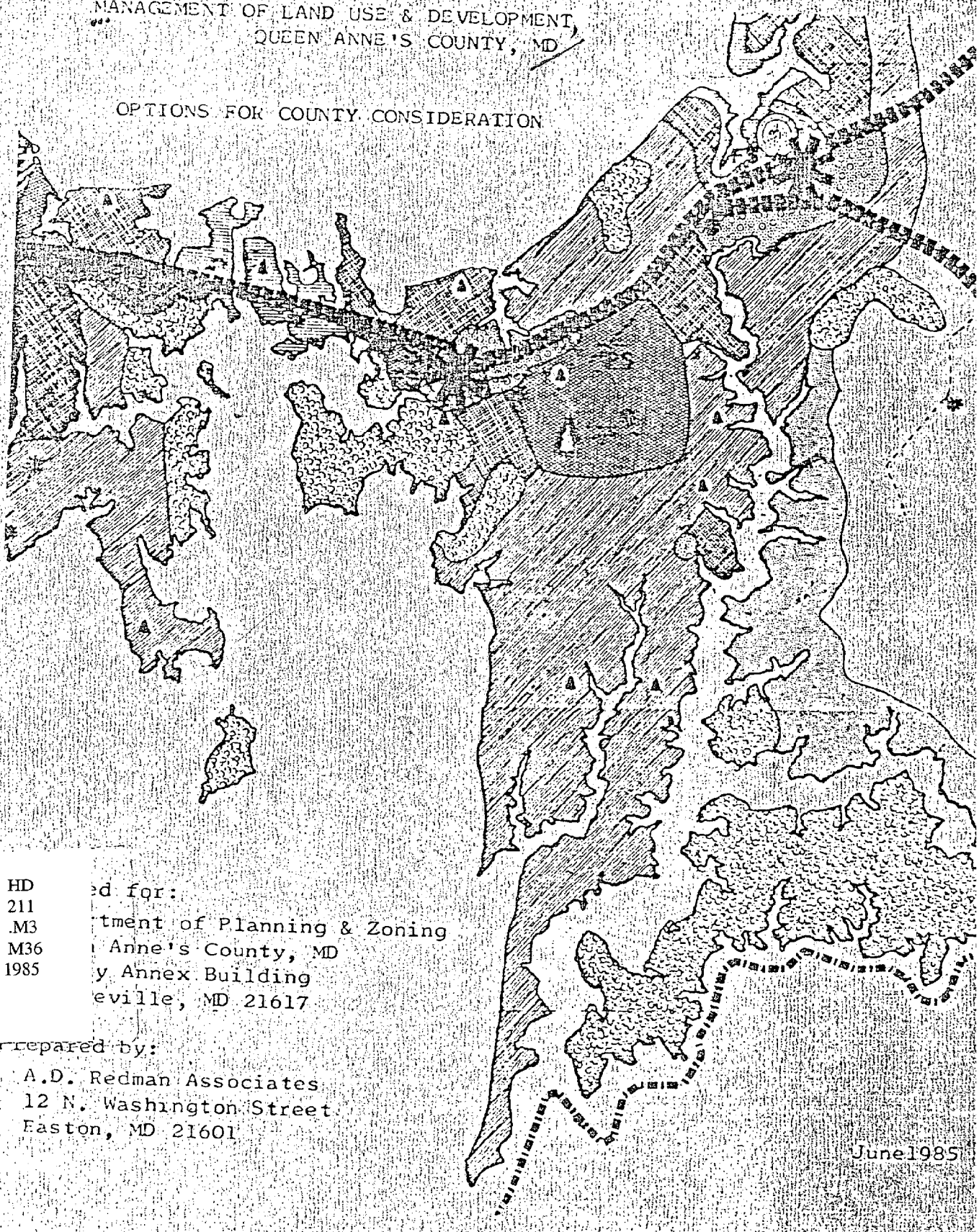
MANAGEMENT OF LAND USE & DEVELOPMENT, QUEEN ANNE'S COUNTY, MD

OPTIONS FOR COUNTY CONSIDERATION



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INTRODUCTION

The following report has been prepared to assist Queen Anne's County in evaluating optional means by which future County land use might be managed.

It is prepared at a point in time when the adequacy of existing regulatory tools (e.g. zoning subdivision) by which the County influences or shapes its development pattern is being called into question.

In light of accelerated growth pressures evidenced in the westernmost portions of the County (4th & 5th districts) over the past ten years, this County reappraisal is more than justified.

The initial efforts of the County in response to these recent development trends and increasing growth management concerns has been preparation of a Comprehensive Plan for the 4th & 5th districts during the past year. The process through which it was developed provided opportunity for community discussion of County development and land use management issues which in turn triggered a framework of adopted objectives and policies. These policies clearly suggest that greater sophistication in the County's system of managing the form and pattern of future development will be required if they are to be successfully implemented.

At present the County is establishing a work program to evaluate needs and update its planning framework for

remaining portions of the County which do not appear to be subject to the development pressure evident in the 4th & 5th districts. These areas are somewhat removed from urbanizing forces and the County waterfront. Dominant land uses remain agricultural or agriculturally-related in nature.

Planning treatment for these areas, which are more typical of the rural nature of adjacent eastern shore counties, will most likely be substantially different both in the community objectives proffered for these areas as well as in the means by which they are accomplished.

