

Adequate Public Facilities Ordinances in Maryland:

**An Analysis of their Implementation and
Effects on Residential Development
in the Washington Metropolitan Area**

**A Report for the Maryland-National Capital Building Industry Association
by
The National Center for Smart Growth Research and Education**

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I. Introduction

I.A. The Planning Context of APFO Implementation in Maryland

Since the late 1960s, jurisdictions in several U.S. states have implemented adequate public facilities ordinances (APFOs), a growth management tool that attempts to link the timing of a new development to the availability of facilities needed to service it. Under an APFO, before issuing development approval for a project the jurisdiction ascertains whether the project meets certain standards regarding adequacy of selected facilities and services needed to support that development. If the jurisdiction's schedule of capital improvement provision is not timely for the developer's purposes, the project may not proceed unless the developer chooses to build/fund the needed facilities/services to the required standards (Porter 1997; White 1996).

In 1969, Ramapo, NY became one of the first municipalities in the U.S. to implement an APFO, and that state's highest court upheld the constitutionality of the strategy in *Golden vs. Planning Board of the Town of Ramapo* (324 N.Y.S. 2d 178 (N.Y. 1971)). By 1991 over a third of California's municipalities had APFOs (Porter 1997). Local APFOs are required under the state growth management systems of Washington and Florida, and are currently used by 13 of Maryland's 23 counties and by 12 of its municipalities.

In 1992 the Maryland State Legislature passed the Economic Growth, Resource Protection and Planning Act. Among the act's provisions was that all local comprehensive plans were to address six visions, with two more added in later years. Of the eight visions, visions 1, 3, 6, 7, and 8 are particularly relevant to APFO implementation: Those five are:

1. Development is concentrated in suitable areas
3. In rural areas, growth is directed to existing population centers and rural resource areas are protected
6. To assure achievement of visions (1) through (5), economic growth is encouraged and regulatory mechanisms are streamlined
7. Adequate public facilities and infrastructure under the control of the county or municipality are available or planned in areas where growth is to occur
8. Funding mechanisms are addressed to achieve these visions.

The 1992 Act also mandated that zoning and other regulations be consistent with the local comprehensive plan and with the visions.

In the Spring of 1997 the Maryland State Legislature approved the Smart Growth Areas Act, which directs State funding into already developed areas and areas that county governments have designated for future growth based on state criteria. With certain exceptions, only these "Smart Growth Areas" and "Priority Funding Areas" can qualify for State funds for water, sewer, transportation, housing, economic development and environmental projects. The Act's intent is to discourage sprawl by denying State subsidies for it, and to promote development and revitalization in cities and inner

suburbs. In effect, the Smart Growth Initiatives embodied a set of programs intended to address visions 1 and 3, above.

While the term “Smart Growth” (upper-case “S” and “G”) refers herein to a package of specific, incentive-based programs used in Maryland, the term “smart growth” (lower case “s” and “g”) will refer to a set of principles espoused by advocates of a national, anti-sprawl movement. The Smart Growth Network website (www.smartgrowth.org) enumerates ten smart growth principles, such as “mix land uses”, “take advantage of compact building design”, “create walkable communities”, and “provide a variety of transportation choices”. Two of the Smart Growth Network principles are the following: “strengthen and direct development towards existing communities”; and “make development decisions predictable, fair and cost effective”.

By mid-2005 it appears that in many locations in Maryland the application of local APFOs is inconsistent with the Maryland 1992 Planning Act, the 1997 Smart Growth Areas Act and with the two Smart Growth Network principles cited above. For example, several developers interviewed for this study assert that, aside from the Not-In-My-Backyard (NIMBY) syndrome, APFOs are the biggest obstacles to their attempts to build compact developments in either existing communities or designated growth areas.

It is worth noting that, ideally, an APFO should be merely one of the tools that can be used to enable a jurisdiction to implement its comprehensive plan. The comprehensive plan should establish the overall vision, goals and policies for long-range growth in the jurisdiction. The jurisdiction’s local area master plans, zoning and other regulations, capital improvement program, and other taxing, expenditure and incentive programs should all be consistent with jurisdiction’s comprehensive plan (Kelly and Becker (2000,45-6). Accordingly, a jurisdiction’s APFO and its capital improvement program, impact fees and other infrastructure-related taxing / spending programs should be coordinated in order to enable development in areas designated for growth under the comprehensive plan. An APFO can help ensure that growth within the jurisdiction does not outpace the provision of services and facilities needed to support the residents in areas experiencing growth.

In fact, Maryland is a state well-suited to incorporate APFOs into local planning. Major power for land use planning rests with 23 counties. While there are about 150 cities and towns in the state, a relatively small number of them exercise planning and zoning power. Local governments are required to prepare six-year capital improvement programs that are updated annually. Counties must prepare 10-year water and sewer plans that include the needs and plans for cities/towns within their boundaries. School districts are coterminous with county boundaries, county elected officials have final approval over all school budgets, and county revenues help fund schools (Avin 2004). The above characteristics enhance the potential for counties to coordinate infrastructure and school funding so that development in Smart Growth areas is provided with needed services and facilities.

However, APFO implementation takes place within a political context. Standards for services and facilities, along with implementation procedures, are established by elected officials and can change depending on the growth orientation of the county council or commission. More commonly in recent years, elected officials consistently hear from vocal, current residents who express concerns about growth and such impacts as the loss of open space and increasing traffic. Elected officials also are averse to raising property tax and other fees that affect current residents (their constituency). School boards consistently hear from parents their concerns about overcrowding and aversion to redistricting. As a result, in some Maryland jurisdictions recently, especially in times of fiscal restraint and local backlash to growth, the APFO becomes the dominant land use regulatory instrument. As such, the APFO restrains development that is consistent with the comprehensive plan, with local zoning and with smart growth.

I.B. Purpose of this Report

This report examines the relationship between local APFOs and Smart Growth implementation in Maryland. The overall purpose of the study is to determine whether, the degree to which, and reasons why, APFOs complement or frustrate development in Maryland's Priority Funding Areas. This report addresses that issue through case studies of six (6) of the 13 counties in Maryland that have implemented APFOs. The six counties include Calvert, Charles, Frederick, Montgomery, Prince George's and St. Mary's. The case studies involved a) analysis of each jurisdiction's APFO and its impact fee or excise tax policies (if any), and the APFO's relationship to the local comprehensive plan; and b) interviews with county planners and with building industry professionals familiar with the county's APFO.

In all, 13 Maryland counties had adopted APFOs by 2005, and the location of those counties is shown in Figure 1, below.

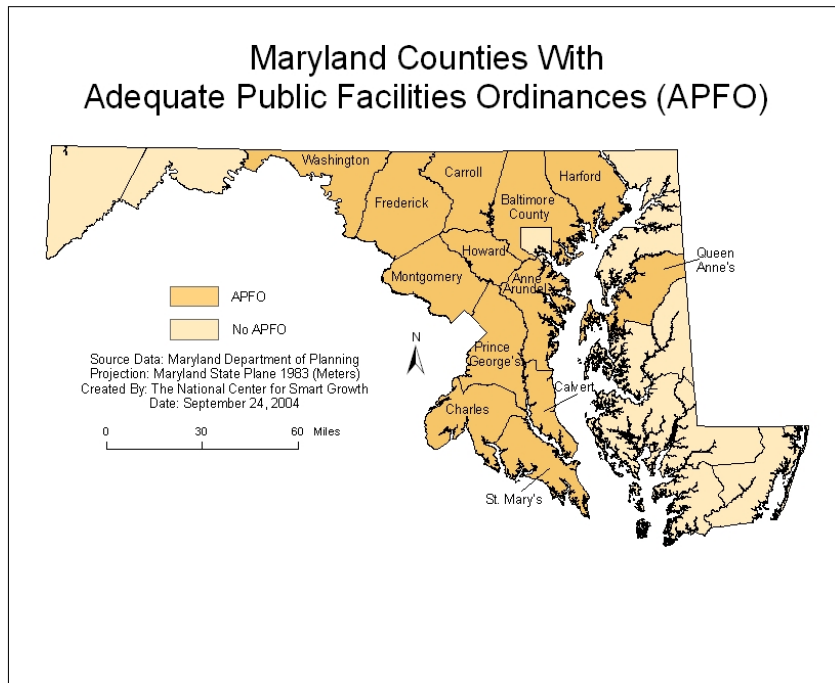


Figure 1. Maryland Counties with APFOs

The Maryland jurisdictions (including 12 municipalities) with APFOs are listed in Table 1, below. The years in which APFOs were first implemented range from 1973 (Montgomery County) to 2003 (City of Rockville). All the counties with APFOs include schools and roads as covered facilities and 10 of the 13 counties include water and sewer facilities. The table shows that of the 12 municipalities with APFOs, three are located in Washington County and the other nine are located in four counties – Carroll, Frederick, Harford and Montgomery.

Table 1. Jurisdictions with Adequate Public Facilities Ordinances in Maryland: First Year of Implementation and Facilities / Services Included, as of September 2005

| Jurisdiction | Year | Facilities / Services Included |
|---------------------|-------------|---|
| Counties | | |
| Anne Arundel | 1978 | Schools, roads, water, sewer, water for fire fighting |
| Baltimore | 1979 | Schools, roads, water, sewer, storm water, recreation |
| Calvert | 1988 | Schools, roads |
| Carroll | 1998 | Schools, roads, water, sewer, police, fire/rescue |
| Charles | 1992 | Schools, roads, fire suppression in rural areas |

| | | |
|--------------------------------------|------|---|
| Frederick | 1991 | Schools, roads, water, sewer |
| Harford | 1991 | Schools, roads, water, sewer |
| Howard | 1992 | Schools and roads |
| Montgomery | 1973 | Schools, roads, water, sewer, fire, health services |
| Prince George's | 1981 | Schools, roads, water, sewer, police/fire/rescue |
| Queen Anne's | 2001 | Schools, roads, water, sewer |
| St. Mary's | 1990 | Schools, roads, water, sewer, fire supp., storm drain. |
| Washington | | |
| Municipalities (& County) | | |
| Aberdeen (Harford) | 1999 | Schools, roads, water, sewer |
| Bel Air (Harford) | 1998 | Schools |
| Boonesboro (Wash.) | 1993 | Schools |
| Brunswick (Frederick) | 1998 | Schools, roads, water, sewer |
| Mt. Airy (Fred., Carr.) | 1989 | Schools, roads, water, sewer, fire/rescue |
| Keedysville (Wash.) | 2005 | Schools |
| Rockville (Montgomery) | 2003 | Schools, roads, water, sewer, fire/rescue |
| Smitsburg (Washington) | 2005 | Schools |
| Sykesville (Carroll) | 1988 | Schools, roads, water, sewer, police/fire/rescue, health services, solid waste disposal, storm drainage |
| Taneytown (Carroll) | 1995 | Schools, roads, water, sewer, storm drainage |
| Thurmont (Frederick) | 1995 | Schools, roads, water, sewer |
| Williamsport (Wash.) | 2005 | Schools |

Table 2, below, compares Maryland counties that have APFOs with those counties that do not, in terms of population size and decennial population growth rates since 1960. As would be expected, the 11 counties with the largest populations in 2000 all have APFOs. In addition, counties with the largest population growth rates during at least two of the decennial periods are more likely to have APFOs. Thus, while Queen Anne's County has smaller population than four of the counties that do not have APFOs, that county's growth rate exceeded all of the non-APFO counties in the 1970s and 1980s, and was lower than only three non-APFO counties in the 1990s.

Table 2. Maryland Counties with and without APFOs in 2005: Population in 2000 and Decennial Growth Rates Since 1960

| Location | 2000 Pop. | Growth Rate | | | |
|-------------------|-----------|-------------|-------------|-------------|-------------|
| | | 1960 - 1970 | 1970 - 1980 | 1980 - 1990 | 1990 - 2000 |
| Maryland | 5,296,486 | 26.5% | 7.5% | 13.4% | 10.8% |
| With APFOs | | | | | |
| Anne Arundel Co. | 489,656 | 44.0% | 24.6% | 15.2% | 14.6% |
| Baltimore County | 754,297 | 26.1% | 5.6% | 5.6% | 9.0% |
| Calvert County | 74,563 | 30.7% | 67.5% | 48.3% | 45.1% |

| | | | | | |
|----------------------|---------|-------|-------|-------|--------|
| Carroll County | 150,897 | 30.7% | 39.6% | 28.8% | 22.3% |
| Charles County | 120,546 | 46.4% | 52.6% | 39.0% | 19.2% |
| Frederick County | 195,277 | 18.1% | 35.2% | 30.9% | 30.0% |
| Harford County | 218,590 | 50.4% | 26.5% | 24.8% | 20.0% |
| Howard County | 247,842 | 71.3% | 91.5% | 58.0% | 32.3% |
| Montgomery County | 873,341 | 53.3% | 10.8% | 30.7% | 15.4% |
| Prince George's Co. | 801,515 | 84.8% | 0.7% | 9.5% | 10.0% |
| Queen Anne's Co. | 40,563 | 11.2% | 38.5% | 33.1% | 19.5% |
| St. Mary's County | 86,211 | 21.8% | 26.4% | 26.8% | 13.5% |
| Washington County | 131,923 | 13.8% | 8.9% | 7.3% | 8.7% |
| Without APFOS | | | | | |
| Allegany County | 74,930 | 26.5% | 7.5% | 13.4% | 10.8 |
| Caroline County | 29,772 | 1.6% | 17.0% | 16.8% | 10.1% |
| Cecil County | 85,951 | 10.1% | 13.4% | 18.1% | 20.5% |
| Dorchester County | 30,674 | -0.9% | 4.1% | -1.3% | 1.4% |
| Garrett County | 29,846 | 5.2% | 23.4% | 6.2% | 6.1% |
| Kent County | 19,197 | 4.3% | 3.4% | 6.9% | 7.6% |
| Somerset County | 24,747 | -3.6% | 1.4% | 22.2% | 267.8% |
| Talbot County | 33,812 | 9.8% | 8.1% | 19.3% | 10.7% |
| Wicomico County | 84,644 | 10.6% | 19.0% | 15.2% | 13.9% |
| Worcester County | 46,543 | 3.0% | 26.4% | 13.4% | 32.9% |

I.C. Criteria Used to Summarize Data from the Case Studies

Based on the above cited provisions of the 1992 Planning Act , the Smart Growth Areas Act and selected Smart Growth Network principles, the following are seven criteria that are used herein to summarize data from the case studies. The summary highlights the degree to which county APFO design and implementation is complimentary to smart growth and reflect planning principles consistent with Maryland planning mandates and smart growth principles. For purposes of this discussion, the criteria will be referred to as “good planning”. Some of these criteria are based on Avin (2004).

1. The local comprehensive plan provides guidance for planning regulations, including the APFO. Accordingly, the APFO favors growth within PFAs rather than outside.
2. APFO standards are reasonable.
3. APFO is justly administered.
4. The APFO feedback informs the Capital Improvement Program.
5. The APFO contributes to development decisions that are predictable, fair and cost-effective.

6. There is tight coordination between the planning department and the board of education, so that school-related decisions are consistent with the APFO and the comprehensive plan.
7. There are reasonable funding options, aside from the CIP, available to provide needed facilities/services in PFAs.

I.D. Summary of the Case Studies with Regard to Each Criterion

1. Under good planning, the local comprehensive plan should provide guidance for planning regulations, including the APFO. Accordingly, the APFO favors growth within PFAs rather than outside PFAs.

The six county case studies show there is variation in the degree to which comprehensive plans are guiding APFO and CIP implementation, and to which APFOs are favoring growth in PFAs. On paper, all six county APFOs would seem to be favoring growth inside PFAs rather than outside them to some degree. Every county has more relaxed road standards in its designated growth areas or town centers than in rural areas. Some counties, such as Montgomery and Prince George's, charge lower impact fees within key growth districts. However, unless there is adequate infrastructure capacity within PFAs and the school districts serving them, large portions of designated growth areas will be in moratoria (as is the case in parts of Calvert and St. Mary's Counties and until recently has been the case in Montgomery and Prince George's Counties). APFO consistency with the comprehensive plan is possible only if adequate funding is allocated to provide the necessary infrastructure in the plan's designated growth areas.

