Appendix N:

Adequate Public Facilities Ordinances in Maryland

Maryland Sustainable Growth Commission

Adequate Public Facilities Ordinances in Maryland:

(Discussion Draft)

Annual Report Review - 2012

A Report by
The APFO Workgroup
of the
Maryland Sustainable Growth Commission

Maryland Sustainable Growth Commission

March 21, 2013

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EXECUTIVE SUMMARY

The purpose of this APFO Workgroup study is to review the reports of local jurisdictions on adequate public facilities development restrictions required by the Land Use Article, and assess whether and to what extent adequate public facilities ordinances affect the achievement of the goals of the State economic growth, resource protection, and planning policy. It should be noted that the Maryland Department of Planning (MDP) is working with local governments to enhance the quality of the information submitted in these reports for subsequent years; however, significant deficiencies in the submitted reports limit the conclusions on the impact of Adequate Public Facility Ordinances (APFOs) at this time. The APFO Workgroup has identified a series of recommendations will enable a more complete assessment of APFOs in Maryland during the next round of local jurisdiction submissions, and improve the effectiveness of APFOs as planning and growth management tool. Recommendations include, in part:

1. Create model guidelines for APFOs within Priority Funding Areas (PFAs).
2. Consider establishing minimum Level of Service (LOS) standards for PFA areas. In lieu of moratoria, include options to consider underutilized facility capacity within designated PFA areas.
3. Require biennial APFO reports to indicate the amounts and types of capital improvements necessary to maintain sufficient adequate public facilities needed to support existing level of service standards, the facility improvements made with fees collected and projected growth and redevelopment within designated PFA areas for the next reporting cycle.
4. Time limits on a moratorium should also be considered in PFA areas.
5. Mitigation of project impacts, instead of a moratorium, should be considered, in PFA areas.
6. Increase the capacity of schools in PlanMaryland Targeted Growth and Revitalization Areas to limit the impacts of APFO restrictions within PlanMaryland Targeted Growth and Revitalization Areas by:

    a) Encouraging the coordination of the local board capital improvement program with the county comprehensive plan;

    b) Coordinating local infill and redevelopment plans with local school boards and school capacity and capital improvement needs assessments;

    c) Considering the use of infill and redevelopment sites; adaptive reuse; or use of smaller sites for mitigation and increased school capacity;

d) Encouraging redistricting or clustering of adjacent and accessible school service areas to utilize available unused school capacity, consistent with State Public School Construction Program regulations for determination of eligible enrollment capacity in projects requested for funding assistance;

e) Considering a tiered approached to amending APFO standards to up to 120% of State-Rated Capacity within PlanMaryland Targeted Growth and Revitalization Areas, with corresponding local funding and capital improvement mechanisms needed to support the increment of student population growth; and

f) Evaluating the need to adjust the definition of State-Rated Capacity to support adequate school capacity in targeted areas.

Additional recommendations are included at the conclusion of this report.

As part of this APFO study, MDP staff conducted a literature search that revealed two recent publications similar in nature to the proposed APFO Workgroup study. The "Adequate Public Facilities Ordinance in Maryland" report, prepared by the National Smart Growth Center (NSGC), dated April 20, 2006 and the "Adequate Public Facilities Ordinance (APFO) in Maryland Jurisdictions" report, prepared by the Maryland Department of Planning, dated May 10, 2010.

The 2006 NSGC Report examines the implementation and effects of APFOs and the relationship between APFOs and Maryland's Smart Growth policy through April 2005. The NSGC Report also provides a history of APFOs in Maryland. The 2010 APFO Report provides an inventory of all APFO level of services standards. This APFO Workgroup study incorporates the historical aspects of the NSGC Report and incorporates data and legislative updates from April 2005 to June 2012 using local jurisdiction annual reports for APFOs. This study will provide continuity for any future APFO review and study that may be continued to the next two-year annual reporting cycle in 2014.

