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Re: Charles County Comprehensive Plan Amendments and Rezoning of Watershed Conservation District

Dear Charles County Board of Commissioners:

We write to raise concerns regarding the expansion of the Maryland Airport and the related rezoning near the airport, and to formally request:

- 1) reconsideration of the Charles County Board of Commissioners' ("Board") October 19, 2021 decision approving amendments to the Charles County Comprehensive Plan that removed the Watershed Conservation District designation from 558 acres near the Maryland Airport, including a new public hearing;
- 2) a pause in proceedings regarding any related rezoning of this acreage from "Watershed Conservation District" to "Employment and industrial;" and
- 3) no action on the Bryans Road Subarea Plan that considers the Watershed Conservation District removed from the area in question.

The rezoning of 558 acres around the Maryland Airport would bring grave environmental and environmental justice harms, devastating the Mattawoman Creek and exacerbating existing air pollution impacts for the predominantly Black community near the airport. The Board's approval of the Comprehensive Plan amendment was made without adequate consideration of environmental impacts—impacts that have also not been properly reviewed in earlier stale and inactive federal environmental reviews under the National Environmental Policy Act ("NEPA") for certain expansions of the airport. In addition, the Board did not provide adequate notice or

ability to participate in the public hearing on the Comprehensive Plan amendments held on September 22, 2021, as required by the Maryland Open Meetings Act. For these reasons, we request that the Board reopen and reconsider the Comprehensive Plan amendments made on October 19, 2021, and immediately pause any related rezoning proceedings, or change in land use designations (other than returning the area to the Watershed Conservation District), pending the completion of forthcoming federal environmental reviews of the Maryland Airport expansion.

I. Background

The Maryland Airport is located in a predominantly Black area of Charles County, Maryland.¹ This area has also been designated an “Equity Emphasis Area,” which entitles it to special consideration in local planning to promote racial equity.² The airport is located less than a mile from Matthew Henson Middle School and JC Parks Elementary School, both of which also have predominantly Black student populations.³ The airport is situated on 215 acres, and had approximately 22,000 airplane takeoffs and landings in 2020.⁴ The airport primarily serves piston-engine airplanes, the vast majority of which are fueled by aviation gasoline (avgas), which contains lead.⁵ Lead is an extremely dangerous neurotoxin, and there is no safe level of lead in blood.⁶ Airborne lead can be inhaled by people near airports, either from direct aircraft emissions or from interacting with contaminated soil or dust from earlier aircraft emissions.⁷ In January 2022, EPA announced that it will review and evaluate whether emissions from small planes using leaded avgas endanger public health and welfare, promising to make a proposed “endangerment finding” in 2022 and a final endangerment finding in 2023.⁸

The Maryland Airport has been in the process of expanding for at least the last two decades, and while some of those expansion plans have already been realized, much of the expansion has not yet been completed, including the completion of the runway extension to

¹ The airport is located near Bryans Road, Maryland, which is approximately 62.2% Black. U.S. Census Bureau, QuickFacts, Bryans Road CDP, Maryland, <https://www.census.gov/quickfacts/bryansroadcdpmaryland>.

² Metropolitan Washington Council of Governments, Resolution Endorsing Equity Emphasis Areas as a Key Planning Concept and Tool to Inform Decision Making and Action (Oct. 2021), *available at* [https://go.boarddocs.com/md/chrlsco/Board.nsf/files/C92PEX63B5D6/\\$file/Certified_Resolution_R46-2021_-_Endorsing_Equity_Emphasis_Areas_as_a_Key_Planning_Concept_and_Tool.pdf](https://go.boarddocs.com/md/chrlsco/Board.nsf/files/C92PEX63B5D6/$file/Certified_Resolution_R46-2021_-_Endorsing_Equity_Emphasis_Areas_as_a_Key_Planning_Concept_and_Tool.pdf); Equity Emphasis Areas in Charles County, *available at* [https://go.boarddocs.com/md/chrlsco/Board.nsf/files/C92PEZ63B79A/\\$file/COG%20EEAs%20-%20Charles%20County%20Map.pdf](https://go.boarddocs.com/md/chrlsco/Board.nsf/files/C92PEZ63B79A/$file/COG%20EEAs%20-%20Charles%20County%20Map.pdf).