APFO's should not become *the* controlling planning tool in a jurisdiction, when other mechanisms for implementing a comprehensive plan are more appropriate. An example of the latter is Prince George's County, where the 2002 comprehensive plan included an objective to limit the proportion of the county's housing units that are built in the Rural Tier to 1.0% by the year 2025. Evidence is that, in recent years, a much higher proportion of the county's housing units were being constructed in that planning area. While the county tightened the allowed emergency response time standard to its APFO ostensibly in reaction to residents safety concerns, the standards were set so tightly that the whole county was shut down to residential subdivision review for over eight months. It is clear that the current County Council is interested in restricting growth in the Rural Tier, and APFO school, road and public safety standards favor projects proposed within the Developed Tier. However, the Prince George's County case suggests that an APFO is an inappropriate mechanism to use for accomplishing land use goals that are better addressed through longer term regulations tied closely to the General Plan.

2. Under good planning, the APFO standards should be reasonable. In terms of schools, in Frederick County the schools are judged to be adequate only if capacity is below 100%, while in others the acceptable capacity is much higher. Several professionals in the building industry interviewed for this study pointed out that school populations can

ebb and flow over time, and that it does not make sense to initiate a subdivision approval moratorium once a school building has a projected enrollment of 100%. In the short run, many say, a county can rely on relocatable classrooms rather than declare a moratorium and / or find funding to build a new school. Only one of the six counties (Charles) allows for relocatable classrooms to be included in the available capacity when school adequacy is assessed. The reasonableness of having school adequacy threshold of 100% is closely related to the issue of whether school adequacy is properly determined (i.e. whether the APFO ordinance is justly administered -- see below).

3. Under good planning, the APFO is justly administered. This study found a high level of concern among the development community with the way that school capacities are determined. One building industry professional interviewed for this study asserts that school administrators deliberately build in extra capacity into schools, made possible by having large rooms with movable partitions. Since the state school standard is that a classroom for 25 students must have a minimum of 800 square feet, the local school administrator could adjust the partitions so that some areas were less than that size and the school could be officially full. Or, the administrator could reduce class sizes. Or, the school board could produce erroneous enrollment figures. All this leads to skepticism about school capacity calculations.

A different kind of example, from Prince George's County, shows how APFO road adequacy determinations can be misleading. That county's APFO considers roads adequate if funding for needed improvements is in a county CIP or in the State Consolidated Master Plan. The county has been approving subdivisions whose road adequacy determination was based on the fact that State Rte. 301 widening is in the long term State plan. However, that project has never actually been funded, nor it is expected to be funded in the indefinite future. Some residents in the Bowie, MD area interviewed for this study complain that the APFO lacks integrity as a result.

4. Under good planning, APFO feedback informs the local government's capital improvement program (CIP). However, many of the building industry professionals interviewed for this study stated that they saw little evidence of this in some of the counties in which they have done business. For example, one developer asserted that in Charles County, when a project is turned down because of road capacity on minor roads, nothing shows up in the subsequent CIP because the budget focus is on the major roads.

5. Under good planning, the APFO contributes to development decisions that are predictable, fair and cost-effective. This analysis focused on four ways in which jurisdictions could address this principle in APFO design and implementation. a) by determining capacity surpluses or deficits at the concept (sketch) level of review so the developer can decide whether and/or when to proceed with project development before incurring substantial expenses; b) by enabling the developer to mitigate for capacity shortfalls by constructing improvements or paying in-lieu fees; c) by arranging reimbursement to a developer who pays for improvements that expand capacity that benefits developers of future projects; and d) by specifying the extent of the denial period

-- and limiting the denial period -- so that developers know if and when they can proceed with the project.

In terms of making capacity determinations at the concept level of review, all but one of the six counties makes the determination of capacity availability at the sketch level. Prince George's County now makes capacity determination at the subdivision phase, on the premise that at the subdivision phase there is more detail in the proposal for APFO review purposes.

In terms of enabling the developer to mitigate for capacity shortfalls by constructing improvements or paying in-lieu fees, the results depend on the facility under consideration. All counties except for Charles allow for developers to mitigate or pay in-lieu of fees for roads. Other than impact fees, only Charles allows developers to mitigate for schools (through that county's "pay-and-go" system). Frederick County's APFO allows for developers to construct new schools, but not to pay the county an amount proportionally equal to the school building space needed for the number of students generated by his/her residential project. A building industry professional noted that this feature of an APFOs is an especially serious hardship for smaller developers/builders, who do not have sufficient capital to participate in "pay-and-go".

In terms of arranging reimbursement to a developer who pays for improvements that expand capacity that benefits developers of future projects, only Prince George's County has this policy.

In terms of specifying the extent of the denial period -- and limiting the denial period -- so that developers know if and when they can proceed with the project, only Calvert County has this provision although the wait period is seven years.

Prior to July 2004, Calvert was the only county among the 6 studied that gave developers some certainty about the length of the APFO-related denial period. Charles and Frederick still do not, but Montgomery County altered its APFOs, effective July 2004, to give developers more certainty about when they can develop. In Montgomery County's case, under the new guidelines the developer may proceed as long as road and school impact taxes are paid, except for a residential project in which projected enrollment at impacted schools is above the respective capacity standards for elementary/middle schools and for high schools. If projected enrollment exceeds the standard but is below 110% of it, the developer must pay a \$12,500 per student "school facilities payment". In Frederick and St. Mary's Counties, residential projects can be delayed indefinitely due to funding shortfalls for increasing school capacity to APFO-required standards.

5. Under good planning, there is tight coordination between the planning department and the board of education, so that school-related decisions are consistent with the APFO and the comprehensive plan. Few of the counties reported having excellent communication between the planning department and the school board. In Prince George's County one planner described the relationship as a "work in progress".

6. Under good planning, there are reasonable funding options, aside from the CIP, that are available to finance needed facilities / services in designated growth areas. However, school funding options are limited in five of the six studied counties to impact taxes and fees on new construction. Planners in St. Mary's County note that the actual impact fees being charged are much lower than what their consultants have recommended. A jurisdiction with a property tax caps, such as Prince George's, has additional limitations in using tax monies for infrastructure provision. Montgomery was the only county of the six that uses a portion of its real estate transfer tax to pay for schools, since most of that county's new enrollments result from re-sales of existing houses rather than from new home construction.

I.E. A Typology of the Six County's APFO Design / Implementation as of October 2005

The case studies of the six studied counties shows divergence in APFO design and implementation, and in the effort taken by the counties in generating funding – beyond the CIP – for infrastructure needed to support growth in PFAs. The six counties can be characterized by 1) the degree of strictness of the school APFO standards (since it is school adequacy that has caused most moratoria in growth areas); and 2) the degree to which the county uses impact fees, excise taxes or other mechanisms to augment the CIP to increase school capacity or other major, local growth-limiting factor; and c) whether the county has a defined waiting period after which a given delayed development may proceed, and the length of the waiting period.

For purposes of the typology, “strict” school APFO counties are those that either a) define acceptable enrollment thresholds at less than 105% of state-rated capacity; b) prevent relocatable classrooms from being considered as potential classrooms; and/or c) do not allow for borrowing capacity from adjacent school districts to relieve otherwise moratorium-inducing “overcrowding” in a given district. “Flexible” school APFO counties are those that either a) define acceptable, projected enrollment thresholds above 110% of state-rated capacity); b) allow relocatable classrooms to be considered as acceptable to prevent development moratorium; and c) allow for borrowing of school capacity from adjacent school districts to relieve otherwise moratorium-inducing enrollment projections.

In terms of the degree to which each of counties augments its CIP, “Resource-limiting” APFO counties are those in which infrastructure funding sources are relatively limited because of lower-than recommended impact fees or excise taxes; lack of other taxes dedicated for schools (such as from the real estate transfer tax); and/or a property tax cap that limits available resources. “Resource-expansive” APFO counties are those in which elected officials have raised impact fees, excise taxes or other funding sources dedicated for infrastructure, and/or have implemented “pay-and-go” systems or development rights and responsibilities agreements to help pay for otherwise growth-limiting infrastructure.

In terms of waiting periods, “Indefinite” waiting period” counties are those in which the APFO allows for a development proposal to be in moratorium for an unspecified period of time. “Long” waiting period counties are those in which the waiting period is more than 5 years after initial, APFO-induced subdivision denial. “Short” waiting period

counties are those in which the waiting period is less than 5 years after initial, APFO-induced subdivision denial. “No” waiting period means that the county does not specify a waiting period and is experiencing no moratoria.

The case studies show that the “strict” school APFO counties that are resource-limiting and have indefinite or long waiting periods are much more likely to be undergoing building moratoria in October 2005 than are “flexible” school APFO counties that are resource expansive and have no waiting periods. The following list classifies the six counties into the categories based on the case studies.

Calvert: Strict School APFO County; Somewhat Resource-Limiting; Long Waiting Period

School capacity threshold of 100% of state-rated capacity, relocatables not included in capacity determination, and no longer borrows from capacity of adjacent school district; school impact fee of \$7,800 on single-family home; waiting period of 7 years.

Charles: Somewhat Flexible APFO School County; Resource Generating; Indefinite Waiting Period (unless use “pay-and-go”)

Allocates school capacity but uses “core capacity” determination that results in capacity determinations of between 100-120% of state-rated capacity, relocatables included in capacity determinations, but no redistricting; has “pay-and-go system that lets county negotiate with developers for contributions to infrastructure in exchange for development approval, school excise tax of \$10,247 on single-family home (but no impact fee, excise tax or in-lieu payments allowed for roads); indefinite waiting period for school allocation if not using “pay-and-go”.

Frederick: Inflexible APFO School County; Somewhat Resource Limited; No Waiting Period

School capacity threshold of 100% of state-rated capacity, no relocatables included in capacity determinations, while developer can request school board to redistrict when capacity is available in adjacent school there is no obligation of school board to do so; School impact fee of \$9,509 for single-family home but no other non-CIP source for school construction (although the law allows a developer to construct a whole school); no waiting period because developers get pre-test on school capacity and so no real “denials” as projects are not even submitted for review (but a building professional calls this a “de facto moratorium”.

Montgomery. Strict School APFO County; Resource Generating; No Waiting Period

School capacity threshold of 100% for high schools and 105% at elementary and middle school level, no relocatables included in capacity determinations; Base school impact fee of \$8,000 for single family home that can rise to \$12,000 depending on size, in addition a developer can pay a \$12,500 per student “school facilities payment” if projected enrollment is above standard but below 110%; no moratoria and no waiting period.

Prince George’s: Flexible School APFO County; Somewhat Resource Limited; No Waiting Period

APFO capacity tests used only for planning purposes, not as development approval condition; school surcharge of either \$7,000 or \$12,000 depending on location of development; No waiting period once school surcharge introduced in mid 2003.

St. Mary's: Somewhat Inflexible School APFO County; Resource Limited; No Waiting Period (but have moratoria)

Uses school area test (3 geographic areas) rather than individual school district test, with threshold at 107% of state-rated capacity for all elementary (or middle or high schools) in a given area; no relocatables included in capacity determination; school impact fee of \$4,375 for single family home, but this is much lower than county consultant's recommendation of \$9,200; no waiting period but Leonardtown school area in moratorium since December 2004.

More detail on the counties' APFO design and implementation is contained in the case studies.

I.F. Conclusions from the Case Studies

The case studies of the APFO counties, and analyses of how their implementation addresses selected smart growth principles, suggest a number of challenges for APFOs to be applied in accordance with Maryland planning policy and smart growth. The following are seven (7) challenges that have been identified.

1. The first challenge is that APFOs are designed, implemented an altered in a political environment. Sometimes, this means that APFOs become the controlling land use tool in a given jurisdiction, an outcome that can sometimes derail smart growth objectives. While the above can be problematic, the difficult issue is whether there is any other land use decision making process that is preferable (or politically feasible) in Maryland.
2. The second challenge of facilitating smart growth with APFO implementation is in raising sufficient revenue to fund the provision of facilities and services in areas designated for growth under the counties' comprehensive plans.

In some ways, the financial situation in Maryland resembles the problem that has faced local governments under Florida's statewide "concurrency" requirement since its inception in the mid-1980s. As reported by Nicholas and Steiner (2000), the Florida Legislature has shifted responsibility for funding growth to the local level, and this has reportedly contributed to urban sprawl as developers seek out developable areas with excess infrastructure capacity. Pelham (2001) argues that the State of Florida must support its land use policies "with commensurate taxing and spending priorities which do not subsidize and encourage sprawl". Maryland's case is somewhat different in that, under Maryland Smart Growth, state funds for water, sewer, roads, housing and economic development are directed to Smart Growth and Priority Funding Areas.

However, counties such as Calvert and Montgomery, with time limitations on APFO waiting periods, have raised the stakes. These two counties are providing developers with "predictability" by betting that sufficient revenues will be raised to provide up-to-

standard road and school capacities by the time delays / moratoria automatically end. However, what happens if sufficient revenues are not raised, and capacity is not at the legislated levels of service? One possibility is that moratoria will be declared under an “emergency” situation until a new funding plan (i.e. higher taxes and/or fees) is devised. Developers will rightfully feel betrayed if moratoria are extended. Another possibility is that capacity standards would need to be lowered to keep promises to developers and deal with infrastructure funding shortfalls. A third option is that taxes and/or impact fees would need to be raised. Still another option is for the comprehensive plan and zoning to be changed to reduce allowable density. Only time will tell whether the gambles have worked.

3. A related APFO / smart growth challenge is determining how to raise funding for infrastructure capacity upgrades in a fair and progressive way. Impact fees and taxes in the six studied counties are ultimately paid by purchasers of new housing. However, the fairness issue, along with the capability of raising more revenue, is why Montgomery County uses a portion of its real estate transfer tax revenues to pay for new school schools. This is because a significant proportion of that county’s new school enrollments are generated by households’ purchases of *existing* houses. The source of new students (existing versus new housing) will vary across counties at any given time. More research and discussion is needed at the local and state level on the sources of school enrollment increases and the most effective and equitable ways of taxing residents to pay for the needed school improvements.

Among the options that deserve further study is having large commercial or industrial developments enter in partnerships with local government to help build schools, under the rationale that additional school space is needed for children of the new employees. Another alternative is to have such firms pay a graduate school impact fee, dependent upon size.

4. An important and volatile issue in school APFO implementation is that of using school redistricting to prevent building moratoria caused by school overcapacity. Redistricting to prevent building moratoria caused by school overcapacity appeases developers but angers parents. County officials are left with the choices of a) redistricting almost annual; b) responding to parents’ complaints and maintaining moratoria; c) raising taxes / fees sufficiently to pay for new schools; and/or d) loosening capacity standards.

5. A fifth challenge is improving local databases, analytical methodology, forecasting, and capital facilities planning and funding to better assist local officials to balance new growth with needed infrastructure (Tustian 2004). Part of the issue here is the state of the art of modeling and forecasting. Donnelly (2003) has pointed out a number of factors that will be impacting school capacity, including the “No Child Left Behind Act” and the growth of magnet and charter schools. In addition, the Maryland legislature has required that elementary schools provide all-day kindergarten by the year 2007.

However, accepting the fact of uncertainty, one would hope that APFO methodologies are not purposefully manipulated in order to constrain growth when capacity is actually available, or to approve developments that are actually projected to result in facility overload. Evidence discussed above suggests the former frequently takes place in Maryland. The latter instance was the case in Washington State, where a report resulting from a whistle-blowers' complaint found that the county was using incorrect assumptions and methodology that allowed development to proceed even though road congestion would be beyond county standards (Pyrne 2003).

6. A sixth challenge is educating the public on the fiscal and environmental consequences of alternative APFO standards. For example, what is the fiscal and environmental cost of widening a road compared to the opportunity cost of drivers waiting a few more seconds at an intersection?

7. A seventh challenge is administering a county APFO when the municipalities in the county do not have their own APFOs. On one hand, some key informants say this encourages growth in municipalities, consistent with Smart Growth. On the other hand, the inconsistencies in APFO implementation put strains on county infrastructure and can hamper growth within the county's own PFAs.

