufficient

In its September 2018 Waiver Letter, DPIE stated:

“This approval does not relieve the applicant of responsibility for obtaining any other approvals, license or permits in accordance with Federal, State or local requirements and does not authorize commencement of the proposed project.”

In its July 2023 Waiver Letter, DPIE imposed the following specific conditions, stating:

“Therefore, the waiver request is hereby approved with the following conditions:

“1. Issuance of a Maryland Department of Environment (MDE) waterway construction permit and satisfaction of the MDE violations on this property is required, prior to issuance of any grading or building permits in the 100-year floodplain.

“2. Issuance of a Notice of Intent (NOI) permit to discharge, issued by MDE, prior to issuance of County grading permits for the development in Phase two of the project (Outparcel 1 - tax account 1830132 -4.66 acres (Phase two)

“3. FEMA LOMR approval is required after construction and prior to release of use/occupancy permits for structures adjacent to the floodplain.

“4. This approval does not relieve the applicant of the responsibility for obtaining any other approvals, license or permits in accordance with federal, state, or local requirements and does not authorize commencement of the proposed project.”

DPIE essentially acknowledges that Werrlein lacked required state-federal approvals to disturb the floodplain, adjacent wetland, and adjacent stream when it submitted DSP 21001 and when the Planning Board and District Council first heard the case. Werrlein stills lacks those approvals.

Condition 4 presents just one example of the absurdity of certain conditions imposed by the Planning Board and/or DPIE. Werrlein commenced the project in July 2019, and in the ensuing dumped stockpiles of soil and demolition debris on the lower parcel and in the 100-floodplain, which led to discharges of sediment pollution to the local stormwater system, which discharges directly to the tributary stream at the southern end of the lower parcel.

Werrlein recommenced work in May 2021, when it disturbed all, or nearly all, of the entire property, plus parkland owned by M-NCPPC.

In its December 15, 2022, Technical Referral Memo on DSP 21001, DPIE states:

“The applicant is required to secure state and federal permits from FEMA, MDE, and the US Army Corps of Engineers; however, before impacts to the floodplain can be constructed.”

Maryland Department of the Environment Statements Demonstrating That DPIE’s Waiver Letters Are Insufficient and the Werrlein Must Secure State-Federal Approvals.

On its web site, the Maryland Department of the Environment (MDE) states the following:

“The [National Flood Insurance Program] requires counties and towns to issue permits for all development in the 100-year floodplain. Development is broadly defined to include any man-made change to land, including grading, filling, dredging, extraction, storage, subdivision of land, and the construction or improvement of structures. If state and federal permits are required, development may not begin until all necessary permits are issued. Proposed development must not increase flooding or create a dangerous situation during flooding, especially on another person's property. If a structure is involved, it must be constructed to minimize damage during flooding.

“In addition to local permits, activities in the 100-year nontidal floodplain require State Waterway Construction Permits, and activities within 25 feet of or in nontidal wetlands require wetland permits from Water and Science Administration (WSA)/Maryland Department of the Environment (410-537-3745). Activities that may change tidal wetlands require Tidal Wetlands Permits from WSA (410-537-3837). To get applications for any of the above State permits, call 1-800-876-0200. Enforcement assistance can be obtained by calling WSA at (410) 537-3510 or 1-800-922-8017.”

Werrlein has not secured the required state-federal authorization to alter the floodplain, the site-adjacent non-tidal wetland, or the Northwest Branch tributary that emerges from beneath the lower parcel. Therefore, the Planning Board should not have accepted DSP 21001 for review, and it should have approved DSP 21001. In fact, the Planning Board should not have accepted DSP 18005 for review, and the Planning Board and the District Council should not have approved it in 2020.

Werrlein did not even apply for that required state-federal authorization until late July or early August 2021, well after it had graded, grubbed, and otherwise disturbed nearly the entire lower parcel, as well as adjacent M-NCPPC land. Werrlein applied only after Sustainable Hyattsville reported to MDE in May 2021 that Werrlein was working on both parcel, and in the floodplain, without required state-federal permits, and nearly two months after MDE had inspected the site, found Werrlein to be in significant non-compliance, and directed Werrlein to stop all grading and to stabilize all stockpiles of soil and demolition debris.