³ National Center for Education Statistics, JC Parks Elementary School, https://nces.ed.gov/ccd/schoolsearch/school_detail.asp?Search=1&Miles=10&Zip=20640&ID=240027000592; National Center for Education Statistics, Matthew Henson Middle School, https://nces.ed.gov/ccd/schoolsearch/school_detail.asp?ID=240027000599.

⁴ Charles County, Maryland Airport, <https://www.meetcharlescounty.com/maryland-airport/>.

⁵ National Academies of Sciences, Engineering, and Medicine, Option for Reducing Lead Emissions from Piston-Engine Aircraft (2021), at 1, <https://www.nap.edu/catalog/26050/options-for-reducing-lead-emissions-from-piston-engine-aircraft>.

⁶ *Id.*

⁷ *Id.* at 2.

⁸ EPA, Regulations for Lead Emissions from Aircraft, <https://www.epa.gov/regulations-emissions-vehicles-and-engines/regulations-lead-emissions-aircraft>.

4,300 feet and additional hangar construction, among other projects. As discussed further below, these additional expansions will require new environmental review under NEPA, and we understand the airport is in the early stages of beginning a new NEPA analysis.

On October 19, 2021, the Charles County Board of Commissioners approved a series of amendments to the county's Comprehensive Plan that are intended to facilitate development in the vicinity of the airport by removing the "Watershed Conservation District" designation on 558 acres. The removal of the environmental protections afforded by this designation paves the way for a rezoning of the 558 acres from "Watershed Conservation District" to "Employment and Industrial." The rezoning of this land has not yet been completed, and there are important reasons why it must not be implemented.

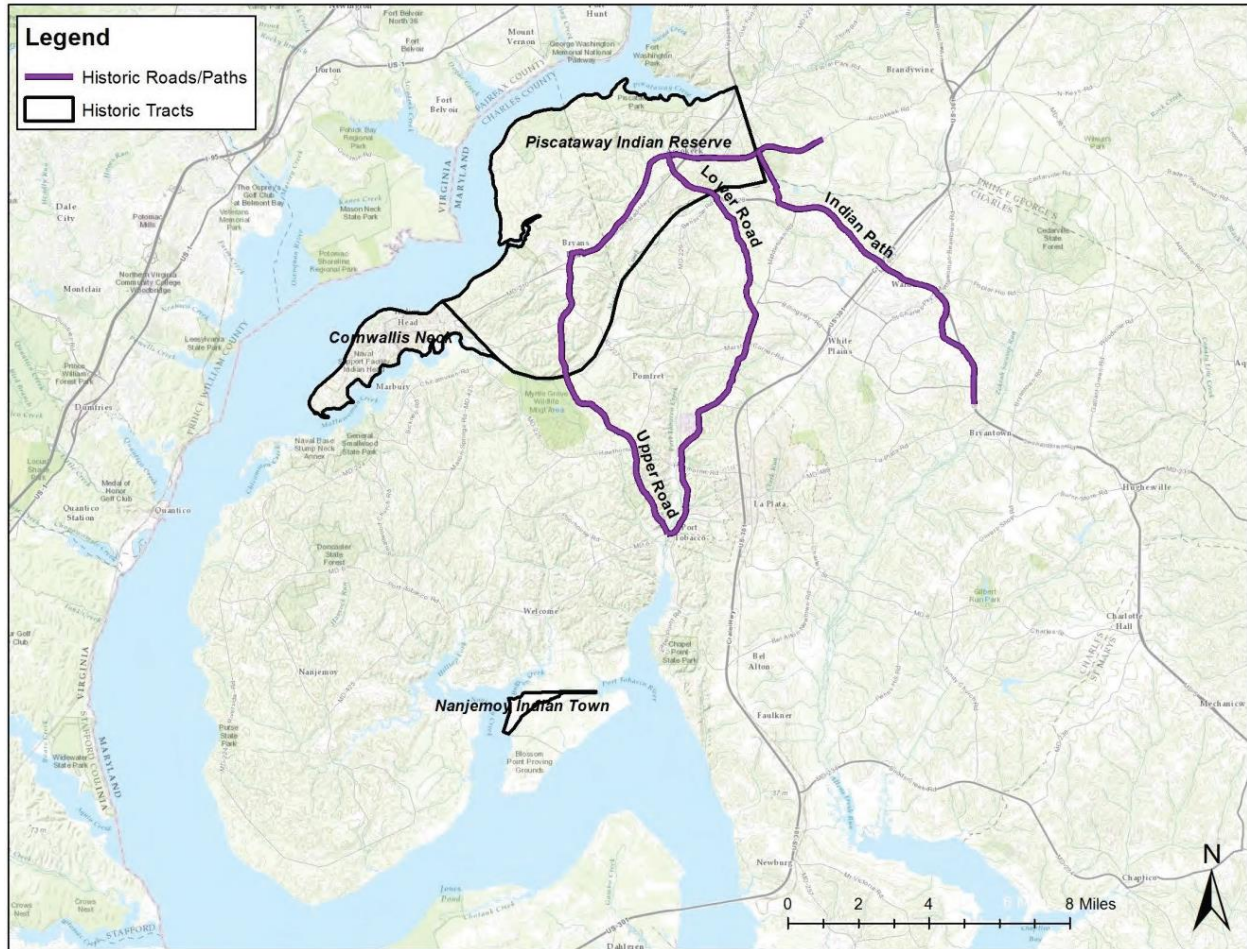
Charles County applied the Watershed Conservation District designation to these 558 acres in 2017 in order to protect the environmentally sensitive area that drains into Mattawoman Creek, an important tributary of the Potomac River. This zoning change for these and other thousands of acres was specifically intended to protect the undeveloped land, which is environmentally sensitive and predominantly forested, and prevent future stormwater pollution and degradation of the Mattawoman Creek and Port Tobacco River watersheds.