In closing, it is worth noting that, in its 1999 annual report, the Maryland Economic Growth, Resource Protection and Planning Commission had a number of recommendations regarding APFOs. One was creation of a state infrastructure financing program for growth areas that would be used for infrastructure improvement in PFAs. Some recommended features of the fund were that all projects funded, including schools, must be within a PFA and be identified in the local government's CIP; and that a local match would be required. Specific priority from the fund would be given to projects that a) remove APFO restrictions or other moratoria that stop or retard development in PFAs; and b) involve the renovation or rehabilitation of existing infrastructure. Furthermore, two special categories of the fund infrastructure fund were to be the following:

- 1.0% of State monies allocated for fund each year set aside for a public education campaign focused on cost of sprawl, the need to provide adequate facilities in growth areas, and benefits of Smart Growth; and
- a special fund to assist with improvements need to meet APFO requirements related to State facilities, which would be a required element of the Consolidated Transportation Program. The fund would be used to "reward jurisdictions for measurable achievements to control sprawl and encourage Smart Growth".

Among the other highly-ranked recommendations of the Commission's workgroup were the following.

- Broad-base tax resources (property, sales or income) should provide the fiscal resources necessary to fund APFOs in growth areas. The state needs to diversify

broad-base revenue sources available to local governments to reduce dependence on the property tax.

- The Interagency Committee for School Construction (IAC) should increase its square footage funding allowance for the renovation of school facilities located in, or serving students residing in, PFAs.
- A coordinated plan should be prepared, detailing State and local actions necessary for the provision of adequate infrastructure.

Another Commission recommendation would have amended APFO enabling legislation to add the following local governmental powers, specifically to a) establish Special Tax Districts or TIF districts to raise funds for needed facilities; and b) establish other mechanisms, such as infrastructure funding “banking” programs, that accumulate developer contributions to be used to fund needed improvements. The Commission also recommended that Article 66-B be amended to clarify that local governments would have the following responsibilities:

- establishing a limit on length of an APFO-based moratorium or delay on a development proposal in a PFA;
- waiving APFO requirements on certain infill or revitalization projects within PFAs; and
- every 2 years, preparing and publishing a report identifying facilities within PFAs that do not meet local APFO standards, and any improvements to those facilities that have been scheduled / proposed in the CIP.

In its 1999 report the Commission concluded the following:

APFOs are an important tool for ensuring that the necessary public facilities exist in growth areas. Nevertheless, without alternative financing structures to address facility needs in those areas, APFOs can push development away from the very locations where growth is most appropriate. . . Therefore, enabling legislation should be broadened, or at least clarified, so that local governments can adopt other techniques which would address the need for additional infrastructure funding sources. (*Making Smart Growth Work*, 1999)

Finally, it is worth repeating that APFOs should be one of tools – not the primary tool -- used by a jurisdiction to guide growth in a way that is consistent with its comprehensive plan. The underlying assumption is that growth itself is not the problem, but growth’s location, pattern and quality. If areas are designated for growth in the comprehensive plan, it is the jurisdiction’s responsibility to ensure that new development and revitalization in those areas is served with adequate infrastructure and facilities. While APFOs have often resulted in slowing growth to maintain level of service standards,

when sufficiently funded they can also be used to guide development consistent with smart growth principles. Doing the latter will take political will, public discussion of what “adequate” means for a given service or facility and how those standards can be achieved (particularly for transportation), sophisticated forecasting and modeling, and thoughtful financing that incorporates social equity concerns.

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II. Case Studies

II.A. Calvert County

As expressed in its first comprehensive plan in 1967, Calvert County regards preservation of its rural character as a major priority. At first the County relied on 3-acre zoning to protect farm areas from the impact of residential development. The 1970 census revealed the county's population to be 20,682, an increase of 30.3% during the 1960s. In 1974, the County updated its comprehensive plan, declared "slow growth" a primary goal, and increased minimum lot size in the rural area to 5 acres. By the end of the decade the County had initiated a transfer of development rights program to augment its agricultural preservation efforts.

By 1980, Calvert County's population had reached 51,372, a 48.3% increase since 1970. In 1983, the County updated its comprehensive plan, which called for directing new commercial and higher density residential growth to a series of town centers. By 1987 the Calvert County Board of Commissioners were concerned with generating new revenues to support additional growth, and hoped to avoid raising property taxes to pay for new facilities / services. The County's APFO was created in 1988, primarily because school and road construction was not keeping pace with rapid residential growth. The County hired a consultant (Nancy Stroud from the Florida firm of Burke, Bosselman and Weaver) to help craft their new ordinance. Also in 1988 the County began imposing an impact fee on all new development to help pay for school construction.

Calvert County's population grew 45.1% in the 1990s, and an additional 16.0 percent from 2000 to 2004. The county's population of 86,474 is nearly 2.5 times the population in the year 1980, even though during the early 1990s the APFO "effectively stopped the approval of most new subdivisions until the new schools could be built" (Calvert County Comprehensive Plan, 2004).

In 1992, large lot zoning was again the focus of intense public review. Despite its preservation efforts, Calvert County was leading the state in the amount of farm and forest acreage being converted to residential uses. To address the problem the county adopted mandatory clustering together with the designation of three zoning categories: a) Farm Communities; b) Resource Preservation Districts; and c) Rural Communities. Under the new guidelines lots had to be clustered onto 50% of the area of any given parcel within the rural community and onto only 20% of any parcel within a Farm Community or Resource Preservation District.

Calvert County's 1997 comprehensive plan included a projection of county build-out at 150,000 people, even while increasing the land preservation goal from 20,000 preserved acres to 40,000 preserved acres. However, the population projection generated substantial criticism for being too high. Subsequently, the county has not altered the zoning map but has changed the allowed zoning densities specified in the text. In 1999 the County reduced all zoning by 50%, as 5-acre lots became 10-acre lots and 10-acre

lots went to 20 acres. Densities were also reduced at the town centers. However, a developer in a town center is able to use TDRs to build at higher-than-normally-allowed densities there. In addition to downzoning, the County has attempted to achieve build-out reduction by creating new incentives for voluntary land preservation, including an Agricultural Preservation Leveraging Program. The 2004 Comprehensive Plan states that by 2004, “build-out had been reduced to an amount that could reasonably be accommodated without major reductions in the quality of public facilities and services (in particular schools and roads) or the need for major increases in taxes.

An Overview of the Calvert County APFO

Calvert County’s APFO focuses on schools and roads. The County considered having police and fire service included in the original APFO in the 1980s but these facilities / services were judged to be minor factors in the county’s struggle to keep pace with population growth. Under the 1988 ordinance, before the planning commission could approve a subdivision it had to determine that all identified roads and schools were currently adequate or programmed to be adequate until 1990, and within one year lead time of final approval after 1990. A proposed subdivision would be denied unless the applicant could provide the necessary improvements to the roads and/or schools. The planning commission is responsible for developing and publishing policies and procedures, as necessary, for obtaining final approval for subdivisions that have been on hold pending adequacy of public facilities.

Standards Used to Determine School Adequacy; Length of Final Approval Delay

Calvert County’s APFO has gotten less growth-friendly over time in terms of the a) rated capacity of schools; b) the threshold capacities triggering a moratorium on development approvals in a given area; and c) the length of time that a subdivider or developer needs to wait before being given final approval (even if facilities are still inadequate).

For schools, “adequacy” as currently defined is when all public elementary and secondary schools that will serve the proposed residential subdivision / development can accommodate the pupil yield from that residential subdivision or development without exceeding 100 percent of the rated capacity of those schools (Calvert County Zoning Ordinance, 7-1.05.D). If enrollment exceeds 100 percent of rated capacity, the schools may still be deemed adequate if an adopted school redistricting leads to a result whereby the enrollment projected by the County’s Department of Planning and Zoning (DPZ) for the next school year is at or below 100 percent of rated capacity in any of the schools serving the residential subdivision or development. The County DPZ publishes a report annually that lists the 100 percent rated capacity for each of the county’s schools.

The following table shows the pupil yield assumptions for different types of development. The yields are the same contained in the initial, 1988 ordinance.

Table Ca.1. Pupil Yields for Different Housing Types: Nov. 2004

| Housing Type | Pupil Yield by Grade | | |
|--------------|----------------------|------------|-------------|
| | Grades K-5 | Grades 6-8 | Grades 9-12 |

| | | | |
|------------------------|------|------|------|
| Single-family detached | .291 | .130 | .176 |
| Single-family attached | .194 | .084 | .118 |
| Low-rise apartments | .097 | .043 | .059 |
| Manufactured homes | .145 | .065 | .088 |

Source: Calvert County Zoning Ordinance, 7-105 D.3.

Rated Capacity of Schools. With regard to elementary schools, in the 1988 ordinance the rated capacity was calculated as the number of classrooms multiplied by 25. In that calculation, the number of classrooms does not include such areas as libraries, media centers, cafeterias, physical education rooms, art rooms, music rooms, assembly rooms, science rooms, special reading rooms, and career education rooms, re-locatable classrooms or rooms for other unique programs. A school was determined to be over capacity for residential development-approval purposes if projected enrollment exceeded 110% of rated capacity.

In 1993, the APFO was changed so that, in the event that if a given elementary school was not adequate, a development proposal could still pass the adequacy test if the Board of Education’s enrollment records from the previous September revealed that the aggregate enrollment at all the elementary schools in the impact fee district encompassing the “overcapacity” school did not exceed 105% of the aggregated rated capacity for those schools – as long as there was sufficient capacity in the other schools serving the development.

In 2001, the County amended the APFO to lower the rated capacities of elementary while simultaneously lowering the threshold for declaring a school over capacity. The formula for determining the rated capacity of elementary schools was changed to the sum of the following:

- a) for pre-kindergarten, the number of classrooms multiplied by 20;
- b) for kindergarten, the number of classrooms multiplied by 22;
- c) for grades 1-5, the number of classrooms multiplied by 25; and
- d) for special education, the number of classrooms multiplied by 10.

In addition, the 2001 amendments reduced the upper threshold of school adequacy from 110% to 100% of rated capacity for all school (including middle and high schools). The amendments also eliminated the more growth-friendly provision from 1993 that allowed for consideration of the aggregated rated capacity of the elementary schools in the entire impact fee district. Instead, the elementary school serving the proposed development is now the only one considered.

For middle and high schools, the rated capacity is the number of “teaching stations” multiplied by 25, with the resulting number multiplied by 90 percent. The county justifies this formula on the basis that such students often have elective classes that are not completely filled. However, for high school capacity determination, added to the rated capacities is the number of students attending either the morning or afternoon sessions of the Career Center (whichever is lower) for each respective high school at the beginning of the grading period.

Calvert County's APFO (§7-105 D.2) defines "teaching stations" as the "interchangeable classrooms, special purpose rooms, laboratories, vocational/industrial arts shops (excluding vocational resource classrooms), art rooms, mechanical drawing rooms, music rooms and home economics rooms." A gymnasium is considered to be one teaching station, although a gym with a standard inter-scholastic basketball court is counted as two teaching stations. Relocatable classrooms are not included in the count.

The above-described capacity determination for middle schools represents a tightening of the capacity definition since the 1988 ordinance. In the original ordinance, rated capacity of middle schools was the product of the number of teaching stations and 25 (i.e., that product was not reduced by multiplying by 90%). The capacity determination for high schools uses the same formula contained in the original ordinance.

Length of Delay Before a Subdivider May Proceed. In the 1988 ordinance, in order to avoid any takings claims, the county decided to exempt the first 3 lots in a subdivision from the APF requirements. In 1993, the newly-elected Board of Commissioners was concerned about court challenges to the APFO ordinance based on permit denials. The board asked how long it took to build a new school and was told that 5 years would be an ample amount of time for a school to be constructed. The result was an amendment to the APFO in 1993 stating that if a development proposal would lead to a school overcapacity, the developer would have to wait 5 years for the school to be built. If schools become adequate or if 5 years went by, the development could proceed even if the school was not constructed or expanded by that time.

In a 2003 amendment to the APFO, the waiting period was increased to 7 years, subject to the following procedure. For residential subdivisions (not including townhouses, multi-family housing, etc.), applications for final approval are considered in order of their preliminary approval. If final approval of a residential subdivision is being held up only because of inadequate school capacity, then 7 years after the date of preliminary approval the project is entitled to final approval, whether or not the relevant school capacity is adequate – as long as all other conditions of final approval are satisfied. This provision applies even when there has been an amendment to the site development plan or a portion that plan during the 7-year interval, as long as the commission finds that the pupil yield that would result from the amended residential development is not greater than that of the original site plan and would not adversely affect the public health, safety and general welfare of the present and future residents of the development (§7-105 B).

According to County planners, frequently the entire county is closed to the recording of residential subdivisions and building permits due to school moratoria. Twice a year (April and November) DPZ prepares a map showing schools by name and indicates whether the school board has done redistricting. In its November 2004 report the DPZ identified 4 of 12 elementary school districts that were closed to recording of subdivisions due to inadequate capacity, as were one of the six middle school districts and two of the four high school districts (Plummer-Welker 2004b).

The school board has its own facilities planner but there is reportedly a good working relationship between the DPZ and the school board. The Board of Education appoints a redistricting committee with staff and Planning and Zoning has a representative on the committee.

Exemptions to the APFO Requirements

There are three kinds of exemptions to the APFO provisions, which the County included in the ordinance “to lessen the hardship that this Ordinance may have on property owners’ (§7-105 F). The first two types of exemption applies to any parcel on record as of the date of the APFO passage (Feb. 23, 1988) and which are eligible for more than five lots. For such parcels, the first three (3) lots to be created for residential purposes are exempt from the APFO. (Note that if the parcel already has either a built residence or a building permit for one, then that home or permit does not count as one of the three.) Or, the owners of such parcels can chose to voluntarily restrict the maximize number of lots to five (5). In other words, the owner of such parcels can either create three new lots and have any additional lots be subject to the APFO, or simply choose to limit build-out to five lots, none of which are subject to the APFO. For parcels that are already zoned for five or fewer lots, the lots that are created are exempt from the APFO.

Exceptions to the school capacity review requirement are made for a) subdivisions or residential developments that restrict occupancy to elderly persons (over 55 years old), or b) non-residential developments. This exception was included in the first version of the ordinance.

Relationship of the County’s School Board to the County Government

The Calvert County School Board is appointed by the governor and not elected, so members are independent from the County. The school board has no fiscal responsibility, so must ask the County Commissioners for money.

Calvert County APFO Standards for Roads

For roads, §7-105 C states that a proposed residential subdivision must be served by access roads “adequate to safely accommodate the vehicular traffic projected to be generated by the proposed subdivision or residential development”. The ordinance states that the County may require that a traffic study be conducted by a registered professional engineer approved by the County’s Department of Public Works, and be done at the applicant’s expense. The traffic study must be prepared in accordance with DPW-created written procedures and criteria (approved the Board of County Commissioners). The study is intended to determine if the area roadways and intersections are adequate to accommodate the proposed residential subdivision or development. The traffic studies must use the Critical Land Method at intersections with the nearest arterial road from the proposed development.

“Adequacy” is defined differently depending on type of road (County or State) and on whether the proposed development is within or outside of a Town Center. To be determined adequate by the planning commission, County roads must maintain a level “C” service rating, and State roads a “D” rating, after the factoring in the full

development of the proposed project “and all other existing and proposed residential developments and subdivisions in the study area” (§7-105 C). However, a level of service rating of “D” on County roads and intersections is acceptable inside Town Centers, once the full development of the proposed project and all other existing and proposed subdivisions and residential development in the study area are included. The traffic study can be waived by the County Engineer or his designee “under extenuating circumstances” (§7-105 C). The Department of Public Works is responsible for making recommendations to the planning commissions as to whether all the roads in a study area are “adequate”.

In the original ordinance, the traffic adequacy tests were only required of residential projects because the County did not want to discourage economic development. However, over the past four years the county has been experiencing gridlock and traffic jams. Accordingly, in August 2004 the County adopted an APFO for commercial development. It requires commercial and industrial developers to do an APFO test but exempts commercial development that generates 400 trips per day or less. During the 10-month period between the time the regulations were adopted (August 2004) and June 2005, there were no commercial or industrial developments delayed due to inadequate roads or intersections.

The County’s APFO for commercial / industrial development law allows for waivers on APF requirements for any “targeted industry”. Calvert County's target industries were developed and described during a target market analysis done in 1996. The Calvert County Economic Development Department provided the following list and descriptions for the targeted industries.

Administrative Services - operations where administrative workers engage in corporate office support operations, such as processing orders, billings, claims, and similar tasks.

Defense - companies that provide professional and management services to the defense industry within the following fields: software development, computer integrated systems design, engineering management services, and computer consulting.