Given very different conditions and forces at work in these two respective County areas, design of a uniform system to manage future land use which recognizes this urbanizing/rural dichotomy represents a substantial challenge.

In the final analysis, establishing a framework for managing future land use and development which satisfies the needs and interests of residents in both areas will require their respective involvement and co-authorship.

I. EVALUATION OF HISTORIC COUNTY DEVELOPMENT PATTERNS.

In order to assess the adequacy of means by which Queen Anne's County directs or manages development and use of land resources, it is first necessary to assess the climate in which current regulatory tools are being applied.

Therefore, this section of the report briefly overviews past County development trends and to some extent assesses the degree to which established plans and ordinances have influenced these trends. Sources of information reviewed as a basis for this assessment are identified in the appendix to this report.

Queen Anne's County's community development problems and needs identified in the established County planning documents are comparable to those identified by most rural counties. Consequently, the adopted plan documents do not reflect the extraordinary population boom of 39 percent that occurred in the County in the last decade. Until the past year, the rapid rate of growth in the Kent Island area evidenced in the past 15 years in particular had not been addressed by any of the existing plans.

The plans noted the existence of developmental pressures on productive agricultural land and the need to

preserve the seafood industry. Although historically a strong component of Queen Anne's economy, production in the seafood industry has declined in recent years. The reasons for the decline are both environmental and economic. Reduced supplies of seafood as a result of natural and man-made events (pollution and a hurricane) have been coupled with the loss of industrial processing capacity due to the obsolescence of existing plants.

Although housing, public facilities, and commercial development were discussed generally, again the plans did not address the impact of intensive residential and commercial development of Kent Island on the County's economy and public facilities. The potential housing shortage in the same area, caused by the population increases, was not considered. Additionally, the plans did not address the lack of adequate community facilities along Route 50 and 301 in the Kent Island area, nor did they clearly project or forecast added facility/source demands more recently prompted by substantial growth pressures.

The population expansion caused by people working on the Western Shore of the Bay seeking residences on the Eastern Shore was only reflected in the County officials' concern for protection of the County's sensitive environmental areas and cultural and historical landmarks.

To address the problems and needs identified in the County plans, Queen Anne's County established a number of goals and objectives concerning its historical assets, environment, population, economy, land use, housing and public services. For example, the land use goal of the County is to accommodate an increasing population (a maximum average growth of three percent per year), while maintaining the characteristics of a rural environment.

The keynote policy embodied in past plans which served as the basis for guiding development in Queen Anne has been to accommodate an increasing population while maintaining the characteristics of a rural environment.

For Queen Anne's County this policy meant that new residential development would be located in and around existing communities. New commercial, industrial and institutional development was to be located near existing communities or in planned highway locations. Beyond community areas, the County's objective was to maintain low population densities and to prevent sprawl and indiscriminate development from occurring on agricultural land or in conservation areas, in what might be considered less servicable patterns.

The means by which these policies and objectives were implemented were through adoption of a zoning ordinance and land subdivision regulations.

These conventional means of plan implementation were considered adequate in their time and until more recent years under increasing growth pressures, were never actually tested for their effectiveness in guiding development in a manner consistent with the adopted planning framework.

II. RECENT DEVELOPMENT TRENDS.

Since establishing the framework for planning and land use management previously discussed, a number of forces have brought about changes within Queen Anne which have prompted County attention to review and revision of the Planning Program during the past two to three years.

Foremost among the changes was accelerated growth subsequent to 1970 in the 4th and 5th County election district beyond rates previously anticipated.

From 1970 to 1980 the County experienced a 38.5 percent population increase, considerably higher than the 11 percent increase in the 60's.

Its concentration in the County's fourth and fifth districts has prompted county attention to service delivery system demands. The fourth election district alone experienced a 113 percent growth rate in the 10-year period.

Both districts are home to most of the County's 258 miles of shorefront. Together with their proximity to urban and urbanizing Western Shore centers of development, somewhat lower land costs make these districts likely candidates for continued development pressures.

Population projections for these two districts prepared in the past years are reflected in Table 1. Table 2 identifies population growth trends from the period 1930 to

TABLE 1
POPULATION PROJECTIONS
FOURTH AND FIFTH DISTRICTS
1984-2005

Year	Population	Change	School Age Children*
1984	14,731	---	3,344
1985	15,120	389	3,432
1986	15,550	430	3,530
1987	15,928	378	3,616
1988	16,348	420	3,711
1989	16,779	431	3,808
1990	17,221	442	3,909
1995	19,614	2,393	4,452
2000	22,340	2,726	5,071
2005	25,445	3,105	5,776

* School age children make up 22.7 percent of the population.
Source: Greenhorne & O'Mara, Inc. 1984

TABLE 2
POPULATION TRENDS
FOURTH AND FIFTH DISTRICTS
QUEEN ANNE'S COUNTY
1930 - 1980

YEAR	FOURTH DISTRICT	FIFTH DISTRICT	SUBTOTAL	QUEEN ANNE'S COUNTY	PERCENT OF COUNTY
1930	2,196	2,592	4,788	14,571	33%
1940	2,094	2,813	4,907	14,476	34%
POPULATION CHANGE	-102	221			
PERCENT CHANGE	-4.6%	8.5%			
1950	2,205	3,095	5,300	14,579	36%
POPULATION CHANGE	111	282			
PERCENT CHANGE	5.3%	10.0%			
1960	3,114	3,375	6,489	16,569	39%
POPULATION CHANGE	909	280			
PERCENT CHANGE	41.2%	9.0%			
1970	3,832	3,896	7,728	18,422	42%
POPULATION CHANGE	718	521			
PERCENT CHANGE	23.1%	15.4%			
1980	8,177	4,713	12,890	25,508	51%
POPULATION CHANGE	4,345	817			
PERCENT CHANGE	113%	21%			

SOURCE: U.S. CENSUS BUREAU

1980 illustrating the shift in the increasing percentage of County residents located in the westernmost county areas.