As of May 2012, fourteen counties and 26 incorporated municipalities in Maryland have enacted ordinances intended to ensure that infrastructure necessary to support proposed new development is built concurrently with, or prior to, that new development. These APFOs are intended to ensure that public schools, roads, sewers, water for fire-fighting, police and rescue response times and/or other infrastructure or services are "adequate" to support proposed new development. APFOs are timing devices that can be a useful tool for managing urban growth. When properly used, they can help ensure that needed facilities and services are available for new development and can signal to planners and elected officials what types of infrastructure, in which particular growth areas, are in need of additional capital improvement spending. They are intended to provide the rationale for prioritizing infrastructure investment decisions and/or allocating existing facility capacity.

In terms of categories of services included in the 14 county APFOs, all cover schools and roads. While two counties limit their APFOs to those two service categories, twelve others include water capacity and eleven include sewage capacity; eight include water for fire suppression, five include stormwater drainage, three include police/fire/rescue services; and one includes solid waste. Not only do categories of services included in the APFOs vary, but so do: a) the standards used to gauge adequacy; and b) the approaches taken by the counties when a development proposal is judged as leading to service or facility inadequacy. Moreover, APFO standards in a given jurisdiction can and do change over time as local elected officials respond to the concerns of constituents, other stakeholders and changing public policy objectives.

This study confirms that APFOs in Maryland are often poorly linked to capital improvement plans. Potentially, moratoria can last for unspecified periods of time if the AFPO does not specifically provide limitations. New approaches outlining the amounts and types of capital improvements necessary to maintain sufficient adequate public facilities needed to support projected growth and revitalization within designated growth areas should be considered, or greater compliance with existing State mandates, such as, the updating of Water and Sewerage Plans, per Code of Maryland Regulations (COMAR).

However; during the 2012 reporting cycle, few moratorium areas were reported. The housing recession felt across the nation and in Maryland over the past 5-years, rather than capacity improvements, may be a contributing factor. It is projected that increases in housing and population will rebound, and will likely result in increased moratoria being reported. To address this issue, adequate infrastructure must be in place in designated growth areas. Further, the consequences of APFOs in Maryland are often unintended and their effects frequently contrary to the broader land use policies of the state. In many counties that employ APFOs, they have become a limiter of growth rather than a facilitator of its growth.

When roads, schools or other infrastructure are judged to be insufficient to meet the standards established within APFOs, the result is often a moratorium on building until the infrastructure is ready to come on line. Often, these moratoria can be lifted through the payment of fees by developers. Developers can also make certain public improvements, such as intersection improvements, that mitigate the APFO restriction. Alternatively, communities may make capital improvements to expand the facility to meet the standard established for the public facility or may suspend or amend the APFO standards so that capacity is achieved, or may reallocate service districts to utilize system-wide capacities.

In 2006, the NCSG Report concluded that APFOs are applied in ways that deflected development away from the very areas designated for growth in county comprehensive plans to rural areas never intended for growth, to neighboring counties, or even to adjacent

states, by as much as 10 percent. While deflection may occur in some instances, no deflection was reported in 2012.

APFO consistency with a local comprehensive plan is possible only if adequate capacity is available in the plan's designated growth areas. In 2012, few restrictions were reported. Of the restrictions reported, they impacted school geographical areas and road intersections. No jurisdiction reported that development patterns were being affected due to APFO or available facility capacity.

PART I - OVERVIEW

The purpose of this study is to review the reports of local jurisdictions on APFO development restrictions and to examine any implementation and effects of APFOs and the relationship between APFOs and Maryland's Smart Growth policy. The overall goal is to determine whether, the degree to which, and reasons why, APFOs complement or frustrate economic development, resource protection and planning policy within Maryland's Priority Funding Areas.

GROWTH MANAGEMENT IN MARYLAND

Maryland has a reputation as a leader in efforts to manage growth and development. From the creation of the State Planning Act a half century ago through the enactment of various measures to protect the Chesapeake Bay and the state's natural areas, state and local elected leaders have consistently demonstrated a desire for orderly and environmentally sensitive growth.