Non-Defense - companies that provide managerial and technical consulting and related services within data processing, engineering, research and testing, energy environment, computer systems analysis, and software. This category also includes research and testing services (commercial & non-commercial) and contract management services.

Computer Programming, Software Development Related Services - companies that provide services and products to: computer programming; pre-packaged software in accounting, communications, government, health services, manufacturing, office automation, technical/scientific and utility systems; and computer related services such as computer systems consulting, data processing consulting and database development.

Impact Fees in Calvert County

In 1988 the County also began imposing an impact fee on all new development to help pay for school construction. The county now has an excise tax that includes schools, recreation facilities, roads and solid waste. Table Cal-2 shows the amount of the tax, by type of residential structure and use of the fund. It is noteworthy that there is no tax on commercial or industrial structures for roads.

Table Ca. 2. Excise Tax Fund Charges in Calvert County, MD: July 2005

| Type of Residential Unit or Structure | Excise Tax Fund Charge Per Unit or Structure | | | | Total Tax |
|--|--|------------|---------|--|--|
| | Schools | Recreation | Roads | Solid Waste | |
| Single-family detached | \$7,800 | \$1,300 | \$3,500 | \$350 | \$12,950 |
| Single-family attached | \$5,175 | \$1,300 | \$3,500 | \$350 | \$10,325 |
| Manufactured home | \$3,900 | \$1,300 | \$3,500 | \$350 | \$9,050 |
| Apartment | \$2,600 | \$1,300 | \$3,500 | \$350 | \$7,750 |
| Bona fide elderly unit | 0 | \$1,300 | \$3,500 | \$350 | \$5,150 |
| Commercial, industrial or institutional structure* | 0 | 0 | 0 | \$0.11 per sq. ft of gross floor space | \$0.11 per sq. ft of gross floor space |

*Revenue generated by these structures (including places of worship and public facilities) are credited to the Solid Waste Enterprise Fund.

Source: Calvert County Code, Article III, § 136-13

Low-income housing projects are not exempted from Calvert County APFO regulations, but the County's excise tax may be waived for the construction of affordable housing (§136.15. Credits of the Building Excise Tax). Excise taxes for schools are collected for new dwellings in the municipalities of North Beach and Chesapeake Beach.

Perspective of Developers

Two building industry representatives, Trent Jasklitsch and Brooke Kaine, were interviewed for this study in order to gain their perspectives on Calvert County’s APFO. Both of the commentators believe that Calvert County’s APFO is driven by a prevailing “no-growth” sentiment among a vocal electorate to which county elected officials and school board members are responsive. Kaine asserts that school capacity numbers have been manipulated so that schools appear to be at or over capacity (for example, by counting a given room as a closet rather than the usable classroom it either is or could be). He also said that there is not a sincere effort on the part of the County to increase school capacity.

When asked if the County’s APFO is steering development to PFAs, Kaine responded that is not the case. The 7 town centers are still subject to the APFO and any moratoria. He said there are insufficient incentives to persuade developers such as himself to build there. However, it should be noted that the county’s two municipalities, Chesapeake Beach and North Beach, are not subject to the County’s APFO.

Frank Jacklitsch asserts that the 7-year waiting period is not simply designed to promote school adequacy but to be a growth limiting strategy. He states that 5 years is an ample amount of time in which to address a school inadequacy. He believes the school APFO standards are reasonable, however, and thinks that feedback from APFO implementation does inform the CIP as there is good communication between the DPZ and the school board. He notes that developers in the County are able to mitigate for roads but not for schools, thus making school capacity adequacy more difficult to achieve. He does not believe that the County's APFO standards steer development to Priority Funding Areas, and says the 7-year delay drives up the cost of development.

Ongoing Issues in Calvert County's APFO Implementation

Calvert County's APFO has changed over time to reflect the prevailing political sentiment on the desirability/undesirability of residential growth. Critics of the ordinance point out that the consultants advised the county that 5 years was a sufficient amount of time to address school capacity shortfalls, but that County officials chose a 7-year waiting period instead – a position consistent with an “anti-growth” approach designed to avoid “takings” challenges to school-based moratoria. Commercial development, on the other hand, is favored by features contained in both the APFO and the impact fee ordinance. It remains to be seen how the county will provide school facilities serving those development projects currently stalled in a waiting period.

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II.B. Charles County

Charles County first adopted its APFO in 1992 to address facility capacity concerns related to rapid residential and big-box retail growth. The county has relatively little office, business and industrial development, and relies heavily on residential and retail projects to fuel its economy. The County has modified its APFO over the years and now has an ordinance that one local developer says is “several steps ahead of other counties”. As described below, the unique features of the County’s APFO are its method of allocating school capacity among development proposals, its “pay-as-you” go policy that enables developers to finance school construction, and an excise tax to fund schools, payable by a new home purchaser over a 10-year period.

Charles County has experienced high rates of population growth over the past 25 years. The County’s growth rate during the 1980s was 52.6%, more than triple the State growth rate of 13.4% during that decade. During the 1990s, Charles County’s population increased by 39.0%, nearly four times the State’s growth rate over the same period. By 2004, Charles County’s population had reached 135,807. According to an analysis by the Maryland Department of Planning, about 81% of the net migration to Charles County from the years 2000 to 2003 consisted of residents moving from Prince George’s County (Marimow 2005).

Charles County’s APFO is contained in its zoning ordinance (Article XVI, Section 297-255 through 297-266 of the County Code). Facilities and services covered under the ordinance include schools, roads, and fire suppression in rural areas. (The County has a water and sewer ordinance separate from the APFO.) Under the ordinance, no preliminary plan for a subdivision, or major site plan required for a zoning permit, can be approved unless the County’s planning commission determines that the proposed subdivision or development will not adversely affect the adequacy of the of public facilities serving the project and the area in which it is located. Each of the facility areas covered by the County’s APFO is discussed below.

Charles County conducts a Preliminary APF analysis of a project prior to the project sponsor’s submission of a subdivision application. The preliminary analysis considers schools, roads and water supply, and determines whether there is a concern with groundwater supply in the area of the proposed development, and whether a school or traffic impact study will be required. There is no filing fee for the preliminary APF analysis.

Schools

The school component of Charles County’s APFO applies to all residential development except for projects that are deed-restricted so that residency is denied to a) individuals less than 55 years old; and b) school aged children. Residential developments in the Planned Residential Zone (PRD) and the Planned Unit Development Zone (PUD) are exempt from the school APFO provisions as long as deed restrictions specify that persons who are between 21 and 54 years of age can live in such communities only if they occupy

a house with someone who is 55 or older. In order to ensure compliance with the age restrictions the APFO specifies that each sales contract or lease agreement for a house within the community must require certification of the name and birth date of each resident, with recertification occurring on an annual basis (Charles County Code Article XVI, Sec. 297-258A).

To receive approval for a final plat for a residential subdivision or a development services permit for a residential site plan, the applicant must receive a school allocation from the director of Planning and Growth Management (PGM). Annual allocations of school capacity at each of the county's school districts is made by a School Capacity Allocation Committee ("the Committee"), comprised of the County Commissioners and the County Board of Education. The APFO outlines several factors that the committee must consider in establishing the allocative school capacity for the coming year. Among those factors are current and projected enrollments; the current capacities of individual schools and the County-wide capacity of each level of school; school capacity to be provided within the next five years by any current CIP projects; additional capacity provided by the use of relocatable classrooms; current district boundaries for school attendance and redistricting opportunities within the Board of Education's policy guidelines; residential development and growth within the incorporated towns that will impact enrollments at county schools; the number of lots from minor subdivisions recorded in the previous year; and core capacities of each school facility.

In examining the available capacity of each school, the Committee now utilizes the concept of "core capacity". The analysis is based on how many students can be served by the cafeteria and the gymnasium. Temporary buildings are included along with regular classrooms in the count of available seats. This policy is a change from that used until the mid 1990s. The County used to evaluate available capacity on a classroom basis and designate a school at over capacity if it exceeded 110% of state-rated capacity. Under that method, some schools were at 130% to 140% of state-rated capacity. The current system is less restrictive than the former method, and results in core capacity determinations that range from 100% to 120% of state-rated capacity.

The Committee utilizes the above-listed factors to determine the amount of allocatable capacity for each school district and for the county as a whole. The Committee can only make a school allocation if school capacity currently exists or is programmed to exist within five subsequent years under the CIP. After agreeing on the amount of allocatable school capacity for the upcoming year, the County Commissioners publish a listing of the approved allocatable capacity.

Once the allocation list is published, residential school capacity allocations are granted in the order in which development projects appear on the school capacity allocations eligibility list. All valid preliminary subdivision plans are placed on the school capacity eligibility list in the order in which they received approval from the Planning Commission. In any given calendar year, the maximum number of allocations that any one project may receive is 75 units. If there are additional allocations available once capacity has been offered to the projects on the eligibility list, a project may be receive

supplemental allocations as long as the augmentation does not constitute more than 25% of the total number of units for which the project originally received Planning Commission approval. However, a single project cannot receive half or more of the target allocations set by the commissioners for that year (Planning Division, Charles County Dept. of Planning and Growth Management 2001). County APFO guidelines allow for approved school capacity allocation to be transferred from one developer or builder to another, for the same number of units in an already approved project, subject to approval by the Charles County Commissioners.

Proposals for “minor subdivisions” - - those with 5 or fewer lots - - are exempt from the requirement of having to be placed on the on the school capacity allocation eligibility list. Instead, the County reserves a quantity of “bulk reservations” of allocations to allow for the approval of minor subdivisions, as well as of lots recorded prior to the effective date of the APFO. However, no minor subdivision project can receive allocations for more than three (3) lots in any two-year period.

An allocation granted to a proposed project is valid for a period of 18 months from the date it was granted. An 18-month extension of this period may be granted upon approval of a written request to the Director of PGM.

Projects are allowed to seek school capacity allocations only from the districts in which they are located. However, the APFO has provisions for distributing allocations when a project’s location is encompassed within more than one school district, depending on the number of lots in the approved preliminary or site plan. For any project greater than 100 lots, the school capacity allocation for each lot must be granted from the district in which the lot is located. For projects with 100 lots or fewer lots, the school district in which the project may apply for and receive allocations is determined by the district in which the majority of the lots are located. For example, if the project contains 80 lots and 60 of them are located in district 2, then all 80 allocations are granted from district 2.

According to David Cooksey of Loiederman Soltesz Associates, Inc., Charles County’s school allocation process instituted several years ago works better than the previous policy. Under the former version of the school adequacy regulations, the County exempted subdivisions that generated 25 or less students. That meant that the County was getting a lot of 40 and 41 lot subdivisions, because under the previous formula for student generation that would exempt subdivisions with less than 42 houses. However, Mr. Cooksey believes there is a gap in communication between the School Board and Department of Planning and Zoning. The school sets the school boundaries and the commissioners have no say in that process. The Board of Education rarely redistricts, largely because there are elected and are wary of upsetting parents with school-aged children. Nevertheless, Cooksey maintains that communication between DPZ and the School Board has improved over the years.

To determine how many students will be generated by new development, the County utilizes a table of student generation yields for different types of living units in the county. The table below shows the student yields, by type of dwelling, unit for three

school levels, along with the weighting factor for each type of unit that is applied in order to produce a weighted average yield for each new approved unit.

Table Ch. 1. Student Yields for Different Housing Types in Charles County: 2004

| Housing Type | Weighting Factors | Student Yield by Grade | | | Total |
|---------------------------------|-------------------|------------------------|---------------|-------------|-------|
| | | Elementary School | Middle School | High School | |
| Single-family detached | 70% | 0.23 | 0.13 | 0.19 | 0.55 |
| Townhouse | 20% | 0.25 | 0.13 | 0.15 | 0.53 |
| Multifamily | 10% | 0.20 | 0.09 | 0.11 | 0.40 |
| Total | | 0.68 | 0.35 | 0.45 | |
| Weighted Average Factors | | 0.231 | 0.126 | 0.174 | 0.531 |

Source: Charles County Department of Planning and Growth Management, undated.

The weighted average student yields, shown above, masks variations in student yields in different areas within Charles County. The County recently conducted a survey of students per household in nine subdivisions located in the Town of LaPlata. Student yields varied from a low of 0.106 students per household in one subdivision to a high of 0.912 students in another. At the elementary school level, the survey found that one subdivision had about 1/25th of a student in each household, while another subdivision had nearly ½ student in each household. Despite this variation, the overall average for the nine subdivisions was 0.60 students per household, very close to the 0.531 total weighted average in Table Ch.1. The survey convinced the county that their calculation method was reliable and that there was no need to make adjustments to it.

Charles County has gone through a number of different strategies towards funding new schools. In 1989 the County introduced a school construction impact fee. By 2003 he fees were capped at \$5,000 for single-family detached homes and townhouses, and \$3,908 for multi-family units. A study conducted for the County in 2002 found that actual local school construction costs were substantially higher than the amount of the fees (Charles County Website. 2005b). The impact fee was scrapped in July 2003 in favor of an excise tax. Table Ch. 2, below, shows the excise tax by type of housing unit.

Table Ch. 2. FY 2005 Excise Taxes for Schools, by Type of Dwelling Unit: Charles County, MD.

| Type of Dwelling Unit | Excise Tax |
|--------------------------------------|------------|
| Single Family Detached | \$10,247 |
| Townhouse (duplex, triples, etc.) | \$9,719 |
| Multi-family (includes mobile homes) | \$7,395 |

Source: Charles County Website (2005)

The school construction excise tax is based on the County's determination of school construction costs. Total County costs for elementary, middle and high schools are divided by the total number of students. The student yields listed in Table Ch.1. are then applied to per capita cost to determine the excise tax for each type of housing unit. The excise tax is paid by the new home owner over a maximum period of 10 years. The County issues bonds and uses the revenues collected from the excise tax to pay back the bonds.

With declines in available school construction money from the State government, Charles County decided to initiate a policy to generate even more funding for school construction. In November of 2004 the County established a "Developer Rights and Responsibilities Agreement", or the "pay-and-go" system. This system corrects for the prior inability of developers to mitigate for school shortfalls. Without the Developer Rights and Responsibilities Agreement option, when a proposed project does not meet standards or does not have a school allocation then it goes on a waitlist, and can be on the wait list for an indefinite period.

Under a Development Rights and Responsibilities Agreement, a developer indicates what he will provide. In terms of schools, the developer pays \$15,000 for each house. In addition, the new homeowner pays \$10,000 (paid by the owner over a 10-year period). This totals \$25,000 per new house for schools. The developer portion of the school money is taking over the State share of school construction. According to David Cooksey, the pay-and-go system provides more predictability to the developer than the allocation system. Under the current allocation system, if a developer of a 200-lot subdivision receives an allocation for 30 units, there is no guarantee that (s)he will get an allocation the following year. The developer who receives a 30-unit allocation usually puts in two-thirds of the infrastructure, but if (s)he has to wait for a long time the investment is wasted. However, Mr. Cooksey states, the new pay-and-go system will address that problem. If there are 900 units per year that are guaranteed in the county, the maximum any one developer can get is 125. However, the developer can be assured of getting the same number of allocations in ensuing years. While Mr. Cooksey has praise for the pay-and-go system, he asserts that it puts no school-funding responsibility on the existing residents of Charles County. He says approval of the pay-and-go system "shows what developers are willing to do to build here".

Roads

A traffic study is required for any proposed development that will generate more than 140 vehicle trips per 24 hours, or 14 peak hour trips. Guidelines for determining the number of trips that will be generated by a proposed development, are included in the County's *Adequate Public Facilities Manual*. The handbook stipulates that the latest edition of the Institute of Traffic Engineers (ITE) *Trip Generation Manual* is to be used as the primary resource for making trip generation calculations. The studies are to consider AM and PM peak hour trip generation, along with average daily traffic generation. In cases in which a particular traffic congestion problem has already been identified in a given area, the County's Zoning Officer may require the applicant to analyze weekend trip generation as well.