Until recent update of the Comprehensive Plan for the 4th and 5th districts, the projected development pattern indicated by the County plans did not reflect the current development pattern on Kent Island. While intensive industrial, commercial and residential development currently exists throughout the Kent Island area, the County hopes to contain future development in other areas to existing communities and to retain the agrarian nature of the rural areas of the County. The line of demarcation between the rapid suburbanization of the Kent Island area and the slow growth of the other more rural Queen Anne areas is presently slightly east of Grasonville.

The Kent Island area is important to the County as an industrial and maritime center as well as a residential center. Several seafood processing plants, a number of marinas and existing proposed industrial sites are located on the Island. Kent Island's present development pattern is linear and related to the right-of-way of Route 50 and the narrow and flat configuration of the Island. The specific pattern of development of Kent Island consists primarily of strip residential and commercial development reflective of, and trending toward, the pattern existing along Route 2 or Ritchie Highway in Anne Arundel County.

Rapid development of Kent Island along Routes 50 and 8 has already begun to absorb the communities of Stevensville, Grasonville, and Kent Narrows in a patchwork pattern of developing subdivisions, marinas and corridor commercial development The County does not expect this area to conform to the growth pattern envisioned for the rural portion of the County. Because of its present development, however, the Island can no longer be considered rural and previously established community centers in the area have lost much of their definition.

At present, the County expects the growth that is occurring in its more rural areas to take place around the existing towns and villages. These towns and villages like Centreville,Church Hill, and Sudlersville are intended to be the centers for modest new residential, commercial and industrial development. Provisions of adequate public facilities and services, particularly water and sewerage, is programmed to reinforce the growth of these towns and villages as activity centers. However, increasing commercial development along Md. Route 213 along the County's Northern border suggest planning assumptions and controls even for these areas of the County bear closer examination.

The work program currently underway for updating the comprehensive plan for these areas will provide opportunity for re-evaluation of these present policies.

III. THE BASELINE FOR EVALUATION OF FUTURE COUNTY GROWTH MANAGEMENT OPTIONS.

In order to assess their relative value and suitability for application in Queen Anne, both the existing subdivision framework as well as alternate, less traditional zoning approaches must be evaluated in light of the broad complement of objectives the County wishes to achieve.

The nucleus for objectives to be achieved through a County development guidance system are those enumerated in the recent plan prepared for the 4th and 5th districts. (See Comprehensive Plan, pages 166 through 178) In addition to serving these plan objectives, Queen Anne's plan implementation framework should achieve consistency with statewide planning objectives and programs which clearly influence local land use management options and approaches.

A notable example is Maryland's Chesapeake Bay Critical Areas Program and those program criteria currently being prepared by the Critical Areas Commission. The County is statutorily responsible for implementation of this program at such time as the criteria are promulgated, and will therefore need to incorporate these program elements into any future land use management system approaches.

By the same token, certain needs and/or demands prompted beyond the County will influence or impact the ability of the County to sustain local interests. Major

examples which in great part have prompted the 4th and 5th district plan update are the influences of resort-bound traffic on the County 50/301 corridor use of land and the exurban population shift from nearby metropolitan areas into these same districts. Although prompted by external forces, both nevertheless place land use planning and service delivery system demands on the County.

Finally, any County land use management or development guidance system must be evaluated in light of its local political acceptability, its legal defensibility, its consistency with enabling legislation (Article 66-B of Maryland Annotated Code), and the degree to which it places demands on County fiscal and staff resources; the latter potentially prompted both in establishing the system and attending to its administrative requirements.

Although not considered exhaustive, the following list of objectives has been derived from these considerations and review of those contained in the 4th and 5th district Comprehensive Plan. Future preparation of Comprehensive Plans for remaining County districts may well prompt additions or revisions to this list.

Taken together these objectives provide a yardstick against which current and future plan implementation options may be tested.

GROWTH MANAGEMENT/DEVELOPMENT

GUIDANCE SYSTEM EVALUATION CRITERIA

Existing Community Plan Objectives

Maintains rural and marine environment.
Preserves historic and cultural heritage.
Protects natural resources Countywide.
Directs growth to designated centers.
Provides for compact and contiguous residential and non-residential uses.
Responsive to County service delivery capacity.
Responsive to County Capital improvement program constraints.
Effectively protects agricultural land.
Supports County economic development interests.
Addresses County landscape design objectives.
Encourages servicable development form.
Directs commercial development to existing towns or proposed village centers.
Permits broad range and mix of housing.
Provides for recreational amenity needs.
Supports county transportation system objectives.