The Piscataway People, including the Maryland state-recognized Piscataway Indian Nation and Piscataway Conoy Tribe, have long lived in the Mattawoman watershed region (as part of a much larger Piscataway homeland).⁹ In 2013, Preservation Maryland placed twelve indigenous landscapes in six Maryland counties on its Maryland Endangered list, including the Mattawoman watershed, which is threatened by the urban and suburban development in and around Waldorf, Maryland.¹⁰ The area near the Maryland airport includes important indigenous areas, including historic tracts and paths.¹¹

⁹ Indigenous Cultural Landscapes Study for the Nanjemoy and Mattawoman Creek Watersheds (Nov. 2015), <https://chesapeakeconservancy.org/wp-content/uploads/2020/02/NanjemoyMattawoman-ICL-FINAL.pdf>.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 47.



Source: Indigenous Cultural Landscapes Study for the Nanjemoy and Mattawoman Creek Watersheds at 47 (Nov. 2015), <https://chesapeakeconservancy.org/wp-content/uploads/2020/02/NanjemoyMattawoman-ICL-FINAL.pdf>

Lithics have also been found at the airport site itself.¹²

The Mattawoman Creek is ranked eighth out of 137 watersheds in Maryland for freshwater stream biodiversity and supports spawning for anadromous fish.¹³ It is also a highly popular bass fishing destination, and the site of bass tournaments that bring a significant amount of economic activity into the county.¹⁴ But the Mattawoman’s health is tenuous, and is already declining due to development and the county’s failure to require adequate stormwater management.¹⁵ The Mattawoman was listed as impaired due to nutrient pollution in 1996, and later pollution control plans have accordingly called for roughly 50% reductions in nutrients from urban stormwater runoff.¹⁶

¹² See 2002 Environmental Assessment.

¹³ Maryland Department of Natural Resources, Mattawoman Case Study, <https://dnr.maryland.gov/fisheries/pages/fhiep/mattawoman.aspx>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Charles County Municipal Stormwater Restoration Plan (Dec. 2017) at 39, <https://www.charlescountymd.gov/home/showpublisheddocument/4319/637231408687400000>.

In 2012, during the early part of the 2016 Comprehensive Plan process, federal and state agencies had concerns about the health of Mattawoman Creek. A Mattawoman Ecosystem Management Interagency Task Force was formed, and the task force transmitted a report to Charles County, including detailed recommendations regarding stormwater management and future development.¹⁷ Removal of the Watershed Conservation District designation from this area reverses course on these plans and exacerbates the existing stormwater pollution concerns.