Roads are considered adequate for the projected traffic from a proposed development if one of two conditions is met. The first condition is that roads serving the project will be capable of accommodating existing traffic, traffic to be generated from already approved projects, and traffic from the proposed development so that relevant Level of Service (LOS) standards (as defined in the current edition of the Highway Capacity Manual) are met for the year in which the proposed project is completed. The LOS are to be met “. . . at all intersections in the immediate vicinity of the project, as designated by the Zoning Officer . . .” (Charles County Code, Article XVI, Section 297-257.C(1)). The “immediate vicinity” is not defined in the Code, and the County’s *Adequate Public Facilities Manual* states that “the Zoning Officer reserves the right to evaluate each existing road segment on an individual basis and make a determination of the level of study required . . .”(Planning Division, Charles County 2001,2). The handbook also states that “traffic generated by the development shall be assigned to the existing road network according to the probable origins and destinations based on existing traffic patterns and experience” (Planning Division, Charles County 2001,3). The Zoning Ordinance states that, after reviewing the preliminary APFO analysis, the Zoning Officer can add or delete roads or intersections necessary to evaluate the impact of the development” (Charles County Code, Article XVI, Section 297-257.F)

The second condition under which roads serving a proposed project will be deemed adequate is if county, state or other governmental unit has budgeted sufficient funds for road improvements that will enable the roads serving the proposed project to meet the relevant LOS standard, taking into consideration the traffic to be generated from the proposed project, existing traffic, and traffic emanating from other approved projects in the development pipeline.

LOS standards for peak and off-peak traffic are more stringent for proposed developments in the rural /agricultural areas than in the development districts, village centers or town centers. Table Ch. 3, below, shows that an LOS of D is allowed for peak hour traffic in town centers and the urban core, while LOS B is required for peak hour traffic in the rural / agricultural area.

Table Ch. 3: Minimum Level of Service (LOS) for Roads and Intersections: Charles County, MD.

| Comprehensive Plan District | Level of Service | |
|--|------------------|-----------|
| | Off-Peak | Peak Hour |
| Development district | C | C |
| Village centers | B | C |
| Rural / agricultural conservation area | A | B |
| Town centers and urban core | C | D |

According to David Cooksey, the major shortcoming of Charles County’s APFO is the roads process. The County refuses to consider road clubs or special taxing districts. As a result, the initial developer has to fix the road and is unable to get reimbursed by later

projects. It is illegal in Charles County to impose impact fees for roads, and there has never been an in-lieu-of fee for roads.

Cooksey says that feedback from the APFO implementation does not inform the CIP with regard to road funding. When a project is turned down because of road inadequacy, he contends that nothing shows up in the ensuing CIP. He adds that a lot of the budget focus is on major roads, rather than on minor roads that can cause a project to fail the adequacy test. He also notes that, because it is easier for developers to meet road adequacy standards in rural areas, it makes rural development even more attractive.

Fire Suppression for Rural Areas

In September of 2002 Charles County amended its APFO to include a provision for fire suppression in rural areas (Charles County Code Article XVI, Section 297-261). The provision applies to proposed projects that create more than five buildable lots. According to the ordinance, a proposed project must satisfy the following requirements in order to be eligible for preliminary plan approval. First, an existing water source with all-weather access must be available within a four round-trip mile driving distance, with the source capable of supporting the weight of a fully loaded tanker and allowing sufficient room to allow a tanker to turn around. Second, if an existing water source is not available, then the applicant must mitigate by providing a water source within four round-trip miles driving distance of the proposed usable area of each new building lot, with the mitigation complying with design criteria in the County's Water and Sewer Ordinance (Charles County Code, Article XVI, Section 297-261.B(2-3)). Developers who pay for improvements for rural fire suppression may be reimbursed by later developers located in the service area of the fire suppression facility.

Continuing Issues with Charles County's APFO

Charles County's pay-and-go system provides an opportunity for developers to avoid spending years on a waiting list due to inadequate school capacity. However, some residents of the county have expressed concern that small builders are not able to compete with large companies because they cannot afford to pay for school and other improvements (Partlow 2005). As a result, national and regional builders are buying lots in Charles County, potentially squeezing out smaller local builders.

Another issue with regard to the pay-and-go system involves the town of La Plata, which used to collect impact fees and send them to the county. According to David Cooksey, now that the county has instituted the pay-and-go system, LaPlata was "pushed away from the table" since it is the County that is making deals with developers. He said La Plata has crafted its own development rights and responsibilities agreement but it "needs work".

Charles County has one of the state's most innovative APFOs because of the way it has attempted to generate school construction funds. While some observers praise the school excise tax and pay-as-you go system, they also note that the County is not charging existing houses for their impacts on school facilities. While David Cooksey believes the

system needs tweaking, he still believes that Charles County is several steps ahead of other counties and is being successful in steering development to the County's PFA.

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II.C. Frederick County

Frederick County

With a population of 195,277 in the year 2000, Frederick County is the 7th most populous county in Maryland. The County grew by 35.2% during the 1970s and by 30.0% in the 1980s. The County initially adopted its APFO in 1991, largely due to concerns about overcrowded schools. Currently, the County's APFO encompasses schools, roads, water and sewerage. As described below, the most critical issue that has surfaced in APFO implementation is how to permit developers to contribute to school construction funding in lieu of constructing an entire new school.

Schools

All public, elementary, middle and high schools serving a proposed subdivision must be adequate, or adequate capacity must be scheduled for construction within the first two years of the Capital Improvement Program (CIP). The CIP project and the proposed development must be located within the same school attendance boundaries, including areas where redistricted boundaries have been approved. For determining adequacy, "enrollment" is calculated as the Frederick County Public Schools official enrollment figures, plus "background enrollment growth", plus pupil yield from the proposed project (Frederick County Code, sec. 1-20-61 (B)(2)). The County's APFO states that "background enrollment growth" is average annual enrollment change occurring in the preceding three years in the school attendance areas serving the proposed development (Frederick County Code, sec. 1-20-5 (B)). The ordinance directs the county to adjust the background enrollment growth figure if enrollments from approved but unplatted major preliminary plan developments in the affected area might make the three-year historical growth trend inaccurate by a factor of 35 percent or more (Frederick County Code, sec. 1-20-61 (G)). All schools must be less than 100% of state-rated capacity for development to meet the adequacy test.

Initially, an elementary school was deemed to be overcrowded when it was projected to be at 105 percent of State-rated capacity, while for middle and high schools the threshold was 110 percent. In 1998 the threshold was dropped to the current 100 percent of State-rated capacity for all schools.

Roads

Developments triggering 50 or more total vehicle trips during the highest daily peak hour of the adjacent street traffic, must undergo APFO review. A developer cannot avoid review by submitting piecemeal applications for preliminary plats or site plans. Also, for those residential applications that have 6 or more lots yet generate fewer than 50 peak hour trips, "county staff will maintain a cumulative data base of these developments for the purpose of monitoring their respective impacts on roads and bridges" (Frederick County Code, sec. 1-20-30 c).

All developments meeting the threshold must prepare a Traffic Impact Study (TIS). The contents of the TIS are outlined in Sec. 1-20-31(B). In determining adequacy, the portion of the existing roads required to be adequate depend on the developed area's designation

in the County’s Comprehensive Plan. For a development in an area designated as agricultural/rural, the relevant analysis is from the site’s planned entrance(s) to the nearest intersection of an arterial road or freeway/expressway with a collector road, in direction of anticipated traffic flow. For an area other than agricultural or rural area, the analysis focuses on the road from the site’s planned entrance(s) to the nearest intersection of an arterial road or freeway/expressway with an arterial road, in the anticipated direction of traffic flow. Analysis is conducted at peak times. Approved background traffic impacts are pro-rated. The APFO requires that all traffic studies use the Critical Lane Method.

The LOS criteria for roads are spelled out in Sec. 1-20-31(c7). Roads and intersections in agric./rural areas are judged adequate if they maintain a LOS of “C” using CLM. Other areas must meet “D” to be considered adequate. Required mitigations, if any, are reviewed on a case-by-case basis.

For a site plan that does not meet the county’s APFO requirements, the developer has the option of a) providing the public facility improvements necessary; b) waiting for the public facilities to become adequate through the CIP or other sources (county, state or municipal agency may participate in the improvements); or c) contributing money to an escrow account in proportion to the share of costs required to meet the roads adequacy requirement (Chapter 1-20-10 through 12). The proportionate share of a given developer’s road-related expense is based on an equitable allocation or portion of traffic trips that the proposed development is estimated to cause, when measured against the additional usable capacity that the proposed improvement is creating. Mitigation fees for roads are in addition to impact fees, shown in Table Fr.1, below.

Table Fr. 1. Impact Fee Schedule in Frederick County, MD, effective July 2005.

| Land Use Type | School Impact Fee | Library Impact Fee | Total |
|--|---------------------------------|-------------------------------|----------------------------------|
| Single-Family Detached | \$9,956 | \$531 | \$10,487 |
| Townhouse/Duplex | \$6,754 | \$496 | \$ 7,250 |
| All Other Residential (condominiums, apartments, mobile homes) | \$1,880 per dwelling unit | \$334 per dwelling unit | \$ 2,214 per dwelling unit |

Source: Frederick County, MD website. 2005.

Water. APFO-related water review does not apply to developments served by individual private wells. For all other projects, water is considered adequate if the source facilities, storage tanks and local pumping stations have sufficient available capacity to provide maximum day demand to the proposed development and meet peak hour demand in addition to fire flow; and the distribution system is capable of providing normal required pressure as well as minimum residual pressure to the proposed development. A public or private community water system will also be considered adequate if improvements to or construction of facilities necessary for compliance with the standards are scheduled in the first two years of the CIP.

Sewerage. APFO-related sewerage review does not apply to developments served by individual septic systems. For all other projects, the sewerage facilities serving a proposed project are considered adequate if, given existing connections, the system after development can handle ultimate peak flows. Sewerage facilities can also be considered adequate if improvements to or construction of facilities necessary for compliance with the standards are scheduled in the first two years of the CIP.

Changes to Frederick County's APFO Over Time

Several changes have been made to Frederick County's APFO since 1998. First, allowed elementary school capacity was reduced from 105% to 100% and middle school and high school capacity was reduced from 110% to 100%. Second, the process was made more stringent for PUD phasing. Formerly, if adequacy was not initially met the developer could phase, but that is no longer an option. C) Third, roads in municipalities and secondary highways are now included in road capacity analyses. Fourth, allowable peak hour trip capacity was reduced from 100 to 50 (i.e. tightening the standard). Fifth, in 2002, age-restricted communities were exempted from the schools test. Sixth, a subdivider already granted approvals prior to the time that a moratorium is declared, is granted a time out (so the development does not lose years during a moratorium). Seventh, language in the ordinance was cleared up regarding the conditions for a school's adequacy exemption. If the developer's schools are not adequate but the adjacent district is at least 20% below capacity, the developer can ask the Board of Education for a re-districting. However, the Board of Education is not obliged to do anything. Since re-districting is very unpopular with parents, developers have not chosen to request the Board of Education to consider that alternative.

Agencies Involved in APFO Implementation

Several agencies are involved in the County's APFO implementation. The Department of Public Work's transportation engineering section does the analysis of road adequacy. For schools, the County's Board of Education staff makes a recommendation to the Planning Commission, who make the final adequacy determination. The DPW's Utilities and Solid Waste Division does the water and sewerage adequacy determination. One challenge in the doing the latter is that the reviewers need to know what the exact land use is going to be to make a determination of water adequacy. For example, an industrial park might be proposed, but within that park a high tech manufacturing plant or a laboratory uses a lot more water than a warehouse.

Approvals of Development Proposals

Subdivision plats or site plans that do not meet the requirements for adequacy cannot be granted preliminary subdivision or site plan approval by the Frederick County Planning Commission. A conditional approval can be granted, provided that no final approval is given until the conditions are met.

The approval of adequate public facilities is valid from the date of the Planning Commission meeting at which preliminary subdivision or site plan approval was granted,

for the following time periods (as long as the preliminary plan or site plan approval remains valid):

A. *Residential subdivision*: 6-100 units = 3 years; 101-500 units = 5 yrs.; 501+ units = 10 yrs.

B. *Nonresidential subdivisions*: 0-50 acres = 3yrs; 51-200 acres = 5 yrs; 200+ acres = 10 yrs.

Sec. 1-20-8(E) allows the Planning Commission, at the request of the developer, to extend approval of adequate public facilities beyond the time frame specified above, as long as all conditions of approval are being met, and all unrecorded lots or unbuilt site plan structures meet the adequacy requirements for school, road water and sewerage capacity, or capacity is vested for improvements constructed for roads, water or sewer.

A developer can request that the time of approval for the development be extended if a moratorium has been imposed and the developer already had APFO approval; and the Division of Utilities and Solid Waste Management certifies that water and sewer capacity is adequate to serve the development or such portion as required. The duration of the time extension for the APFO approval is the longer of a) the length of time remaining for the APF approval at the time the moratorium was imposed; or b) one year. In such cases, the re-testing of public facilities, *other than water and sewer*, is not required.

All PUDs with existing Phase II approval as of Dec. 1, 1991 have to meet the APFO requirements prior to preliminary plat (Phase III) or site plan approval or re-approval. A phasing plan indicating the density and rate of development in accordance with ADF availability must be approved as part of the preliminary plat or site plan approval.

A MXD or PUD Phase II preliminary plan or site plan that does not meet APFO requirements cannot be approved except for conditional approval allowed in Sec. 1-20-10. That provision in the APFO requires the developer to provide the necessary facility or facilities; or to provide a phasing plan detailing how the rate and density of construction of the PUD or MXD is in accordance with future availability of facilities.

The developer has the option of a) providing the public facility improvements necessary; b) waiting for the public facilities to become adequate through the CIP or other sources (a county, state or municipal agency may participate in the improvements); or c) contributing money to an escrow account in proportion to the share of costs required to meet the roads adequacy requirement. Proportionate share is based on an equitable allocation or portion of traffic trips that the proposed development is estimated to cause, when measured against the additional usable capacity that the proposed improvement is creating. The Planning Department and the Dept. of Public Works' staff review the information provided by the applicant and recommend an equitable allocation, with the Planning Commission making the final determination of equitable allocation. The Department of Finance must insure that the funds contributed in the escrow account by the developer are used solely for improvements benefiting the development.

Exemptions

Exemptions to the standards include the following.

- A) minor residential subdivisions (a parcel to be subdivided into 5 or fewer lots).
- B) any preliminary subdivision plats for residential and non-residential development approved prior to Dec. 1, 1991 were exempted for a period of years depending on the number of units or acreage to be developed) as long as the preliminary approval remained valid (see Sec. 1-20-7). However, the exemption time period expired Dec. 1, 2001.
- C) a residential subdivision subject to a phasing schedule imposed prior to Dec. 1, 1991 as a condition of rezoning and that is not completely built out within the time period specified in Sec. 1-20-7, and that has been “substantially delayed due to the county’s inability to provide planned public utilities”, may proceed with construction in accordance with the rezoning phasing schedule, if all schools serving the project are adequate as defined by the ordinance. If any schools serving the development are not adequate as defined in this chapter, the development may proceed with construction at a reduced rate: 60% of the number of units are permitted annually by the phasing schedule imposed at the time of rezoning, or as subsequently amended. This provision was phased out on Nov. 30, 2005.
- D) Developments that meet the requirements of the ordinance at the time of preliminary subdivision approval do not have to comply with the provisions of this APFO at the time of site plan approval. Any project qualifying as “housing for older persons (defined in Sec. 1-20-5) is exempted from the schools test as long as it meets other conditions stipulated in Sec. 1-20-7 (E).

County Planning Director Eric Soter asserts that they have not been many development denials due to the APFO, because developers will get an unofficial school capacity test from the Board of Education. If they find out they would fail the schools test they will not even apply. This unofficial review is done at the preliminary plan stage. The formal review takes place at the Preliminary Plan (Phase II) stage.

Ongoing Issues with APFO Implementation in Frederick County

According to Planning Director Soter, the major issues needing to be addressed in relation to the APFO are the following: a) how to allow developer contributions to schools - - short of building an entire school -- and other creative financing methods for education; and b) what “available funding” for schools means when determining adequacy (i.e. should funding include the figures contained in the Board of Education master plan, or just what is in the County’s 6-year CIP). Right now, developers can contribute money for roads, water and sewer. However, schools are publicly funded and many residents are uncomfortable with the idea of a developer to building a school. According the Soter, the reason for this is that citizens are concerned that if a developer finances construction of a school, the County will need to provide operating funds for it – resulting in a shifting of available resources from existing schools.

