



January 8, 2018

Mr. Gary Setzer, Sr. Advisor  
Maryland Department of Environment  
1800 Washington, Blvd.  
Baltimore, MD 21230  
**VIA E-Mail – [gary.setzer@maryland.gov](mailto:gary.setzer@maryland.gov)**

### **Comments on Nutrient Trading Regulations**

Dear Mr. Setzer:

The NAIOP Maryland Chapters, representing more than 700 companies involved in all aspects of commercial, industrial, and mixed-use real estate appreciate the opportunity to comment on MDE's draft nutrient trading regulations.

As NAIOP sees it, both the science of and the economics of Chesapeake Bay clean-up argue strongly for creation of a robust trading market in Maryland. Nutrient trading presents the potential for cities, counties, individuals and wastewater treatment plants to be matched with water quality improvements in other locations that provide equal or better environmental results at far lower cost. Without cross-sector nutrient trading, many Marylanders will be siloed and forced to consider only the most prohibitively expensive options when deciding how to comply with bay cleanup responsibilities.

Numerous obstacles have delayed adoption of regulations and, even though we expect this to be an iterative process, NAIOP is generally supportive of moving the trading regulations in their current form. Please accept the following comments on behalf of our membership.

**Reserve Ratios** - We remain concerned about the continued requirement that trading partners allow the state to take 5% of nutrient credits for use elsewhere. The *Reserve Ratio* forces credit generators and purchasers to first generate additional credits and then donate those credits the state to be used for removal of additional pollutants that have no direct relationship to the activities of the trading partners.

**Combined Weight of Uncertainty Ratios, Margins of Safety and Inspections** – We appreciate the administrative flexibility written into the regulation to allow for a 1:1 ratio. Any higher ratios should be applied sparingly because of the multiple margins for error built into the TMDL model. Beyond that, the regulation requires a rigorous certification, verification, registration and inspection regime to ensure performance. To layer these measures would be excessive.

**Public Participation** – NAIOP believes that public comment and a hearing should be provided at the reauthorization of NPDES permits not every time a trade is associated with an activity regulated under an NPDES permit.

**Limited Trading Regions** – We recommend MDE resist calls to restrict trading regions. The most effective trading opportunities may be where delivered loads to the bay are highest. With prohibitions against harming local water quality in place, MDE should allow for cross bay or cross jurisdictional trading in cases where the resource protection benefits warrant doing so.

**Forest as a Stand-Alone Sector** – We noted that the reintroduced version of the regulation includes listing of forest as a separate sector. NAIOP does not and do not believe it appropriate to create a new sector through this regulation, particularly through a late amendment.

**Preceding Growth Offsets / Aligning for Growth** – We reiterate our concern that this document will be finalized and adopted prior to any clear policy decisions on growth offsets / aligning for growth. The outcome of that process could necessitate changes to the regulations.

Thank you for the opportunity to comment.

Sincerely;



Tom Ballentine, Vice President for Policy  
NAIOP Maryland Chapters - *The Association for Commercial Real Estate*

Cc: Nick Manis – Manis, Canning Assoc.