II. Federal Review under the National Environmental Policy Act

In approving the Charles County Comprehensive Plan amendments that will facilitate rezoning 558 acres in Charles County from “Watershed Conservation District” to “Employment and industrial,” the Board of Commissioners declined to adequately address the numerous environmental and environmental justice concerns implicated by this significant change. During the Charles County Planning Commission’s 2021 consideration of the proposed amendments, the county’s Department of Planning and Growth Management dismissed questions that members of the Planning Commission had asked about environmental impacts and environmental justice impacts, on the grounds that those questions had been reviewed in a 2002 Environmental Assessment (“EA”)¹⁸ regarding certain planned expansions of the airport, and that this EA concluded with the Federal Aviation Administration (“FAA”) issuing a “Finding of No Significant Impact.”¹⁹ But this reliance on old, separate environmental reviews for certain airport expansion projects ignores the fundamental fact that the environmental impacts from rezoning 558 acres near the airport will necessarily be substantially different from the impacts associated with a 2002 expansion of the airport facility itself.²⁰ The significant stormwater runoff and other impacts associated with potential development of hundreds of acres in the Mattawoman Creek watershed will be different in kind and in scope from the impacts associated with the extension of the airport runway and other airport expansion projects considered in the 2002 EA, and require their own consideration. Moreover, the 2002 EA is stale, having been completed two decades ago.²¹ The County has shirked its duty to engage in any review of the environmental and environmental justice impacts associated with the amendments and planned rezoning.

¹⁷ The Case for Protection of the Watershed Resources of Mattawoman Creek: Recommendations and Management Initiatives to Protect the Mattawoman Ecosystem (March 2012),

https://dnr.maryland.gov/fisheries/Documents/Mattawoman_Ecosystem_Final_Report_March_2012.pdf.

¹⁸ While this EA was finalized in 2002, the FAA issued a “Finding of No Significant Impact” in 2003.

¹⁹ See, e.g., Ex. A (Memorandum from Department of Planning and Growth Management to Charles County Planning Commission, June 17, 2021).

²⁰ In addition, the Planning and Growth Management staff promised the Planning Commission that a study that was in the process of being written would answer all of the Planning Commission's questions. The study did not address the environmental or environmental justice issues, and did not address the lead pollution that is impacting children at the two public schools near the airport, as promised by the staff. While the study is an economic one, it only addressed 50 acres of the area proposed now for rezoning.

[https://go.boarddocs.com/md/chrlsco/Board.nsf/files/C43TCB713909/\\$file/Industrial%20Market%20Analysis%206_16_2021.pdf](https://go.boarddocs.com/md/chrlsco/Board.nsf/files/C43TCB713909/$file/Industrial%20Market%20Analysis%206_16_2021.pdf).

²¹ Pursuant to NEPA’s implementing regulations, an agency must supplement NEPA documents if “[t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns,” or if “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9. An agency’s NEPA review is inadequate if it relies on outdated information or outdated NEPA documents. See, e.g., *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1086–87

In addition, at least three federal agencies expressed serious concerns about the environmental impacts of Maryland Airport expansions and the inadequacy of the prior federal NEPA reviews. At the time the 2002 EA was conducted, federal agencies, including the U.S. Army Corps of Engineers and the U.S. National Parks Service, expressed concerns about a failure to consider alternatives to the proposed airport expansions, failure to consider ultimate project design and cumulative impacts, and significant long-term adverse impacts to the Mattawoman.²² Among other things, the National Park Service expressed its opinion that the airport expansion would cause “significant long-term adverse effects to Mattawoman Creek” and concern that because of discrepancies between the planned expansion and the aircraft the airport planned to serve, the EA “may not be disclosing the ultimate design of Maryland Airport.”²³ In 2014 and 2015, with the airport construction not yet completed, FAA worked on a draft supplemental EA to address the impacts of 6.5 acres of tree clearing that had become necessary to complete the original construction project contemplated in the 2002 EA. But this supplemental EA was never finalized, after the U.S. Environmental Protection Agency (“EPA”) wrote a letter to FAA raising concerns regarding the vagueness of the EA, improper segmentation of airport construction projects, and failure to consider potential indirect and cumulative impacts of the projects, including to the Mattawoman, which EPA recognized is “under many stresses.”²⁴

We understand that the Maryland Airport is now planning additional expansions that will require new environmental review under NEPA.²⁵ Specifically, the Maryland Airport plans to construct new hangars and associated infrastructure, and this project will require a new EA.²⁶ Yet, on October 19, 2021, staff at the county commissioners’ public work session discussing the Comprehensive Plan amendments dismissed concerns from the public about airport expansions on the grounds that the airport expansion was “already approved and has been ongoing.”²⁷ This incomplete explanation erroneously suggested that all decisions and approvals regarding the airport expansion have been completed.²⁸

(9th Cir. 2011) (concluding that the Surface Transportation Board did not take a “hard look” at environmental impacts when it relied on a ten-year-old aerial survey); *see also* *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1052 (9th Cir. 2013) (finding that the agency’s NEPA process was deficient, in part because the agency relied on a thirty-year-old EIS without explaining why that data remained accurate); *Lands Council v. Powell*, 395 F.3d 1019, 1031 (9th Cir. 2005) (finding that six-year-old data, without updated habitat information, was too stale).