An example of the County's current refusal to allow partial developer funding for school construction (other than impact fees), was a recently proposed, large-scale project. According to Mark Friis, a development consultant with Rogers and Associates, the proposed development failed the capacity test for the high school. The developers offered to pay \$8.5 million for the school, on top of the \$9,500 per unit impact fee (although they did request to be reimbursed the impact fee).

Another development consultant interviewed for this study, Krista McGowan of Miles and Stockbridge, pointed out that there is no effective "end" date for a development that is being held up due to school inadequacy. The result is a de factor moratorium and no explicit responsibility on the County's part to correct for the capacity shortfall.

Other issues concern an APFO-related, contentious relationship between Frederick City and Frederick County. The City of Frederick is growing at a steady pace - - its population of 52,767 in the year 2000 represented a 31.4% increase since 1990. The City's population contains slightly over 27.0% of the County's population. However, the City does not have an APFO, and sends children from its new developments to county schools. The City is concerned because while it does charge school impact fees on new development, it has no control over where the generated funds are used. For the County, the issue is that it wants the City to pay a proportional amount of the cost of developing a water line from the Potomac River, and to inform the County as to how much growth will occur and where that new growth will be. The City believes that they can grow anywhere, and have a different view of what "proportional" means.

Krista McGowan believes that, in practice, the County's APFO does not steer development to Priority Funding Areas because the most taxed facilities are in designated growth areas (such as Frederick City and New Market). Only three municipalities in the County have APFOs: Brunswick, Thurmont and Mt. Airy.

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II. D. Montgomery County

Montgomery County is the most populous jurisdiction in Maryland, with a population of 873,341 in the year 2000. The county had a growth rate of just over 53% during the 1960s. Since the 1960s, Montgomery County has been at the forefront of innovative local planning in the U.S. The Washington region's 1964 'Wedges and Corridors' land use plan called for containing sprawl by concentrating development along major transportation corridors while maintaining wedges of low density and rural land uses. Montgomery County was the only jurisdiction in the Maryland portion of the region to incorporate the "Wedges and Corridors" concept into its official plan.

In addition to endorsing the "Wedges and Corridors", the 1969 *Montgomery County General Plan Update* contained three key recommendations for accommodating future population growth (Maryland-National Park and Planning Commission 1993,9): (1) increasing the stock of affordable and clustered housing (for which goal the County implemented a nationally-pioneering Moderately Priced Dwelling Unit [MPDU] program); (2) protecting farmland and rural open space (addressed through clustering options, purchase of development rights, transfer of development rights, and other State and local programs); and (3) balancing development with provision of public infrastructure (addressed through adequate public facilities requirements).

The County developed its growth management policies with the assistance of an advisory committee representing a spectrum of stakeholders. Based on the advisory committee's deliberations, the County's Planning Board identified several principles on which there was consensus among the advisory committee members, two of which were the following (M-NCPPC 1974).

The protection of the natural environment and the conservation of energy must take precedence over the forces of growth whenever their conflict significantly endangers the former.

The underlying rationale for the techniques with which to implement the General Plan is the concept embodied in the term "adequate public facilities".

The County's Adequate Public Facilities Ordinance (APF) subsequently was adopted in 1973, as Chapter 50, Section 35(k) of the Subdivision Ordinance. The introductory sentence of the ordinance stated: "A preliminary plan of subdivision must not be approved unless the Planning Board determines that public facilities will be adequate to support and service the area of the proposed subdivision." The services included in the APF were roads, schools, water, sewer, police, fire and health services.

Water and sewer service are judged to be adequate if the property being subdivided would be serviced by facilities being planned for completion within two years, as outlined in the County's 10-Year Water and Sewer Plan. The Board assumes that police, fire and health facilities are adequate unless the relevant county agency identifies a

shortcoming with a particular subdivision - - an outcome that has not occurred since the onset of the APF.

The Planning Board sets adequacy standards for roads and schools. From 1973 until 1979, the Planning Board's responsibility was to define road and school adequacy of these services / facilities and test each proposed subdivision for adequacy on the basis of the services / facilities existing at the time of review.

In 1979, M-NCPPC's *Fifth Growth Policy Report* outlined a new approach to adequacy review. Richard Tustian, who was the County's Planning Director in the 1970s, states that the "space / time horizon" used in making adequacy determinations on road and school adequacy was augmented so that there was also a match with the space / time horizon used in the county's Capital Improvement Program. This was achieved by calculating road and school adequacy in over 20 policy (geographic) areas and five-year time horizons (chosen because that is the normal timeframe for a proposed subdivision to complete government review and construction). Tustian states that the enlargement of the space/time scale of the APF measurements, from individual parcels to county policy areas), would ". . . make visible and measurable, for the first time, the detailed nature of the operational relationships between land uses and facilities. Additionally, this in turn would improve the decision makers' ability to make better decisions about where and when to invest in public facilities" (Tustian 2004).

Annual Growth Policy

As a result of its concerns that growth was outpacing facilities and service provision during a building boom in the mid 1980s, the Montgomery County Council passed a law in 1986 to require the Council each year to adopt an Annual Growth Policy. From 1984 until July of 2004, the Annual Growth Policy contained guidelines for administering the APF for roads and schools. For the schools test, the AGP evaluated the capacity adequacy of each of county school system's 23 high school clusters, using data on the system's enrollment projections, existing schools' capacities, and any additions / new schools that were planned. Each elementary, middle and high school in each cluster was tested for adequacy to accommodate additional residential development. However, if a cluster's enrollment capacity was exceeded, available space in adjacent school clusters was factored into the analysis before a moratorium on new subdivisions was declared.

In 1986, the County Council adopted an Annual Growth Policy approach by which the County Council ultimately would be responsible for determining adequacy. This took the form of a resolution adopted each year that determined the measures which determined whether the transportation network and schools could handle the additional growth resulting from a new subdivision.¹

Prior to 2004, the tests for adequacy of schools was measured by the five-year student capacity in each high school "cluster" – areas defined by the border of each of the county's 23 high schools and including the associated middle and elementary schools that

¹ The municipalities of Gaithersburg and Rockville have planning and zoning authority, and as such are exempt from county regulation and determine their own growth priorities.

act as feeder schools for the local high school. If there was not enough capacity over the next five years to handle all of the new students projected by a new subdivision, any “extra” capacity in the adjoining districts was considered as part of the total capacity. This practice is referred to as “borrowing” student capacity and rarely led to moratoria, the last of which was in the Damascus area in FY 2002.

The test for transportation adequacy was made in two separate ways. The county was divided into 25 policy areas (plus the cities of Gaithersburg and Rockville). For each area, the AGP calculated the number of new jobs and housing units that each policy area could absorb in the next fiscal year, given the capacity of the transportation network. The transportation network capacity was defined as existing and programmed capacity, including improvements scheduled to be completed during the first five years of the CIP. The housing and jobs ceilings were adopted annually by the county council, and once either ceiling was reached (including the projected increments from approved construction projects), a moratorium was implemented. Nearly all of the building moratoria that were imposed (see below) resulted from failure of the transportation test.

Exemptions to Annual Growth Policy Moratoria

Projects that had received prior development approval could still proceed even if a moratorium was declared. In addition, the moratorium was open to five exceptions: affordable housing projects; projects generating five or fewer peak-hour trips; projects where the developer mitigated the number of trips or provided the needed transportation improvements; the formation of development districts by developers in order to finance the improvements needed to satisfy AGP transportation tests; developments atop Metro subway stations that met certain conditions; projects with “high economic development value”, and additions to corporate headquarter facilities of major firms, for which the applicant paid a “Development Approval Payment”.

The transportation adequacy test also included a local area review for subdivisions which generated 50 or more peak-hour trips. This review included studies of nearby intersections to measure congestion and determined whether or not the intersections could handle the additional development generated by a project. The standards for intersection varied depending on the policy area, and approvals could be secured by intersection improvements made by the applicant that reduced (or mitigated) congestion.

Moratoria; Changes to the APF in 2004

There were several problems with the implementation of Montgomery County’s annual growth policy. Importantly, the character of the county changed as more development accumulated over time. School crowding and traffic congestion increased to levels that were unacceptable to many citizen groups. The latter groups also complained that there were too many exceptions to the moratoria, allowing development to be approved even when the facilities were not adequate to support the growth (M-NCPPC 2003). At the same time, pro-growth advocates were frustrated by the seemingly permanent moratoria that prevented growth in some areas of the county, changing the APFO from a timing device to a de facto growth cap. By early 2002, seven county policy areas were over capacity for roads and six were over capacity for jobs. Table Mo.1, below, highlights ten

policy areas that incurred moratoria on housing for four years or more between the years 1982 to 2002. The table shows that five of the policy areas were in housing and/or job moratoria for over 10 years.

Table Mo.1. Total Years of Housing Moratoria and /or Job Creation Moratoria by Policy Area: Montgomery County, MD*

| Policy Area | Housing Moratorium Start year | Total Yrs. in Housing Moratorium | Job Creation Moratorium Start Year | Total Yrs. In Job Moratorium |
|--------------------|--------------------------------------|---|---|-------------------------------------|
| Clarksburg | 1996 | 6 | 1996 | 6 |
| Cloverly | 1982 | 12 | 1989 | 5 |
| Damascus | 1986 | 14 | -- | -- |
| Fairland/White Oak | 1983 | 19 | 1986 | 16 |
| Gaithersburg | 1995 | 7 | 1992 | 10 |
| Montgomery Village | 1992 | 10 | 1992 | 10 |
| North Bethesda | 1992 | 8 | 1986 | 7 |
| Germantown | 1982 | 6 | 1983 | 5 |
| Aspen Hill | 1990 | 12 | -- | -- |
| Rockville | 1998 | 4 | 1992 | 10 |
| R & D. Village | -- | -- | 1998 | 4 |

*Includes areas in moratoria for more than four consecutive years between 1982 and 2002

Source: M-NCPPC 2001

After two years of review, Montgomery County adopted significant changes to the AGP that began in July 2004. The policy area transportation review was eliminated, and there are no longer any annual housing or job moratoria declared for policy areas on the basis of traffic congestion. However, for individual project review, the Council tightened the criteria to be used by the Planning Board in measuring adequacy of transportation facilities, in all areas except Metro Station areas. In addition, the Planning Board was given discretion to require that larger subdivisions test more distant intersections for adequacy review. The Planning Board can also require trip mitigation as a condition of development approval -- even if the developer prefers to make physical improvements -- and the trip mitigation programs must be at least 12 years (but no more than 15 years) in duration.

Under the revised AGP guidelines, adequacy of school capacity, by school cluster area, will still be done by the Planning Board and moratoria can still be declared. The school adequacy test was tightened, to 100 percent at the high school level and 105 percent at the elementary and middle school level. The practice of borrowing schools capacity from

neighboring areas was restricted,² and any cluster in which a school is projected to be at or above 110% of capacity in the next five years enters into a moratorium, with the exception for housing for the elderly. If enrollment exceeds the standard but is below 110%, the development must pay a \$12,500 per student “school facilities payment” based on student generation rates that vary by housing type. These charges are in addition to the new school impact fee (see below). No school clusters were placed under moratoria for FY 2004-5

In 2004 impact fees were increased for both schools and transportation. For schools, the impact fee varied by type of housing unit, as shown in Table Mo.2, below. The base fee is now \$8,000 for a single family detached home, with a \$1.00 surcharge for each square foot of floor area over 4,500 feet (up to 8,500 sq. ft.). The means that the maximum school impact fee for a single family home is \$12,000.

Transportation impact fees vary by land use and location, as shown in Table Mo.3. The transportation impact tax is approximately 50% higher in the Clarksburg area than the prevailing rate in most of the county, and the rates in Metro station areas are 50% of the general rates which apply in the “rest-of-county” areas.

The impact fee increases are intended to raise money for infrastructure improvements, to create more of a market-based, predictable process that will (ideally) allow development that pays for itself. Other important County priorities are also addressed. As shown in tables Mo. 2 and Mo.3, moderately priced dwelling units and enterprise zones are exempted from the impact fees, and senior housing projects are charged only the transportation impact fee -- at a level that is less than 19 percent of the unit rate charged to single-family attached housing. School adequacy measures are tightened, in a move that will certainly please parents of school aged children, but moratoria are less likely since the increased impact fees and the “school facilities payments” are intended to increase school capacity to levels supporting new development. Development and redevelopment at Metro stations and other “smart growth” areas are supported by road adequacy measures that allow more congestion in such places than in other areas, and by impact fees for residential, commercial and industrial development that are lower than in other areas. The county’s niche as a bio-technology base is reinforced by waiving transportation impact fees for such land uses.

Table Mo. 2: School Impact Fee Rates in Montgomery County, MD Effective July 1, 2004, by Type of Housing Unit

| Type of Housing Unit | Impact Fee, Base Rate* |
|--------------------------|------------------------|
| Single-family detached | \$8,000 |
| Single-family attached | \$6,000 |
| Multi-family garden | \$4,000 |
| Multi-family high rise** | \$1,600 |

² Borrowing capacity at the elementary and middle school levels is not allowed, and high schools may borrow capacity from only one adjacent cluster in order to meet capacity.

| | |
|---------------------|-----|
| Multi-family senior | \$0 |
|---------------------|-----|

*Impact fee for single-family units is increased by \$1.00 for each sq.ft. of floor area over 4,500 sq. ft. up to 8,500 sq. ft.

** Applies to any one bedroom garden apartment and to buildings that are taller than 4 stories.

**Table Mo. 3. Transportation Impact Fee Rates in Montgomery County, MD
Effective July 1, 2004, by Type of Land Use (with per sq. ft fee for non-residential
land uses)**

| Land Use | Clarksburg | Metro Station Area | General (rest of county) |
|--------------------------------|------------|--------------------|--------------------------|
| Single-family detached housing | \$8,250 | \$2,750 | \$5,500 |
| Single-family attached housing | \$6,750 | \$2,250 | \$4,500 |
| Multi-family garden housing | \$5,250 | \$1,750 | \$3,500 |
| Multi-family high-rise housing | \$3,750 | \$1,250 | \$2,500 |
| Multi-Family senior housing | \$1,500 | \$500 | \$1,000 |
| Office | \$6.00 | \$2.50 | \$5.00 |
| Retail | \$5.40 | \$2.25 | \$5.00 |
| Industrial | \$3.00 | \$1.25 | \$2.50 |
| Bioscience | \$0.00 | \$0.00 | \$0.00 |
| Hospital | \$0.00 | \$0.00 | \$0.00 |
| Private school | \$0.50 | \$0.20 | \$0.40 |
| Place of worship | \$0.35 | \$0.15 | \$0.30 |
| Other non-residential | \$3.00 | \$1.25 | \$2.50 |

Montgomery County is the only county with an APFO in Maryland that dedicates part of its real estate transfer tax for school construction. This addresses the reality that much of the new school enrollment is generated not by new development but by demographic change in existing neighborhoods.

Ongoing Issues with Montgomery County's APFO

Currently, as a result of the policy changes in 2004 no areas are in moratorium. The new transportation review procedures make it theoretically possible to build wherever zoning will allow, as long as proper traffic mitigation processes are adopted. The schools test could lead to moratoria in the future, but currently none exist. It is possible that any school capacity moratoria in the future will be short-lived, as local residents in any areas with overcrowded schools will push for additional schools to be built.

What remains to be seen with Montgomery County's new policy is whether the fees charged will be sufficient to provide facilities that avoid increases in road congestion and school overcrowding. Also, as noted by former Montgomery County planning director Richard Tustian, in denser areas of the county the only possible way to reduce road congestion is through a change in travel mode -- by either adding more transit service or by otherwise increasing the person-per-vehicle ratio.

Another question with the new APFO system in Montgomery County is whether the information base / analytical methodology is sufficient to do capital facilities planning that balances expected growth with adequate facilities. If there continues to be publicly unacceptable levels of road congestion and/or school capacity, will the county respond by a) increasing capacities through capital spending; b) putting areas in moratoria until more facility investments are made; c) changing the capacity standards to permit more congestion by altering the definitions of adequacy; or d) lowering the amount of allowed development through lowering the zoned capacity?