MDE convened a public hearing on Werrlein’s application in December 2021. The City of Hyattsville, Sustainable Hyattsville, the Anacostia Riverkeeper, Neighbors of the Northwest Branch, and numerous Hyattsville residents filed comments opposing Werrlein’s application.

II. Werrlein has never presented a legally valid density calculation, and therefore has not demonstrated conformity with the Zoning Ordinance, the Sector Plan, or the cap that the District Council imposed in its October 2022 re-approval of CSP 18001. Therefore, Planning Board should have denied approval.

1. Section 27-107.01(66) defines “Density” as "The number of 'Dwelling Units' per acre of 'Net Lot Area.' "

2. Section 27-107.01(161) defines Net Lot Area as "The total contiguous area included within the 'Lot Lines' of a 'Lot,' excluding:
 - i. 'Alleys,' 'Streets,' and other public ways; and
 - ii. Land lying within a 'One Hundred (100) Year Floodplain[.]' "

These two clear definitions dictate how density must be calculated in the R-55 Zone and other conventional residential zones.

Neither the Planning Board nor the applicant cites any authority in the Zoning Ordinance or any public-interest rationale for ignoring that language or for allowing the applicant using Net Tract Area rather than Net Lot Area.

The Zoning Ordinance presents no instance in which density in these zones may or must be calculated based on Net Tract Area, as Werrlein and the Planning now assert in their latest attempt to make the townhouse densities appear to be less than the maximum allowed by the Zoning Ordinance or the District's Council's approval of CSP 18002.

The Court of Special appeals did not order the District Council to ignore this clear, prescriptive language in Sections 27-107.01(66) ad 27-107.01(161). Likewise, the District Council did not order the Planning Board to ignore these definitions when the Council remanded DSP 21001. Neither the Planning Board nor Werrlein cites any authority in the Zoning Ordinance or public-interest rationale for ignoring that language or for relying upon Net Tract Area rather than Net Lot Area.

To calculate residential density properly, one must perform two simple calculations.

First, one must derive the Net Lot Area by subtracting from the Gross Lot Area any land within a street alley, or other public way, and any land within the 100-year floodplain. Then one must calculate the density dividing the number of dwelling units by the number of acres of Net Lot Area.

The math required here is simple and straightforward enough that any child who has met the learning goals set forth in Grade 3 Mathematics Course Syllabus Prince George's County Public Schools should be able to calculate this project's density.

The fact that residential density must be based on Net Lot Area is further reinforced by the fact that the Zoning Ordinance expresses the minimum allowable lot areas for various housing types in residential zone in terms of Net Lot Area, not Net Tract Area. Section 27-442(b) sets the Minimum Net Lot Area in the R-55 Zone at 6,500 square feet per dwelling unit. Importantly, that minimum allowable Net Lot Area per dwelling unit (generally for detached houses in the R-55 Zone) translates to a maximum allowable density of 6.7 dwelling units per acre of Net Lot Area. There is nothing unclear or ambiguous in these standards for detached houses; and there is no reason to believe that the maximum allowable townhouses densities and minimum allowable lor area may be expressed any differently.

III. The densities sought by Werrlein for townhouses on the lower parcel, for townhouses on the upper parcel, and for the entire project, radically exceed the maximum density allowed by the Zoning Ordinance, the 12.3 townhouse units per net acre approved by the District Council in October 2022, and any density found in adjacent or nearby R-55 communities.

Therefore, with respect to density, the Planning Board could not credibly find that DSP 21001 conforms to CSP 18002, the Zoning Ordinance's goals, the goals for the R-55 Zone, or the Gateway Arts District Sector Plan's goals and standards for Traditional Residential Neighborhoods.

Calculated according to the Zoning Ordinance's relevant provisions:

1. The townhouse density on the lower parcel would be 33 townhouses per net acre.
2. The townhouse density on the upper parcel would be 17.9 units per acre.
3. The density of houses and townhouses on the entire property would be 16 units per acre.

Density Calculation for Townhouses on the Lower Parcel.