Other objectives:

Responsive to Maryland's Chesapeake Bay Critical areas program direction.
Relative ease to establish.
Reduces development review/approval processing time and information requirements.
Minimizes development soft costs.
Legally defensible.
Requires minimum administrative staffing.
Receives broad community support.

IV. EVALUATION OF EXISTING COUNTY ZONING AND LAND USE MANAGEMENT.

The following sections of this report will identify the limitations or shortcomings of existing Queen Anne zoning regulations and evaluate the advantages/disadvantages of optional and less traditional zoning approaches which might be applied within the County against the objectives or evaluation criteria identified in the preceding section.

Queen Anne's existing zoning ordinance and subdivision regulations, adopted in 1964 and 1965 respectively, are the chief means by which the use and development of land are managed. They can generally be considered traditional in their construction and as a result their shortcomings are similar in nature to many conventional ordinances.

Foremost among the disadvantages with traditional zoning is the limited degree to which it serves to implement planning objectives. By way of example, preservation of productive farmland is a clear objective of Queen Anne's established plan and the recent update of the Plan for the 4th and 5th districts. Yet the zoning for County areas where farmland is to be preserved does little to restrict conversion to residential use. Even the five-acre density recommended in the recent plan update will be ineffective based on the experiences of U.S. communities in developing effective agricultural protection programs.

Queen Anne's ordinance contains few mechanisms to assure coordination of zoning policies with County plans or other County plan implementation tools. Its provisions in the form of use lists are essentially restrictive, involving rigid dimensional and area requirements by district, providing little flexibility or incentive to assure good development design. This failing is a notable one in light of the design objectives recently recommended in the 4th and 5th district plan update.

Amendments to the ordinance in more recent years tend to establish somewhat more flexible performance standards for specific uses of land; however the basic ordinance framework remains traditional or "Euclidian" in nature. Therefore flexibility in ordinance administration and application in Queen Anne is largely limited to its provisions for variances, conditional uses, and rezonings. Their capacity to effectively treat complex and often-competing social, economic and environmental issues surrounding land development proposals is limited. By virtue of public hearing and notice requirements and their scheduling before approval authorities (County Commissioners and Board of Appeals) they add time and cost to the development process.

County zoning treatment of land development proposals, when located within respective zoning districts where they are permitted by right, does little to assure good

development design or protection of sensitive natural features. Absent any requirements or standards for review of site plans within the ordinance, control over design and development of commercial, industrial, or intensive residential uses appears to be limited only to the requirements or standards of special purpose ordinances and codes. These ordinances or codes, including the County Stormwater Management Ordinance, Sediment Control ordinance, and Building Code, are each limited in scope and designed to treat only those aspects of site development and construction over which they have jurisdiction.

Their administration and enforcement bears little, if any, relationship to County design/landscaping objectives, or to the impact any given development may have on County facilities and services.

It is important to point out that most of these criticisms of Queen Anne's zoning ordinance come at a point in time when it is being tested under fire. In fact few of these shortcomings were of any consequence or cause for concern in its early years of application.

However in light of recent and projected development trends particularly on Kent Island and adjacent areas, County consideration of options to its traditional zoning framework will become increasingly important.

V. DISCUSSION OF COUNTY LAND USE MANAGEMENT/ZONING OPTIONS.

Overview.

In reviewing a wide array of growth management approaches for Queen Anne's County consideration, it becomes clear that zoning as a basic tool has seen substantial change over the years. The "as of right" or self-executing nature of traditional zoning has largely been replaced. Development issues are increasingly being decided at the time development is actually proposed, rather than through the process of adoption of a zoning map and ordinance. Hallmarks of many of these innovative zoning approaches are increased flexibility and administrative discretion, a significant departure from traditional "use lists" or self-executing zoning systems.

The most common reasons cited for growing reliance on more discretionary land-use controls are:

Demand for land use controls to meet broader public objectives.

The "health, safety, and general welfare" objectives on which zoning was originally based have been expanded to include objectives related to environmental quality, government fiscal responsibility, expanded housing opportunity, etc. These objectives

can be more readily balanced only when development is imminent and applied to a particular site.

Increasing interjurisdictional involvement in land development control.

Local land use control responsibility is increasingly being shared with State or regional agencies and the federal government. These agencies may exercise direct control or may be involved in local control by setting standards or procedures aimed at achieving wider public objectives. Achieving these objectives often requires sophisticated tools. Queen Anne's consideration of land use management options is timely in anticipation of Maryland's Critical Areas program and County implementation responsibilities.

Disillusionment with limited development options.

Traditional zoning, by virtue of "use lists" and development standards often inhibits the market's ability to respond to changing conditions and fails to encourage innovation or good design. Flexible zoning approaches permit more refined control, and assessment of a development proposal.

Greater sophistication of actors in the development process.

The increasing complexity of the land development process has evolved sophisticated builders, lawyers, and administrative officials in response. Their experience with new development approaches and a concerned public has led to new management systems.

Traditional zoning approaches have assumed where and how growth will occur is predictable. On the other hand experience indicates such approaches presumed more foreknowledge than was available. A movement toward "policy oriented" plans as opposed to mapped plans and flexible instead of rigid regulation is perhaps a result of this experience.

Remaining sections of this chapter identify five zoning options for consideration by County officials. A limited discussion of each option is designed to highlight their associated advantages and disadvantages relative to County application.