²² *See e.g.*, Ex. B (Letter from Paul R. Wettlaufer, Transportation Program Manager, U.S. Army Corps of Engineers, to John Robinson, Talbert and Bright, Inc. (June 21, 2001) (raising concerns that the proposed Maryland Airport construction did not comply with NEPA or the Clean Water Act) and Letter from Wink Hastings, Landscape Architect, National Park Service, to Maria Stephens, Federal Aviation Administration (June 29, 2001) (raising NEPA concerns regarding the proposed Maryland airport construction).

²³ Ex. B. (Letter from Wink Hastings, Landscape Architect, National Park Service, to Maria Stephens, Federal Aviation Administration (June 29, 2001)) at 5-6.

²⁴ *See* Ex. C (letter from EPA to FAA, Oct. 30, 2014 and attached technical comments).

²⁵ *See* Ex. D (letter from Genevieve Walker, Environmental Protection Specialist FAA, to Bonnie Bick, Nov. 29, 2021).

²⁶ *See id.*

²⁷ *See* Charles County Commissioners Meeting (Oct. 19, 2021) at time stamp 2:06:39, http://openstream.charlescounty.org/mediaVideoExternal.jsp?&file=/meetings/2021/October/BOCC_101921.mp4&title=Charles%20County%20Commissioners%20Meeting.

²⁸ *See also id.* (noting that FAA never made a record of decision on its 2015 Supplemental EA on related airport expansions and that this Supplemental EA is “no longer an active document”).

Because the environmental and environmental justice impacts associated with the Comprehensive Plan amendments have not been properly considered, and because there is a new forthcoming federal environmental review of additional expansions of the Maryland Airport, the Board should reopen and reconsider its approval of the Comprehensive Plan amendments, and halt any progress on rezoning efforts until after environmental reviews of both the amendments and the future federal airport expansion have been concluded. The significant lead air pollution, stormwater pollution, and other environmental and public health impacts associated with the airport expansion and related rezoning must be considered before the county takes any further actions facilitating development near the airport. The need for further environmental review is underscored by EPA's recent decision to issue an "endangerment finding" for leaded avgas later this year, recognizing the long-overdue need for federal protection of our air from this largest source of lead air pollution.

III. Public Participation

The Maryland Open Meetings Act requires that public bodies, like the Charles County Board of Commissioners, give the public "reasonable advance notice" of the time and location of meetings of public bodies, as well as reasonable access for the public to attend such meetings.²⁹ On the date of the public hearing for the Comprehensive Plan amendments (which was being held virtually due to Covid-19 precautions), the Board abruptly changed the procedure to one more complex and convoluted, and as it proved, unworkable. Many individuals had trouble testifying, and some made great and persistent effort to testify but were prevented from doing so. Some were promised calls from the county that never came. We know of some who were unable to testify, but the total number of witnesses prevented from speaking is not known and unknowable. In no way can this process be considered even minimally sufficient to qualify as public participation.

After the hearing, several organizations sent a letter to the County Commissioners requesting an additional hearing because of the public participation irregularities, many of which were detailed in the letter.³⁰ At the Commissioners' work session on October 19, 2021, the Commissioners failed to address the specific issues outlined in this letter and declined to grant the additional hearing.

In conclusion, we request that the Charles County Board of Commissioners immediately reopen and reconsider its October 19, 2021 decision approving the amendments to the Charles County Comprehensive Plan and hold a new public hearing. We further request that the Board pause any rezoning proceedings for the 558 acres surrounding the Maryland Airport and refrain from making any zoning decisions or changes in land use classifications for these acres, other than restoring the Watershed Conservation District designation to the affected properties, until after the environmental and environmental justice impacts are considered and the forthcoming

²⁹ Md. Code §§ 3-302; 3-102(c).

³⁰ See Ex. E (letter from Mattawoman Watershed Society and Friends to Charles County Board of Commissioners, Oct. 19, 2021).

EA for certain airport expansion plans is completed. Finally, the County should not take action on the Bryans Road Subarea plan that considers the Watershed Conservation District removed in the 558 acres surrounding the airport.

Sincerely,

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