The townhouse density on the lower parcel would be roughly 33 units per acre, based upon:

- a. An assumption that the gross area of the lower parcel is 4.66 acres.
- b. Werrlein's statement at Item 8 in the General Notes Table for PPS 4-18001 that 3.02 acres of the property lies in the floodplain; and
- c. Werrlein's statement at Item 9 in its General Notes Table for PPS 4-21052 that the lower parcel alley would have an area of .4 acre.

Density Calculation:

$$41 \text{ townhouses} / (4.66 \text{ gross acres} - 3.02 \text{ acres of floodplain} - .40 \text{ acre of alley}) \\ = 33.1 \text{ townhouses per net acre of Net Lot Area}$$

More than five years into the review process for this project, Werrlein and the Planning Board now attempt to rely on a proposed (post-construction) floodplain area of just 1.29 acres. This is roughly 60 percent smaller than Werrlein had presented in its previous plans. This strategy fails on several points:

- a. Werrlein's plans, and county agency approvals, fail to account for climate change, so they are likely to be inaccurate and unlikely to prevent harm to non-protective;
- b. MDE has not approved Werrlein application for approval to alter the floodplain.
- c. Werrlein has failed to present sufficient evidence to demonstrate that its proposed floodplain delineation is accurate and likely meet the goals of the Zoning Ordinance, Plan 2035, the Sector Plan, or Subtitle 32.

Density Calculation for Townhouses on the Upper Parcel

The townhouse density on the upper parcel is 17.9 units per net acre of Net Lot Area, based upon the following facts.

- a. The gross area of the upper parcel is 3.6 acres.
- b. At Item 9 of its General Notes Table for PPS 4-18001, Werrlein states that the area of the alley on the upper parcel will be .36 acres. Per the Zoning Ordinance, this acreage may not be included in the Net Lot Area when calculating the townhouse density.
- c. In its Density Calculation Table for DSP 18005, which covers houses and townhouses on the upper parcel, and infrastructure on the lower parcel, Werrlein allocates 2.4 acres to the detached houses on the upper parcel. (Please see below for how Werrlein presents a misleading Density Calculation in DSP 18005.)
- d. The combined area of the alley and the land Werrlein allocates to detached houses equals 2.76 acres, which logically and legally must be subtracted from the upper parcel's gross area to derive the net acres available for the 15 townhouses. That leaves just .84 acres for the townhouses, which results in a density of 17.9 townhouses per net acre of Net Lot Area.

Density Calculation:

15 townhouses / (3.6 gross acres - 2.4 acres for attached houses - .36 acre of alley) =
17.9 townhouses per net acre of Net Lot Area

This is nearly three times the 6.7 units per acre allowed by the Zoning Ordinance, and nearly 50 percent higher than the 12.3 townhouses per net acre allowed by the Council through its reapproval of CSP 18002.

Density Calculation for the Entire Property

The overall density for the entire property would be roughly 16 units per acre, based on the above facts.

Density Calculation:

72 houses and townhouses / (8.26 gross acres - 3.02 acres of floodplain - .76 acre of alleys)
= 16.1 units per net acre

These densities rise even higher if sidewalks and other public ways, perhaps including utility easements, are subtracted from the gross area. The density for detached houses also would rise when all public ways are subtracted to derive the available Net Lot Area. To my knowledge,

Werrlein has never provided an acreage for those sidewalk and other public ways in any of its applications, and neither the Planning Board nor the District Council has required it to.

In attempting to demonstrate that the townhouse densities would not exceed allowed maximums, the Applicant and Planning staff rely on a floodplain area of just 1.29 acre. This acreage is radically smaller (60 percent smaller) than the floodplain acreages (2.95 acres to 3.02 acres) that the Applicant has presented in its previous zoning and land use applications, in its Natural Resources Inventory, and in its Conceptual Stormwater Management Plan. Relying on this smaller area is improper and entirely speculative. This area and the methodologies used to derive it have not been subject to adequate public review, and MDE has not issued the required floodplain-wetland permit.

IV. The Planning Board failed to take a close, hard look at whether the floodplain delineations for property are current, accurate, and protective.