The range of techniques or options discussed is limited and far from exhaustive. References cited in the appendix to this report may provide assistance to County officials who wish to pursue investigation of additional techniques or options for application in Queen Anne.

A. Overlay Zoning.

An overlay zone is a mapped zone that imposes a set of requirements which are superimposed over the underlying zoning district. In an area where an overlay zone is established, property is placed simultaneously in the two zones, and the land may be developed only under the conditions and requirements of both.

Overlay zones typically are applied when there is a special public interest in a geographic area that does not coincide with the underlying zone boundaries. Some of the more common uses for such zones relate to special environmental features that restrain development. Floodplain zones and wet soils overlay zones are examples. Other uses are to maintain the integrity of historic areas or to provide special standards for specific areas either to guide redevelopment or superimpose design guidelines in a particular area.

Uses that are permitted in the overlay district but not otherwise permitted in the underlying district may require approval by the Plan Commission of the "building, site, and operational plans." This provision adds an element of flexibility not provided in the basic districts.

"In Portland, Oregon, a design zone is superimposed on standard zones by the action of the city council on recommendation of the planning commission...Once designated,

such land is subject to the standard district bulk, density, and use regulations and a review by a committee of the planning commission." (Zoning Ordinance, Ch. 33.62, Secs. 3362 et seq. - 1972)

However, the dominant use of overlay zones is for preservation of environmentally sensitive areas. Cecil County, Maryland, has established greater protection of County waterfront through overlay zoning. Queen Anne's County might find similar applications useful in future preparation of a local program responsive to Maryland's Critical Areas law.

The major advantage of overlay zoning is that it adds a small element of flexibility to traditional zoning and, as a result, suffers from few legal impediments.

Overlay zones, as distinct from other flexible techniques, are site specific, and, as such, retain most of the elements of the familiar zoning process. But through their limited flexibility, they add an opportunity to implement site-specific public policies, especially with regard to environmental protection.

Overlay zones can also be used as a device to incorporate special requirements or incentives for the construction of low- or moderate-income housing into zoning ordinances. For example, an overlay zone might be applied to all residentially designated areas of a defined density

or size in order to permit low-income or subsidized housing at a higher than usual density. An overlay zone might offer additional incentives to build such housing by relaxing various restrictions in exchange for developing certain types of projects or for providing certain amenities.

B. Floating Zone.

A floating zone is the same as a conventional zone except that it is not designated on the zoning map. As a result, when enacted into law through adoption of the zoning ordinance, it "floats" over the community until, upon approval of a landowner's application, it is affixed to a particular parcel by a second ordinance amending the zoning map. The text normally will describe the conditions to be met for such approval--a certain size parcel, specified topographical conditions, location with respect to street and utilities, and so forth. Once applied, it becomes the same as any other zone, except that other landowners whose property meets the conditions may also apply.

Its most common application is for planned unit developments (residential, nonresidential, and mixed) and for shopping centers. It may be used when a community wishes to permit a limited number of a specified use, say regional shopping centers, but does not wish to map their locations in advance. It will usually require unified development of the parcel and site plan review. A developer also may be required to demonstrate need for the development through submission of a market analysis report.

Similar application of the floating zone was recommended for use in Queen Anne's 4th and 5th districts

plan update as a means for creation of future village centers.

The legal status of floating zones tends to be based not on the concept per se but on the conditions under which they can be used. They have been approved by the courts in a number of states. Maryland is perhaps most prominent in terms of variety of uses handled via floating zones and the number of cases upholding their use. Their broad use in Maryland and their ready acceptance by the courts are probably due in part to the difficulty in justifying rezonings to regular districts permitting more intensive uses under the rigorous Maryland rule that requires evidence of a change in conditions or a mistake in the original zoning.

The floating zone device has some potential value in an inclusionary land-use program. Queen Anne might, for example, define a low-income housing development as a floating zone. The County would prescribe the minimum size, density, and location with respect, say, to public transportation, employment, and shopping areas, and incorporate a site plan review process into the ordinance. It might specifically refer to the housing subsidy programs under which such housing could be built.

C. Incentive Zoning.

Zoning traditionally places restrictions and limitations on the individual use of property. A recent departure from these traditions has been the incentive or bonus device that permits greater or more intensive use of property and hence the opportunity for greater economic return.

Essentially, incentive zoning is a trade between the community and the property owner. In exchange for the developer's providing something that the community feels is in its interest, the developer is given a bonus, usually in the form of permission to build in a bulk envelope slightly larger than that normally permitted. Usually this means higher density. By granting bonuses, communities expect to receive benefits they could not require--more open space, direct access to public transportation or parking, and the use of cluster development designs rather than conventional lot-by-lot development. In return, the developer will get permission to build at a higher density, usually in the form of more floor area or more dwelling units.

A major impediment to the effective exercise of other techniques is the vagueness of the criteria for measuring acceptability. In many instances, they are not measures but policies and guidelines. In incentive zoning, like industrial performance standards, the measures typically are

numerical. The requirements are spelled out, and the developer can choose to use them or not and knows pretty much what he will get in exchange. There is little room for arbitrariness in their application.