The combined impact tax rates in Montgomery County are very high compared with the other counties in the region and the state, but developers interviewed for this study have warmed to the rates, as they are a preferable option to the moratoriums that prevented any building in much of the county over a wide timeframe. The development community long complained about the difficulty of doing development, but the election of a several new openly pro-growth members to the county council, endorsed by County Executive Doug Duncan, led to these changes. The increases in the impact fees do raise the cost of construction, but the perceived demand for housing and commercial development is so high that the development community plans to pass the costs on to the eventual purchasers. Predictability in the development review process appears to be worth the additional upfront costs.

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II.E. Prince George's County

Prince George's County first adopted its APFO in 1981 as a component of its subdivision ordinance. In the 1980s, the only time that APFO reviews occurred was when Planned Unit Developments (PUDs) were proposed. Several large-scale projects that came on line in the late 1980s, including one at Good Luck Road and Rte. 193, prompted community concern on perceived facility inadequacies, particularly with regard to traffic congestion. At nearly the same time, another development project in central Prince George's County posed a significant water/sewer issue. Concerns over those two developments led the County to establish a local task force to develop APFO regulations, which were adopted in November 1989. At first, proposals were reviewed at the conceptual plan phase. However, they are now reviewed at the subdivision phase so that there is more detail on the proposal for APFO review purposes.

Services included in Prince George's County's APFO include water and sewerage, police, fire and rescue services, roads, and schools. Changes to the APFO in recent years, particularly with regard to roads and to police, fire and emergency response times, can be better understood in the context of the County's 2002 Approved General Plan. That Plan divided the county into three geographic areas - - a Developed Tier, a Developing Tier, and a Rural Tier - - and established planning goals, objectives and policies for each tier. For the Developed Tier, comprising 86 square miles of land inside the Capital (i.e. I-495) Beltway, the policy priorities include support for economic investments in existing neighborhoods; intense, high-quality development and redevelopment in Centers and Corridors; expansion of tree coverage, landscaping and natural open space, maintenance and renovation of public infrastructure; and enhancement of industrial employment areas.

The largest of the three tiers, the Developing Tier, comprises 237 square miles of land area outside the Capital Beltway that is undergoing suburban expansion. The policy recommendations for that tier include maintaining low- to moderate-density land uses except in Centers and Corridors; encouraging higher-density, mixed uses in Centers and Corridors; increasing citizen use of public transit; preserving and improving environmentally sensitive areas; and creating compact, planned employment centers. The Rural Tier comprising 150 square miles of land in the eastern portion of the county, is described by the County General Plan as “. . . the most scenic part of the county . . . characterized by fine landscapes, most of the county's remaining farms, extensive woodlands, numerous streams and diverse wildlife habitats” (Maryland-National Capital Park and Planning Commission 2002). As a result, the County's policy priorities for the Rural Tier are to preserve, to the greatest extent possible, its rustic character.

One of the objectives of the County's 2002 General Plan was to have less than one percent of the County's growth by the year 2025 occur in the Rural Tier. This was the percentage of the County's new housing units that were being built in the year 2000. However, in recent years development pressure in the Rural Tier has increased. Wiggins (2005) cites county planning department figures that about 2,800 acres were subdivided for construction in the Rural Tier between 2001 and 2004. In the first half of 2004, an additional 900 acres were subdivided. County Council concern over the increased pace

of development in the Rural Tier led the council in January 2005 to impose a one-year moratorium on new applications for subdivision approval in the Rural Tier. The purpose of the moratorium was to give the county time to develop effective strategies for land preservation in the Rural Tier. A prior action by the Council in November 2004 (discussed below), altered the APFO requirements for police/EMS response time that effectively shut down the entire County for new residential subdivision approvals for several months in 2005.

Each of the components of the county's APFO is summarized below.

Water and Sewer

To satisfy water and sewer APFO requirements, the location of the property within the service area of the "Ten Year Water and Sewerage Plan" is deemed sufficient evidence of the availability, current or planned, of adequate public water and sewerage services (Sec. 24-122.01(b)(1)). Also, if the location of the proposed project is outside the appropriate service areas of the Ten Year Water and Sewer Plan or is in the County's Rural Tier, then the subdivider is required to provide water storage tanks, the availability of water tanker trucks, or other appropriate source of water for fire extinguishing purposes (Sec. 24-122.01(d)(2)).

Police, Fire and Rescue Services

Some of the standards for Police, Fire and Emergency Medical Services in the County are countywide, some vary according to type of development (residential or non-residential), and others vary according to location of the proposed development (Developed, Developing or Rural Tier). Both the countywide and site-specific standards must be met before the Planning Board can approve a preliminary plat for a proposed development. With regard to determination of countywide public safety adequacy, in November 2004 the County Council designated an "authorized strength" of 1,420 sworn police officers for the county, with an adequate force being one with 90% of that authorized strength (i.e. 1,278 sworn officers) effective December 31 and after. The required percentage of authorized strength is mandated to increase to 95% by December 2005 and after (or 1,349 sworn officers) to be considered adequate, and then to 100% of authorized strength by December 31, 2006 (Sec. 24-122.01(e)(1)).

For fire and emergency rescue services, the 2004 County ordinance established a countywide, authorized strength of 692 personnel. "Adequacy" was attained if the Fire Chief submitted a statement that verified that the County had achieved 95% of that authorized strength by December 31, 2004 and 100% of that level by December 31, 2005. Similar standards were created for the fire Department. If the County has not attained the prescribed levels either for police or fire/rescue officers, then there can be no preliminary plat approval given to any proposed development in the county until the deficiency is rectified. This particular provision has not impacted development review.

Other public safety APFO standards apply only to commercial and industrial development proposals. The County requires that, before a subdivision plat for a commercial or industrial project can be approved, the Planning Board must determine

that the population/employees generated by the proposed subdivision do not exceed the service capacity of existing police stations as determined by the Board in the “Guidelines for the Analysis of Development Impact on Police Facilities”. Similarly, the Planning Board must also determine that the population/employees generated by the proposed project will ‘be within the adequate coverage area of the nearest fire and rescue station(s), as determined by the Planning Board in the ‘Guidelines for the Analysis of Development Impact on Fire and Rescue Facilities’” (Sec. 24-122.01(d)). If either the existing police or fire/rescue facility is not deemed adequate, then the Planning Board may not approve the preliminary plat unless (a) a facility adequate to serve the proposed development has been programmed to receive 100% of needed construction funds within the County’s adopted CIP; or (b) the needed improvements will be funded by the subdivider to meet standards (Sec. 24-122.01(c)).

The most contentious component of the Prince George’s county public safety APFO guidelines have been the standards for police and fire/rescue response times. The County established required response times a number of years ago, with the Planning Department having the responsibility for determining whether a proposed development would have response times meeting the standards. However, a *Washington Post* study in 2003 sampled 142 projects that had been recommended for approval by County planning staff in 2001-2. The study found that 56 (or nearly 40%) of the projects failed the APFO requirements for response time for either fire, ambulance or paramedic services, and 9 failed the test for all categories of response (Wiggins 2004).

Public criticism of the public safety response component of the County’s APFO, and concern by some County Council members of inadequate enforcement of the standards, contributed to changes made in November 2004. For police response, County Bill 89-2004 required that site-specific “adequacy” must be verified by a statement from the County’s Police Chief that the rolling, 12-month average response times in the vicinity of a proposed development be a maximum of 25 minutes for non-emergency calls and a maximum of 10 minutes for emergency calls. For Fire and Rescue, determination of “adequacy” specific to a proposed development site was to be determined by a statement by the Fire Chief regarding the rolling, 12-month average response time in the vicinity of the proposed development. If the proposed development is within the Rural Tier, the response time was a maximum of 8 minutes for fire engines or basic life support and 10 minutes for advanced life support. Outside the Rural Tier the required response times were 6 minutes for fire engines and basic life support and 10 minutes for advanced life support.

The November 2004 law also required the Police and Fire Chiefs to issue a statement that the County has adequate equipment (as defined by the County’s Public Safety Master Plan) for police and fire stations in that same geographic area. The bill removed enforcement of the response time requirements from the planning department to the County’s Office of Audits and Investigations.

According to Alan Hirsch, Planning Supervisor of the Subdivision Section of the County’s Development Review Division, CB-89-2004 effectively shut down the County

for new residential subdivision review. The response time element of the law had the unexpected consequence of shutting down development throughout the county, because even proposed projects in the Developed Tier might not meet the standard even though they were located a mile from a fire station. The reason for this is that when an engine company closest to the new housing is on another call, a fire company based farther away might have to respond, lengthening the average response time.

The County Council subsequently introduced legislation, passed in late July 2005, designed to address the de facto moratorium on residential development. The bill provided funding to upgrade public safety facilities/services by imposing a “public safety surcharge” on building permits. The surcharge is \$2,000 if the building is located in the Developed Tier, and \$6,000 if the building is located in either the Developing or Rural Tiers. The County also altered the fire/rescue response time measurement standard so that the adequate response time “for the first due station in the vicinity of the property proposed for subdivision” is a maximum of 7 minutes travel time, regardless of Tier location. This is a more lax standard than an actual response time of 6 or 8 minutes *measured from the time of the emergency call*, as stipulated in the prior law. The legislation also requires the Fire Chief to submit monthly reports chronicling actual response times for service class during the preceding month. In addition, the legislation allows the County Council to waive any public safety surcharges in the Developed Tier.

Roads

The County’s Subdivision Code Sec. 24-124 outlines road adequacy requirements for subdivision review. The Planning Board’s *Guidelines for the Analysis of Traffic Impact of Development Proposals*, last amended in 2002, is the reference document for the preparation of traffic impact studies required for development review. The guidelines state that a traffic study is usually required of the applicant for a preliminary plat if the proposed subdivision will produce 50 or more trips during any peak hour. The study must indicate projected traffic volumes for the roads and streets within a study area that has been defined through the applicant’s consultation with County staff consultation.

Level of Service (LOS) standards vary depending on the location of the proposed project, with LOS “C” for the Rural Tier, “D” in the Developing Tier, and “E” in the Developed Tier and in metropolitan centers. The traffic impact analysis must consider: a) existing peak-hour traffic in the study area; b) peak-hour traffic from approved but unbuilt subdivisions in the study area; c) increased peak-hour traffic going through the study area; and d) the peak-hour traffic to be generated by the proposed development.

The LOS standards for roads require that roadway projects must be fully funded, even if in out years, as a part of the County Capital Improvement Program and/or state consolidated transportation plan, in order to be considered to have met LOS standards. This does NOT mean that the funds must be literally available for expenditure – it means that the state/county must have committed to spend the funds to make the necessary improvements, at some point in the future. In 2003 the Prince George’s County Council passed a bill that would have prevented the county’s planning board from approving subdivisions until necessary road improvements were actually made.

The County Executive, Jack Johnson, vetoed the bill on the grounds that it would also impact commercial development.

However, in practice, it appears that while road improvements may have been *budgeted* with the County's capital plan or the state's transportation plan, this does not always translate into the actual appropriation of funds. In reality, there is relatively little funding currently appropriated for many of the road projects budgeted by either the County or State. Developers have contributed some funds which are available for improvements, but developers' contributions cannot begin to cover the full costs of major road projects. Most of the county's main thoroughfares fall under the authority/jurisdiction of the State.

Since 1993 the County has enabled an applicant not meeting the relevant LOS standard to offer a Traffic Facilities Mitigation Plan to the Planning Board. The mitigation plan is subject to more lenient LOS standards than or normally required by the County, but must include a traffic impact analysis that demonstrates that the mitigation requirements and the LOS standards can be met either by available and programmed road capacity or by the applicant's proposed mitigation actions. Those actions can include: a) physical road improvements, including additional lands and signalization; b) payment of all or part of the costs of roadway improvements; c) trip reduction measures; and d) staging the development to manage traffic volume so that the LOS standard is met.

County Code Sec. 24-124(b) enables an applicant who was paid for traffic mitigation as part of the condition of preliminary plat approval, to receive reimbursement on a pro rata basis from subsequent subdividers who utilize excess capacity created by the applicant. Furthermore, the County's *Guidelines for the Analysis of Traffic Impact of Development Proposals* allow for "Road Clubs", in which two or more subdivisions can share in the costs and/or responsibility for implementing the same, Planning Board approved, road mitigation project.

Schools

APFO standards for schools are outlined in Subdivision Ordinance Sec. 24-122.02. The adequacy test is applied to a proposed subdivision in regard to how the development would affect enrollments in the relevant school cluster. The number of students generated by the proposed subdivision cannot exceed 105% of State-rated capacity of the affected elementary, middle and high school clusters, as determined by the Planning Board. The Planning Board utilizes pupil yield factors for each type of dwelling unit. In making its calculations, the Planning Board looks at the actual number of students in the cluster by September 30; the number anticipated by the subdivision; the number anticipated from residential completions in the cluster; and the number anticipated from subdivisions already approved in the cluster within the calendar year (Sec. 24-122.02(a)(5)).

Exempted from the school adequacy test during preliminary plat review are the following: a subdivision located in the Developed Tier; redevelopment projects that replace existing dwelling units; elderly housing meeting definitions contained in State and Federal Fair Housing law; subdivisions with no more than 3 lots on less than 5 acres,

for which the lots are to be conveyed to a son, daughter or other lineal descendent of the grantor; and a subdivision with fewer than 36 dwelling units that will not be served by public water and sewer, is not included in a large Comprehensive Design or Mixed-Use Zone development, and for which the applicant/owners did not own any property adjacent to the proposed subdivision as of May 31, 1997.

Effective July of 2003, through CD-30-2003, Prince George's County began collecting a schools surcharge (i.e. a tax charged on building permits, not an impact fee) on new development to help pay down debt service on school capacity increases. The charge is \$7,000 for new buildings in the Developed Tier and for buildings constructed as part of a site plan that abuts an existing or planned Metro station. The charge is \$12,000 for buildings in all other areas. Exempt from the requirement are: single-family detached dwellings built by an individual owner as a personal residence; mixed retirement developments and elderly housing; and multifamily housing units designated as student housing located within 1.5 miles of the University of Maryland. When CB-30-2003 was enacted, it effectively ended a policy under which proposed projects not meeting the school capacity adequate test were subject to a waiting period. Projects that had been approved with a wait condition were allowed to proceed.

There are three points worth noting with respect to the LOS standards for schools:

- The difference in surcharges is meant to encourage development inside the Capital Beltway and near Metro stations, and to discourage over-extensive rural development.
- The surcharge has “replaced” the above-mentioned LOS standard stipulating that students generated by a proposed development not exceed 105% of state rated capacity in affected school clusters. Prince George's County planners interviewed for this report mentioned that school re-districting was never been seriously undertaken as a method by which to meet school LOS standards, and that boundary revision is one of the hardest tasks for the County to accomplish.
- Nevertheless, the schools adequacy test mentioned above is still conducted by Planning Board, according to Sec. 24-114.01 “for planning purposes,” though it has no real impact on the process. Section 24.114.01 does require the Planning Board to conduct a ‘School Planning Capacity Analysis’ based of the Board of Education’s established cluster boundaries. This subdivision code section further stipulates that the capacity analysis results “shall be used by the Planning and Board of Education staffs when assessing the need for new or expanded school facilities, and shall not be a consideration in the approval of the subdivision”. Even so, County planning personnel interviewed for this study stated that the school system uses its own projections, based on where development is occurring or planned to occur.)

Ongoing Issues with Prince George's County's APFO

Except for the shutdown of development review from late November 2004 to late July 2005 caused by the current public safety response time standards, the planners interviewed for this report state that instances of development proposals being denied for lack of facilities do not happen as often as they used to. Since developers are required to conduct their own impact assessments as part of the process, they are aware in advance whether they will be able to satisfy APFO requirements, and tend not to bring projects to the County until they are able to do so. The school APFO test is used for planning purposes only, as developers may proceed with development plans once the surcharge is paid. The road test only requires that the capital funds for any needed improvements be budgeted at the county or state level, even if it is unlikely that money will actually be appropriated.

The Prince George's County Executive has convened an internal working group, including officials from the Planning, Police, Fire, Public Works, and other departments, to work on improving the APFO requirements. In addition, the County Council has convened a number of public forums to discuss APFO issues. In terms of specific issues to be addressed during this process, respondents mentioned the need to reconcile land use with adequacy issues as a significant challenge.