Project opponents, including Sustainable Hyattsville and others, have presented abundant evidence that, in light of climate change and other factors, the floodplain delineations presented by Werrlein, and relied upon by DPIE and the Planning Board, may not be current, accurate, or protective.

Floodplain and wetland delineations may be obsolete due to climate change, development in the watershed, significant loss of trees in Hyattsville and the watershed, and other factors.

Sustainable Hyattsville has raised this critical issue in comments to the District Council and Planning Board regarding Werrlein's applications for several zoning land use approvals.

Project opponents have cited: NOAA's New Climate Normals (which shows a multi-decade trend in severe storms and annual rainfall, NOAA's Atlas 14 Precipitation (which agencies and engineers generally rely, and which presents data that are more than two decades out of date); studies that critique Atlas 14, including *Developing Projected Precipitation IDF Curves* of 2021, developed through NOAA's Mid-Atlantic Regional Integrated Sciences and Assessments center; the County's Climate Action Plan, which states in numerous places that FEMA floodplain maps do not account for climate change; and Plan 2035, which lays out actions the County should take to address climate change-driven flooding.

V. Werrlein's Applications and Plans, and County Approvals, Fail to Account for Climate Change

Werrlein's current application and its floodplain delineations, stormwater management plans, sediment and erosion control plans, and floodplain study all appear to rely on obsolete climate data and fail to take into account clear evidence that climate change already is bringing more extreme weather – include more frequent, more severe storms -- and that this trend will continue and possibly accelerate.

Likewise, the County's approvals of Werrlein's application, studies and plans, and MDE's decision to issue Werrlein with coverage under MDE's obsolete 14GP also failed to account for, and protect from climate change.

In its plans, studies and applications, Werrlein has relied on NOAA's Atlas 14 precipitation data and intensity-duration-frequency (IDF) curve, even though those data and curves are obsolete by more than 20 years. Published in 2006, Atlas 14 relies on climate data no more recent than 2000.

VI. Werrlein's Plans, DPIE's Approvals, and the Planning Board's Approvals Failed Account for Climate Change and Apply the Best Available Science

As it reviewed Werrlein's DSP application and the supporting documents submitted by Werrlein, DPIE, and other parties, the Planning Board should have accounted for climate change as fully as possible, and should apply the best available data, information, analysis, science, and policies.

Data presented by the National Oceanic Atmospheric Administration in its New Normals show that total annual precipitation and the frequency and intensity of storms have increased in our region. For example, **annual rainfall totals at BWI airport increased by nearly five and a half inches from the 1981-2010 period to the 2006-2020 period, which the Chesapeake Legal Alliance rightly describes as "an astounding rate of change in a climatological blink of an eye."**

Please see NOAA New Normal data sets for annual precipitation, maximum temperatures, and average annual temperatures in Prince George's County and the District of Columbia, which are sharing via Google Drive. These data, covering 1895 to 2021, show increases in all three metrics with decent years and decades generally showing the highest values.

Prince George's County and the State of Maryland are well aware that we face new climate normal. MDE is well aware that the data relied on for stormwater permits, flood plain permits and compensatory mitigation, erosion and sediment control plans, and other critical plans and decisions are obsolete, and have been obsolete for decades. MDE's Water and Science Administration refers the public to RAND's analysis of Atlas 14 data. RAND's robust demonstrates that Atlas 14 data and intensity duration, and frequency curves have under-forecast trends in recent years, and that they underestimate projected storms and precipitation.

We offer a few excerpts from relevant MDE publications, which should also hold for M-NCPPC, DPIE, and other county agencies.

WSA Climate Policy – Climate Change is Water Change

Climate change is water change. As an administration in a public regulatory agency that is responsible for water resources planning and issues water-related permits, we have a professional responsibility to ensure our decisions consider how a changing climate may impact activities that require WSA approval. Some of these climate change factors include sea level rise, storm surge, saltwater intrusion, increased precipitation, ocean acidification and extreme events including floods, heat waves, fires and drought. These can cause secondary impacts like erosion, landslides, harmful algal blooms, degradation of water sources prompting greater treatment needs, increased water demand, increased vulnerability of ecosystems and a decrease in the capacity of State waters to assimilate pollution loads.