There has been almost no litigation of the concept of incentive or bonus zoning. Th rarity of such challenges probably results from a lack of willing plaintiffs. Developers would have a difficult time alleging that their property is being excessively restricted when they are being offered an opportunity to increase their economic return. Density bonuses might be challenged, however, by neighbors who feel that the increased density permitted is excessive in comparison to benefits received in return. Neighbors might also challenge, arguing that because such incentives are available they cannot rely on the certainty of the use of nearby property; and further, that they may need to bear additional public service costs resulting from higher density development. Another possible challenge may come from developers who feel that what they are being asked to accept is less than the benefit received and hence may constitute a "taking" without compensation.

Developers are likely to respond to incentives that offer opportunities to earn more money or to save money. Opportunities for earning more money usually involve permission to increase density and, hence, to have more rentable or salable space or to combine residential with

some commercial uses, and, to a lesser degree, to improve design and layout. Opportunities for saving money may come from (1) clustering or concentrating structures and lowering the costs of utility lines and streets; (2) faster processing time, which gives developers a chance to build and sell more quickly; and (3) lowering physical design standards, e.g., narrower streets, thinner pavements, fewer sidewalks.

The County might receive in return a wide range of other public benefits: the preservation, perhaps through dedication, of special environments such as wetlands, wooded areas, and steep slopes; the provision of a desired mix of housing costs and types; the staging of the building process in conjunction with the County's capital program, etc. Sufficiently attractive bonuses may give incentive to developers further to internalize development costs as subdivision exactions do now.

Incentive zoning has potential value to Queen Anne in increasing the supply of low- and moderate-income housing. A developer might be granted a bonus of additional density tied to the number of subsidized housing units built. In fact, short of establishing requirements for such housing (and the legal question such requirements raise), incentives could be among the most effective tools available.

D. Impact Zoning.

Unlike previous tools discussed, impact zoning is a land use management technique designed to establish a process for evaluating the relationship between a community's available capacities and the potential demands on community systems created by a proposed land use. If the natural, service, and fiscal systems cannot accommodate the demands, then clearly there will be damages or an adverse impact. Impact zoning firmly brackets potential development between a bottom line of minimum permissible uses and an upper limit determined by the evaluation of a project's impact on the community's capacities and explicit goals. Within this framework, reasonable growth can occur.

Impact zoning also provides positive incentives for locating development in areas suitable for it. The impact zoning process offers methods of encouraging, measuring, and monitoring the balance between human needs and the capacities of the land.

The system has four primary characteristics:

- It relates land use demands to land use capacities.
- It assesses the consequences of any proposed change in land use.
- It is a process as well as a set of products.

- It provides a legislative and administrative framework for land use management as well as minimal land use controls.

Impact zoning also offers incentives for development that fulfills the goals of quality embodied in a community's master plan. The community might permit the clustering of housing, for example, in return for the guaranteed protection of a valued scenic view. By guiding and motivating developers to respect community values, impact zoning becomes a process of land use management, rather than a system of land use control based on a list of prohibitions as is characteristic of traditional zoning.

The objective of the impact zoning approach is to identify the point of leverage at which the public can improve the quality of its surroundings. The emphasis is thus on more than merely preventing the degradation of the environment. Impact zoning offers a means of freeing private energies to contribute to, not work against, the public interest. The result is an equitable and creative tension between the private and public sectors.

The system works toward these goals by establishing and offering optional incentives. Community goals are established, and a data inventory is completed. This allows the inherent constraints on and opportunities in land use to be summarized, and a management plan can be designed with

new incentive land use controls. Finally, tools for evaluating proposed land uses are developed and instituted.

Like traditional controls, impact zoning employs districting for the uniform application of standards, but there are a number of important differences. First, the several districts so defined are based on generally described physical and environmental capacity levels. Thus, a rural district is defined as one with few if any services (such as sewerage, water supply, and roads) and typical environmental characteristics, precisely enumerated in the definitions section of the code. This district can then be compared, according to these predefined standards, to village, highway corridor, and flood prone districts, for example, and can be rationally adjusted as conditions and service levels change over a period of time.

Within all these districts, a minimal level is allowed by right, based on the inherent capacities of each district. This establishes a bottom line which identifies for every landowner what his basic land development rights are. Should he exercise those rights, the necessary municipal review should be relatively simple, since the probable impacts will be low. This underlying zone avoids the major "taking issue" contention of much zoning today. Beyond this minimum, a range of land use types, densities, and impact levels are defined. In a rural zone, for instance, residential uses--including apartments and townhouses as

well as single-family detached housing, ranging in density from one to eight units per acre--may be allowable if certain performance standards are met. The applicant must provide adequate documentation that the uses and densities he is proposing will not exceed existing system capacities and will meet prescribed quality and compatibility performance levels. Should he be able to show that such performance can be met at, say, six units to the acre at a certain mix of unit types, than that mix, at that density, would be allowed as long as the projected impact remained within the agreed limits.

This negotiation process requires a clear administrative and legal framework. The new master plan provides the basic community guidelines for qualitative evaluation. The new zoning map provides a bottom and top line for land use and density negotiations. The development of a comprehensive land use management code establishes the procedures and sets down the evaluative standards for impact assessment. Master plan, zoning ordinance and map, subdivision regulations, sign controls, building code, and other applicable codes are tied together in the package, eliminating much of the redundancy and contradiction found in incremental subdivision, cluster, PUD, and by-right zoning regulations. This entity becomes the management guide for both County and developer and defines for them the rules of capacity and demand assessment.