It is clear that the current County Council is interested in restricting growth in the Rural Tier, and APFO school, road and public safety standards favor projects proposed within the Developed Tier. However, the council has as yet to create a long term strategy for restricting growth in the Rural Tier. The APFO emergence response standard passed in November of 2004 seemed like a good way to restrict growth for a time without having to resort to more permanent regulatory measures, but the unanticipated result was that the ordinance shut down growth throughout the county for several months. The Prince George's County case suggests that an APFO is an inappropriate mechanism to use for accomplishing land use goals that are better addressed through longer term regulations tied closely to the General Plan.

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II.F. St. Mary's County

The economy of St. Mary's County is largely driven by two factors: the episodic expansion of the Patuxent River Naval Air Station as a result of base closures in other parts of the U.S.; and the expansion of the Washington region's commuting area. A significant amount of the Naval Air Station expansion involves, or stimulates, off-base development. As a result, once rural St. Mary's County is becoming increasing suburban. Its population of 86,211 in the year 2000 represents an 82% increase since 1970.

The County created its APFO in 1990, with adequacy requirements for roads, schools, fire suppression, sanitation/sewer, water and storm drainage. As with other counties with APFOs, inadequate school capacity has been the major reason for development delays in St. Mary's County. Even when budgeted school construction is completed, the county will still face school-based development moratoria in the near future unless the APFO is revised or additional revenues are generated and devoted to school construction.

St. Mary's County's APFO is contained in its zoning ordinance (Article 7, Chapter 20, sections 70.1 through 70.13 of the County Code). According to the ordinance, APFO review is conducted in order to implement APFO policies contained in the County's Comprehensive Plan along with other functional plans, including: the Lexington Park Transportation Plan; the comprehensive Water and Sewerage Plan; the Education Facilities Master Plan; the Fire and Rescue Services Master Plan; and the Land Preservation and Recreation Plan. No preliminary plan for a subdivision, or major site plan required for a zoning permit, can be approved unless the County's planning commission determines that the proposed subdivision or development will not adversely affect the adequacy of the of public facilities serving the project and the area in which it is located.

Except for the determination of water and sewer service adequacy, St. Mary's County's APFO exempts residential subdivisions containing 5 or fewer lots, or non-residential developments containing less than 5,000 square feet of floor area. Sponsors of non-exempt projects must first submit an adequate public facilities study (APFS) as part of the preliminary subdivision or major site plan application. The APFS must contain the following information (Article 7, Chapter 20, sections 70.5.2).

- a) a description of the proposed project, its location and the condition of all public facilities that are regulated by the APFO;
- b) an assessment of the vehicle trips generated by the development (according to a formula described below under ("Roads");
- c) the number of potential public school students generated by the development (utilizing a formula discussed below under "Schools");

- d) market absorption of the project;
- e) analyses and identification of project impacts on the public facilities encompassed in the APFO, using a table that summarizes the impacts for each year of construction up to 10 years and buildout;
- f) a proposed mitigation program for addressing project impact from public facilities;
- g) a traffic impact study (the required elements of which are below under “Roads”, below);
- h) a school impact study using the latest official September 30 enrollments produced by the St. Mary’s County Board of Education; and
- i) an assessment of the adequacy of sewerage, domestic water supply, fire suppression water supply and storm drainage, based on criteria contained in the APFO.

The County’s Planning Director reviews the APFS for each proposed subdivision and major site plan and produces a report assessing the adequacy of each relevant facility category. In the report the director can make a positive recommendation on the project, indicate appropriate mitigation needed (except for schools) to bring a given public facility up to APFO standards, and identify conditions or stipulations that may be needed for the project to satisfy APFO criteria. For site plans, the Planning Director makes the final determination of adequacy. For major subdivisions, the Planning Commission makes the determination on public facilities adequacy, using the APFS and the Planning Director’s report.

Among the mitigation strategies that may be considered by the Planning Director and/or the Planning Commission (except for schools) are: dedication of property to the County; additional or special impact fees; in lieu of fees to finance an improvement; County participation in a private/public partnership to provide required public facilities; developer agreements (discussed below); off-site improvements; and other mechanisms that could ensure facilities adequacy. If the applicant is unable to agree to a mitigation program to assure adequate facilities, then the Planning Director (for major site plans) or the Planning Commission (for major subdivisions) must disapprove the project.

Each of the facility areas covered by the County’s APFO is discussed below.

Roads

The roads serving a proposed project will be considered adequate under St. Mary’s County’s APFO (Article 7, Chapter 20, sections 70.7) if the project satisfies any one of the following four conditions.

1. The roads serving the project are a minimum of 18 feet wide and are capable of accommodating existing traffic, traffic to be generated by the proposed project, and traffic expected to be generated from other yet-to-be built projects for which plats and

plans have been approved. Levels of service (LOS) must be met from the first points of ingress to and egress from the proposed development and to and including the intersection with the first county or state collector or arterial road or state road in all directions from the development.

2. The County or State has programmed, in the then-current CIP (or similar plan), at least 75% of the funds needed for constructing additional roads or road improvements that will bring the project' road LOS in compliance with the APFO.
3. The applicant agrees to undertake construction of the necessary roads or road improvements that will bring the project into compliance with the APFO.
4. The proposed project is located within a designated revitalization area and/or development district in which the County is encouraging new development or redevelopment. In such cases the project may be allowed to proceed even if the area was experiencing a road LOS below acceptable levels, "as long as transportation improvements are made that would result in an improvement in traffic operations beyond what would have been expected if the development had not occurred" (Article 7, Chapter 20, sections 70.7.2(d)). In such cases the Planning Commission may also require the applicant to implement mitigation measures.

In setting road LOS standards, St. Mary's County uses the current edition of the *Highway Capacity Manual* (Special Report #209) published by the Transportation Research Board, or uses the critical land analysis method to access intersection capacity for development in base zoning districts within the planning districts designated in the County's Comprehensive Plan. Table SM.1, below, shows the allowable LOS by base zoning district and Comprehensive Plan district.

Table SM. 1. Allowable Road Levels of Service, by Base Zoning District and Comprehensive Plan District: St. Mary's County, MD

| Base Zoning District | Comprehensive Plan District | Peak Hour LOS |
|--|------------------------------------|----------------------|
| Residential Districts | Development Districts | D |
| | Town Centers and Village Centers | C |
| Commercial and Mixed Use Districts | Development Districts | D |
| | Town Centers and Village Centers | C |
| Industrial and Office Districts | Development Districts | D |
| | Town Centers and Village Centers | C |
| Rural Districts; Commercial Marine Districts | Rural Preservation District | C |

Source: *St. Mary's County Code*, Article 7, Chapter 20, section 70.7.3(a)

The St. Mary's County APFO outlines the content and format of the traffic impact study that must be submitted by a project applicant. If required, the study must encompass traffic flow analyses of the roads, highways and intersections identified in the preliminary

APF study. The ordinance includes trip generation tables for residential, industrial, office and shopping center development that are to be used in the analysis. As an example, Table SM.2, below, shows the trip generation rates for residential and industrial uses.

Table SM. 2: Trip Generation Rates for Residential and Industrial Land Uses, to be Used in Traffic Impact Studies of Proposed Projects: St. Mary’s County.

| Land Use | Average Daily Trips | A.M. Peak Hours | | | P.M. Peak Hours | | |
|-------------------------|-----------------------|-----------------|-----|-------|-----------------|-----|-------|
| | | IN | OUT | TOTAL | IN | OUT | TOTAL |
| Single-family Residence | 9.55 / DU | .20 | .56 | .76 | .66 | .36 | 1.02 |
| Apartment | 6.47 / DU | .09 | .42 | .51 | .43 | .20 | .63 |
| Condo/Townhouse | 5.86 / DU | .07 | .37 | .44 | .36 | .19 | .55 |
| Industrial | 6.97 per 1000 sq. ft. | .72 | .16 | .88 | .09 | .72 | .91 |

Source: *St. Mary’s County Code*, Article 7, Chapter 20, section 70.7.4.

Schools

The school component of St. Mary’s County’s APFO applies to all development projects except for: a) proposed residential subdivisions creating 5 or fewer lots; b) projects developed for exclusively non-residential use; and c) projects for the elderly (55 years old or older, and per other federal regulations).

In calculating the school population to be generated by a proposed development, the applicant utilizes guidelines for student yield approved by the Board of County Commissioners. The yield rates are shown in Table SM.3, below.

Table SM.3: Yield Rates per Dwelling Unit, by Level of School: St. Mary’s County

| Type of School | Pupil Yield Rate |
|----------------|------------------------|
| Elementary | .154 per dwelling unit |
| Middle | .107 per dwelling unit |
| High | .215 per dwelling unit |

Source: Canavan (2005a)

St. Mary’s County is divided into three school areas: Chopticon, in the western part of the county; Leonardtown in the center; and Great Mills in the southeast. It is at the district level that school adequacy is determined, not the individual school district level. According the APFO, the school population to be generated by a proposed development must not result in a total enrollment that exceeds 107% of State-rated capacity in a school area for any of the three school levels (elementary, middle or high school). Thus, while an individual elementary school that would serve a proposed project might be over 107% of state-rated capacity, as long as the elementary schools in the school area collectively are under 107% of state-rated capacity, then the project will not be held up because of

school inadequacy. However, modular school rooms may not be counted in adequacy determinations.

There has been a moratorium on residential development review in the Leonardtown school area since December 2004 due to elementary school overcapacity. Lack of capacity is also a growing concern in the Great Mills School area. The two areas encompass much of the County's designated growth area. However, no new schools have been built in St. Mary's County in approximately 13 years. The County's FY 2006 budget has earmarked 100% of design funds for a new elementary school, and construction money for an addition to the existing Leonardtown Elementary School.

While the expansion to the existing Leonardtown Elementary School will provide approximately 195 new seats, because of State-rated capacity standards effective July 2005 (lowering class sizes for elementary school and kindergarten), the net gain will be only 9 school seats, or 44 housing units. The new elementary school will eventually provide an additional 646 seats, equating to 3,004 new building lots (Shire and Bowles 2005). At that point, the capacity concern will shift to the Leonardtown Middle School, which has remaining capacity of 29 seats (or 270 housing units), while the Leonardtown High School has only 49 remaining seats (or 228 housing units). In a study of the area's school capacity situation, Shire and Bowles conclude that "although the immediate elementary deficit may be resolved in the foreseeable future, the secondary level limitations are imminent" (Shire and Bowles 2005).

Although school capacity limitations are blocking approval of subdivisions in the Leonardtown school area, some residential development will continue to occur there for the following three reasons: a) homes may be built on existing lots of record that have already received County approval; b) minor subdivisions of 5 lots or fewer are exempt from the County's APFO law; and c) the Town of Leonardtown has its own planning and zoning authority and is not subject to the County's APFO, so is able to approve new residential development within its jurisdiction despite the school overcapacity issue.

To help fund schools, St. Mary's County has an impact fee on all new residential development. The impact fee is \$4,500 per-unit, of which \$4,375 is earmarked for schools, \$450 for roads and \$675 for parks. According to County Planning Director Denis Canavan, in 2003 a consultant recommended that the fee be raised to \$9,200 and a more realistic fee at the present time would probably be \$11,000.

Because of the current and looming problem of school capacity shortfalls, Canavan says that developers are interested in mitigating for school capacity. Developer mitigation for schools is currently not allowed under the County's ordinance. However, a recently passed amendment to the zoning ordinance allows for dedication of land for schools by a developer who enters into a "Development Rights and Responsibilities Agreement" with the County (St. Mary's Code, Article 2, Chapter 29).

Water

St. Mary's County's APFO requires that all residential subdivisions of 25 or more lots be connected to a public water system. All non-residential subdivisions, as well as development in the County's Development Districts must be connected to a public water system if they are within 1,750 feet of an existing line of sufficient capacity (St. Mary's County Code, Article 7, Chapter 20, section 70.9). Development of any type in Town Centers and Village Centers that are within 1,750 feet of an existing public water system with sufficient capacity must be connected to the public water system. The water supply system for a proposed development is considered adequate if it satisfies the applicable requirements of the Maryland Department of Environment, St. Mary's County Health Department, and St. Mary's County MetCom regulations.

St. Mary's County, as well as Charles and Calvert counties, relies on groundwater for its water supply. Partlow (2005) reports that since 1975 the Aquia aquifer serving parts of St. Mary's County has dropped 200 feet below sea level. Declines such as this prompted Maryland state officials to begin drilling exploratory wells in the year 2000 a part of a multiyear study of the region's water supply. The study found that current rates of water withdrawal were not sustainable for the next 25 years. While water -- for residential, commercial and industrial uses as well as for fire suppression -- is not a growth-limiting factor in St. Mary's county at the present time, the director of the Water Management Administration for the Maryland Department of the Environment states that "we need to begin planning because 25 years is not much time" (as quoted in Partlow 2005).

Fire Suppression

The fire suppression component of St. Mary's County's APFO is administered in conjunction with the St. Mary's County Metropolitan Commission (MetCom, the County's water/sewer utility) and the County Fire Board. Specific requirements for fire suppression deal with development served by public water service as well as by private wells (St. Mary's County Code, Article 7, Chapter 20, section 70.12). Fire suppression service for a proposed development is considered adequate if it is served by a public water supply system or multi-user water supply system that is capable of providing fire flow in accordance with County standards. Alternatively, that requirement may be waived for subdivisions having 25 to 49 residential lots, in which each residence is served by a private sprinkler system installed in accordance with National Fire Protection Association (NFPA) standards.

For a proposed development on a private wells, adequacy of fire suppression services is attained under two conditions. First, if the proposed buildings are "grouped" as defined by NFPA, the project must have fire flow and storage capacities installed according to NFPA standards. Second, the water source for fire suppression must be provided unless specific exemption is given, for the installation of a sprinkler system, by the fire department serving the development. Or, if sprinkler systems are not to be installed, the development meets the adequacy requirement if the amount of water carried on the fire apparatus responding on the first alarm is greater than that required by the NFPA standard. Alternatively, if the development has access to a County-approved, static water source, it must have a dry hydrant with all-weather access. The water for fire suppression must be available within 1,000 feet of all single buildings under 12,000 sq. ft. and be on

site for all single buildings over 12,000 sq. ft. in area (St. Mary's County Code, Article 7, Chapter 20, section 70.12.2(b)(2)).

Sanitation/Sewer; Storm Drainage

Because these standards are typical of those required by Maryland jurisdictions and the Maryland Department of Environment under other codes than local APFOs, they are not discussed herein. These standards have not been a development-limiting factor in St. Mary's County.

Continuing Issues with St. Mary's County's APFO

Inadequate school capacity is the most challenging problem facing St. Mary's County in administering its APFO. Jim Bacot, of Lifestyle Design Inc., states that feedback from the APFO process should have informed the county's CIP much earlier with regard to funding more schools construction. He thinks that the County's impact fee is simply too low to generate funding necessary for school capacity expansion, and suggests that St. Mary's needs to move in the same direction that Charles County (which has a school construction impact tax that is more than twice the amount of St. Mary's County's school impact fee, and which has instituted a pay-and-go system that yields even more school construction funding).

Denis Canavan, St. Mary's County Planning director, has suggested that the Planning Commission discuss some options for addressing the school capacity limitation. Among those suggestions are treating the county as one school district, so that shortages at a school level in one of the three current school areas would no longer exist due to excess capacity in another area. Also suggested was eliminating the APFO exemption on developments of five lots or less, and developing a policy for allocating school capacity among different areas or types of development -- that would include the town of Leonardtown, grandfathered subdivisions, multi-family projects and single family detached dwellings (Canavan 2005b).

However, treating the county as one large school district may not be a panacea for expanding school capacity to allow more development. As Shire and Bowles (2005) explain:

It would appear that the County-wide approach eliminates the negative capacity at the elementary level, but the current Leonardtown elementary negative capacity would have to be absorbed into the Chopticon and Great Mills systems. The increase in capacity that would allow upwards of 1,028 units is still well short of the pending requests in the subdivision queue. The county-wide numbers may look attractive but are deceiving; for example, the logistics of getting students from the subdivisions to distant schools with actual school capacity would be costly and difficult.

Due to those logistics, the logjam in the Leonardtown school area will only be solved with more funding. If the County Commissioners do not raise impact fees or pass tax increases to fund additional school capacity, then moratoria remain a likelihood in much

of the county's designated growth areas. In the long term (25 years), inadequate groundwater supplies could be *the* growth-limiting factor in parts of St. Mary's County.

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