Maryland Environment Article §2–1301 through 1306, which established the Maryland Climate Change Commission, compels each State agency to "review its planning, regulatory, and fiscal programs to identify and recommend actions to more fully integrate the consideration of

Maryland’s greenhouse gas reduction goal and the impacts of climate change”. The statute specifically calls for consideration of ‘sea level rise, storm surges and flooding, increased precipitation and temperature, and extreme weather events’.”

WSA – Building Climate Resiliency

Background

Urban and riverine flooding is a growing issue in Maryland. The increasing number of extreme rainfall events that produce intense precipitation will continue to lead to more urban and riverine flooding events unless steps are taken to mitigate their impacts. The 2017 National Climate Assessment indicates that “heavy downpours are increasing nationally, especially over the last three to five decades. The largest increases are in the Midwest and Northeast. Increases in the frequency and intensity of extreme precipitation events are projected for all U.S. regions”¹. The University of Maryland’s Center for Disaster Resilience has characterized urban flooding as a “significant source of economic loss, social disruption, and housing inequality.”² The torrential downpours that Maryland recently experienced with Hurricane Ida overwhelmed drainage systems that flooded many roads, businesses, and homes, causing property damage and death. The even more severe impacts that were experienced in New York and New Jersey illustrate the growing public safety risk associated with extreme precipitation events.

Maryland worked to address these flooding issues in 2020 by updating Maryland’s stormwater management law, signed by Governor Hogan, that became effective on June 1, 2021. The state’s Stormwater Management Law, Environment Article 4-201.1, now requires the Maryland Department of the Environment (MDE) to report on the most recent precipitation data available, investigate flooding events since 2000, and update Maryland’s stormwater quantity management standards for flood control. A report on MDE’s plans to update stormwater quantity standards is due to the Maryland General Assembly by November 1, 2021, and thereafter, on updates to the stormwater management regulations and other regulations adopted pursuant to this statute. MDE is to report on the most recent precipitation data available, defined in the statute as “historical data that describes the relationship between precipitation, intensity, duration, and return period (frequency).” Known as intensity-duration-frequency (IDF) curves, this data is used in various hydrologic models to predict runoff rates and quantities. This information is the basis for both stormwater quality and quantity management design standards. The following are the most recent statewide precipitation data available:

- 2006 National Oceanic and Atmospheric Administration (NOAA) Atlas 14, Precipitation-Frequency Atlas of the United States, Volume 2,3 includes record data through December 2000;
- In early 2021, Maryland Department of Transportation (MDOT), along with the states of Delaware, Virginia, and North Carolina agreed to fund an update to the 2006 NOAA Atlas 14 precipitation data. This work, which began in federal fiscal year 2022, is expected to be completed within three years and will include future rainfall predictions;
- In May 2021, a consortium of universities and the RAND Corporation published forecasted precipitation information using two air emissions scenarios (RCP 4.5 and RCP 8.5), and two

time periods (i.e., 2020-2070 and 2050-2100). The forecasted precipitation data can be found at midatlantic-idf.rcc-acis.org/.

The 2006 Atlas 14 precipitation data and the RAND Corporation climate projections incorporate regional atmospheric and topographic variability. Both are available for a number of locations across the state. Table 1 provides, for one location in Maryland, an example of the comparison of precipitation information between the 2006 Atlas 14, and the RAND Corporation's projections due to climate change.

Source: Advancing Stormwater Resiliency in Maryland (A-StoRM) – Maryland's Stormwater Management Climate Change Action Plan FY 2021 Data, report to the Governor, Senate and House, Maryland Department of the Environment, November 2021

There is no evidence in the record that Werrlein's studies or plans, or the agencies' approvals of Werrlein's plans and permit applications, take climate change into account. It is reasonable to assume that Werrlein and the agencies relied on precipitation or storm data contained in NOAA's Atlas 14. NOAA last revised Atlas 14 in 2006, and the precipitation data incorporated into Atlas 14 generally are no newer than 2000, meaning the precipitation data and storm Intensity, Duration, and Frequency Curves that

The FEMA floodplain map for this property and for Prince George's County is based upon a Flood Insurance Study (FIS) that became effective on September 16, 2016. That FIS was published by FEMA, and was developed jointly by FEMA, Prince George's County, and the City of Laurel.