Since the primary emphasis of impact zoning is on the dynamics of land use change, it is important that both the community systems' capacities and the developer's demands be expressed in quantifiable terms. The developer will attempt to meet the performance standards that are required by the municipality's land development code. Thus, one of the most important stages in the impact zoning implementation process is the development of design standards and assessment methods for evaluating the impact of land use proposals.

E. Performance Zoning.

Performance zoning is an alternative to traditional zoning approaches which has received considerable national attention, largely as a result of the A.P.A. publication Performance Zoning, authored by Lane Kendig, former Bucks County, Pennsylvania, and Lake County, Illinois, planning director.

A recent article in Planning magazine outlines the successful experience of Bath, Michigan, and Largo, Florida, in modifying and simplifying the A.P.A. model ordinance to serve local needs.

The Performance Zoning approach has been in place in Bucks County, Pennsylvania, for some time.

Performance zoning as embodied in the Bucks County model code has four major aspects:

- preservation of environmentally-sensitive areas is achieved with fixed percentages for the amount of encroachment or disturbance allowed for each specified feature.

- residential development is governed by density, impervious surface, open space and recreation area ratios, NOT by specifying or prohibiting housing types, such as townhouse, multi-plexes or apartments in residential zones;

- overlay districts based on the timing of development such as Established Neighborhood, Developing, Historic and Rural Districts, are used to insure appropriate development.

- confrontation over design and development standards is reduced by establishing specific conditions and requirements at the beginning of the development process, and even prior to land acquisition.

As described in Performance Zoning, the concept includes a fifth aspect:

- land use change is not governed by zone but by impact, and buffering of impact, of one use on an adjoining use, using a set of compatibility matrices and buffer options.

Recent analysis of the Bucks County experience by an Anne Arundel County task force included a visit to Bucks County and led to the following conclusions:

- performance zoning was successful in protecting sensitive features. However, it was seen as somewhat arbitrary in both the levels of protection established, and in the actual designation of features, some of which did not need to be preserved. While the Task Force was comfortable with regulations that compelled a rigorous environmental analysis of all proposed land use

changes, it felt that this level of analysis was not always needed by the local staff. This sometimes resulted in an inefficient review, and sometimes imposed an unnecessary increase in development cost.

- the regulations encouraged housing diversity, allowing for a greater accommodation of household needs and better utilization of land.

- the regulations did not control scattered development. In some instances the problem was worsened by requiring excessive land acquisition in order to comply with the development ratios, resulting in a "polka dot" type of sprawl.

- in some instances, excessive open space was required, although the deed-restricted transfer of open space land for uses such as farming or nursery operations is permitted.

- the development of non-residentially zoned parcels was sometimes rendered unviable because of environmental constraints. Some wooded sites that were commercially zoned could not be economically used because of the high percentage of protection required.

- while the regulations were successful in achieving a better pattern of land planning within a development, they did not guarantee any better

quality or durability of development than conventional regulatory systems. Quality and aesthetics remained a function of market demand, builder/designer sensitivity and price range.

VI. RECOMMENDED GROWTH MANAGEMENT/ZONING MODIFICATIONS FOR COUNTY CONSIDERATION.

All of the alternative zoning approaches discussed in the previous section of this report offer potential for use in Queen Anne's County.

Some have greater utility than others. Floating zones, overlay zones, and incentive zoning can more readily be applied within the context of the County's existing zoning structure as additive components, each serving to implement a select number of County planning objectives.

Their chief advantages include:

- minimum change to the existing zoning framework
- their capacity to selectively treat County areas where by virtue of their substantially different characteristics, selective treatment is required. (Kent Island as opposed to other County areas)
- Relative ease in administration.

Disadvantages include:

- limits on the number of objectives each can be used to achieve
  Time and effort required to prepare each zone to assure its consistency with the existing ordinance.

County application of Impact or Performance Zoning treatments have greater potential to treat a broader array of relevant County objectives on land use management issues. In particular, these tools appear to be more responsive to the treatment of management needs in the 4th and 5th districts where substantial growth and development has occurred and should be expected to continue to occur.

The primary advantages of these more systematic approaches include:

- Greater responsiveness to complex social, economic and environmental objectives and problems through the land use control process.
- Wider utilization of the most appropriate planning and development methods for each given situation.
- Their treatment of development proposals is responsive to natural and man-built system capacities in Queen Anne.

Chief disadvantages include:

- Substantial effort required to assemble data on County features and system capacities as a framework for implementation.
- Possible disruption or community concern caused by more substantial change or replacement of the familiar zoning system.
- Less development predictability and perhaps uncertainty of County residents about what may be built next door.

The following matrix is designed to assess the degree to which various zoning approaches address planning objectives and land use management needs in Queen Anne's County. Required issues or objectives to be met from Section III are outlined in the left column with zoning techniques or systems provided across the top of each page.

Each technique is rated according to the degree it provides treatment or addresses each respective County objective. All objectives are considered equally weighted and treatments are rated 1 to 5, five indicating most effective treatment.

This illustration reflects the fact that specific zoning treatments have various strengths and weaknesses.

No attempt is made to determine which tool is the right one for Queen Anne's. In fact, it is likely no single system or approach will fulfill all County needs or requirements. However, its review permits assessment of the relative strengths and weaknesses of alternative zoning approaches in light of County planning objectives.