Potential Sources of Flooding on This Property

Flooding on this property and the surrounding properties caused by or contributed to by water coming from multiple directions and sources:

- Precipitation falling directly on a property or surrounding properties
- Water flowing down the Northwest Branch
- Stormwater flowing directly onto the property from land at a higher elevation, e.g., the upper parcel and properties to its north and east, rather than via the Northwest Branch or a nearby tributary.
- Stormwater flowing through the local stormwater system and into the adjacent tributary stream
- Water driven up the Anacostia River and the Northwest Branch by high tides and/or storm surges
- The water table beneath the property

The FEMA Map for This Property Accounts for Just One of These Sources

- Water flowing down the Northwest Branch

- The storm surge analysis for the FEMA 2016 map did not extend up the Anacostia River and the Northwest Branch

FEMA Maps Are Non-Conservative and Potentially Non-Protective in the Following Ways

FEMA maps do not account for the following:

- Precipitation falling directly on a property or surrounding properties (Photos)
- Stormwater flowing directly onto the property from land at a higher elevation, e.g., the upper parcel and properties to its north and east, rather than via the Northwest Branch or a nearby tributary.
- Stormwater flowing through the local stormwater system and into the adjacent tributary stream
- Water driven up the Anacostia River and the Northwest Branch by high tides. (NOAA high tide maps)
- The water table beneath the property rising or being higher than normal due to heavy rains or other factors
- Changes in local land use and topography after a map published
- Changes in stream morphology by sediment loading or other factors after a map is published

FEMA maps assume that only one of these events takes place at a time. That is, FEMA 100-year floodplain maps are based on the one-percent probability that either of these events, but not both, will take place at the same time in a given year. They do not examine what happens if both of these events take place at the same time.

FEMA maps do not examine what happens if either or both of these events take place in conjunction with one or more of these events.

FEMA maps assume that water flow in a stream or river is not obstructed by, for instance, fallen trees or other debris being caught up at a low bridge and creating dam or partial dam.

This FEMA Map probably doesn't account for:

- Precipitation falling directly on the floodplain property or adjacent properties, whether in or near the floodplain.
- Precipitation falling on land that: a. is uphill from the floodplain; and b. may drain to the floodplain on its way to the water course or floodway. In this case, the local FEMA map would not count on stormwater generated
- Extreme high tides
- Climate Change

Climate Change Impacts That This FEMA Map Probably Doesn't Account for:

- Changes in the intensity, duration, and frequency of storms
- Increases in the frequency of severe or extreme storms
- Sea level rise
- Higher storm surges due to sea level rise and-or more severe storms
- Higher tides due to sea level rise

VII. The Planning Board failed to take a close, hard look at whether the stormwater management plans rely on precipitation data and assumptions that probably are obsolete and non-protective, in light of climate change and other factors.

Rather than address this issue in any serious way, the Planning Board simply ignored the evidence in the record and/or dismissed it as irrelevant. Except to note, very briefly, in its resolution that opponents raised concerns about this issue, the Board's resolution fails even to mention climate change or global warming.

VIII. The Planning Board failed to give adequate weight to Werrlein's History of Environmental Violations and DPIE's failure to inspect, enforce, or even require Werrlein to obtain required county, state, and federal approval before commencing work on the upper parcel in 2019 and then across the entire property in 2021..

IX. Based upon the errors outlined above, the Planning Board could not credibly find that regulated environmental features would be preserved or restored to the fullest extent possible.

X. Based upon the errors outlined above, the Planning Board could not credibly find that the DSP 21001 would fulfill the purposes of the Zoning Ordinance, General Plan, Sector Plan, the Clean Water Act, applicable Maryland laws, County's Water Resources Protection and Grading Code, and plans and agreements to restore the Anacostia River and Chesapeake Bay.

Sincerely,

Greg Smith
 Board Member
 Sustainable Hyattsville
 4204 Farragut Street
 Hyattsville, Maryland 20781
 gpsmith@igc.org