The assignment of values within the matrix is based on the professional judgment of the author. Objectives were derived from the recent plan update for the 4th and 5th districts. Other objectives were selected for their broader focus on issues like the degree of community support likely, or impact on County administrative capacity.

The greatest value of this presentation format is that it can be used by County staff to focus the interests and thoughts of the County Plan Citizen Advisory Committee concerning growth management needs.

By way of example, many of the objectives can be revised or deleted and others added based on their input. Perhaps more important, implementation of some objectives will clearly be more important to the County than others and based on their discussion each can be weighted and each zoning approach in turn can be re-evaluated in terms of these priorities.

Use of this format by the County is recommended for several reasons:

- Through community involvement better focus and guidance to County staff can be provided in ascertaining those zoning or land use management options likely to derive broadest community support

- Such an exercise can provide timely guidance and insight to the process of updating the County plan for remaining districts. Foreknowledge of likely means by which the plan will be implemented can and should influence the process and manner in which the plan is prepared and presented.

- This process may help the County citizens advisory task force gain insight into the relationship between planning objectives and the means by which they may be implemented, thus bridging the gap between planning and implementation.

EVALUATION CRITERIA	OVERLAY ZONING	FLOATING ZONING	INCENTIVE ZONING	IMPACT ZONING	PERFORMANCE ZONING
Existing Community Plan Objectives:					
Maintains rural and marine environment	4	1	1	4	4
Preserves historic and cultural heritage	4	4	3	3	3
Protects natural resources Countywide	5	3	1	4	5
Directs growth to designated centers	3	5	5	3	3
Provides for compact & contiguous residential & non-residential uses	3	4	4	4	4
Responsive to County service delivery capacity	4	4	5	5	5
Responsive to County capital improvement program constraints	1	1	4	5	5
Effectively protects agricultural land	1	1	1	3	3
Supports County economic development interests	1	3	4	4	4
Addresses County landscape design objectives	3	1	4	5	5
Encourages servicable development form.	1	3	4	4	4
Directs commercial development to existing towns or proposed village center.	1	4	5	3	3
Permits broad range & mix of housing.	1	4	5	5	5
Provides for recreational amenity needs	1	2	4	4	4
Supports county transportation system objectives	2	2	4	5	5
Other objectives:					
Responsive to Md.'s Chesapeake Bay Critical Areas program direction	5	2	2	5	5
Relative ease to establish	5	5	3	1	2
Reduces development review/approval processing time & information requirements	3	3	2	1	2
Minimizes development soft costs	4	4	3	2	2
Legally defensible	5	4	3	4	4
Requires minimum administrative staffing	4	4	3	1	2
Receives broad community support ★					

★ To be determined

Summary

Based on the advantages and disadvantages of the planning implementation tools pointed out in the previous chapters, it is asserted here that the tools selected by Queen Anne's County should be capable of achieving the following ends:

- The control of the location and timing of new development and redevelopment and the provision of the necessary infrastrucure for both in accordance with adopted land use and financial plans and policies.

- The control of land use interrelationships in order to minimize conflicts between uses (negative externalities) and maximize inter-use benefits.

- The control of community appearance in the interests of preserving historic or esthetically significant structures and sites, preserving the character of esthetically pleasing old neighborhoods, and encouraging in new development and redevelopment a richness of variety within the bounds of esthetically and functionally harmnonious relationships.

- The provision of a means of economic compensation where land use controls inequitably restrict development or redevelopment; that is, where use of

the police power could reasonably be construed as constituting a "taking" without due compensation.

- The control of the physical design adequacy of new development, and maintenance of the quality of the built environment.

- There must be coordination of the implementation tools into an implementation program so that they will be used in a mutually supportive and nonconflicting manner. This may require sacrifices of political and administrative independence and may be made more difficult by failure of administrators, in some cases, to perceive their implemtnation actions as part of a system. Although integration of the implementation tools into one program is not in itself a criterion for existence of a land use guidance system, it is likely to influence the degree of operational efficiency.

- The guidance system, in its implementation program, must take into account the influence of federal and state policies and programs in order to take maximum advantage of and minimize conflict with these plans, policies and programs. Most systems tend to ignore levels of government other than the level of the agency proposing the system.

- Perhaps most important if the guidance system is to receive the political support necessary for it to be effective, it must provide for the full participation of the County's political representatives, civic and professional groups, citizens' organizations, and individual citizens in the planning, policy-making, and preparation of implementation programs.

APPENDIX 1

Queen Anne's County Comprehensive Master Plan (Julian Tarrant, Consulting City Planner, 1965)

Queen Anne's County Comprehensive Master Plan Draft (Queen Anne's County Planning Department, 1975)

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Queen Anne's County Subdivision Regulations (1975).

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Queen Anne's County Rural Development Report Draft (Maryland Department of Economic and Community Development, 1982).

Reconnaisance Survey of Development Activities, Queen Anne's County, MD, Queen Anne's Conservation Association, Inc. (William Cohen, Consultant) 1982.

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Land Use Planning, Techniques of Implementation, T. William Patterson, 1979.

Zoning Ordinance, Bath, MI (Simplified Performance Zoning Approach) 1982

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(cont.)

APPENDIX 1

(cont.)

Protecting Farmlands, Frederick Steiner and John Theilacker, 1984.