Through the Maryland Economic Growth, Resource Protection and Planning Act of 1992, the Smart Growth and Neighborhood Conservation initiative of 1997, and the Priority Places initiative of 2003, Maryland governors and legislative leaders set the statewide framework for balanced growth. These initiatives consistently supported the concept of targeting new growth, whenever possible, to existing communities – to build within the existing development footprint, rather than on a "green field" site, whenever possible. The 1992 "Growth Act" and subsequent legislation established eight "visions" for how growth should be managed in Maryland, five of which were particularly relevant to the implementation of APFOs:

- #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.

Building on these "visions," the Smart Growth Areas Act of 1997 created a regime in which state spending on infrastructure and other growth related expenditures is restricted to geographic areas specifically designated for urban growth called "Priority Funding Areas" (PFAs).

The 2009 Smart, Green, Growing Legislation (Planning Visions bill) replaced the State's eight existing planning visions with 12 new visions that address quality of life and sustainability, public participation, growth areas, community design, infrastructure, transportation, housing, economic development, environmental protection, resource conservation, stewardship, and implementation approaches. These new planning visions are the State's land use policy and a local jurisdiction is required to include the visions in its comprehensive plan and implement them through zoning ordinances and regulations. Five of the twelve visions are particularly relevant to implementation of APFOs:

#3 – GROWTH AREAS: growth is concentrated in existing population and business centers, growth areas adjacent to these centers, or strategically selected new centers;

#4 – COMMUNITY DESIGN: compact, mixed–use, walkable design consistent with existing community character and located near available or planned transit options is encouraged to ensure efficient use of land and transportation resources and preservation and enhancement of natural systems, open spaces, recreational areas, and historical, cultural, and archeological resources;

#5 – INFRASTRUCTURE: growth areas have the water resources and infrastructure to accommodate population and business expansion in an orderly, efficient, and environmentally sustainable manner;

#6 – TRANSPORTATION: a well–maintained, multimodal transportation system facilitates the safe, convenient, affordable, and efficient movement of people, goods, and services within and between population and business centers;

#8 – ECONOMIC DEVELOPMENT: economic development and natural resource–based businesses that promote employment opportunities for all income levels within the capacity of the State's natural resources, public services, and public facilities are encouraged;

#12–IMPLEMENTATION: strategies, policies, programs, and funding for growth and development, resource conservation, infrastructure, and transportation are integrated across the local, regional, state, and interstate levels to achieve these Visions.

The Planning Visions bill also requires local jurisdictions to submit a report to the MDP every two years if an APFO results in a restriction in a PFA. The first such reports were due July 1, 2010. The second cycle of reports was due by July 1, 2012, and the results are summarized in this report. The next set of reports will be due by July 1, 2014, and every two-years thereafter.

Local jurisdiction reports on PFAs and APFOs must include information about the location of the restriction; infrastructure affected by the restriction; the proposed resolution of the

restriction, if available; estimated date for resolving the restriction, if available; the date a restriction was lifted, as applicable; and terms of the resolution that removed the restriction.

MDP's report on the statewide impact of APFOs has to identify: (1) geographic areas and facilities within PFAs that do not meet local adequate public facility standards; and (2) scheduled or proposed improvements to facilities in local capital improvement programs. MDP's first report was completed in 2011.

The bill authorizes local jurisdictions to establish Transfer of Development Rights (TDR) programs within PFAs and to assist a local jurisdiction in the purchase of land for public facilities in PFAs. Proceeds from the sale of these development rights must be used for land acquisition and public facility construction in the PFA. A "public facility" includes recreational facilities, transportation facilities and transit oriented development, and schools and educational facilities.

ADEQUATE PUBLIC FACILITY ORDINANCES

Since the late 1960s, jurisdictions in several states have adopted Adequate Public Facilities Ordinances. In jurisdictions with APFOs, approval for a development project depends on whether the project meets the adequacy standard of the selected public facilities and services needed to support that development and maintain quality of life or public health concerns. The project may not proceed if the impacts of the development exceed the adequacy standard. APFOs often, allow the developer choices to build and/or finance the needed facilities or services to meet the required standards.[1]

In 1969, Ramapo, N.Y., became one of the first municipalities in the United States to implement an APFO, and New York's highest court upheld the constitutionality of the strategy in Golden vs. Planning Board of the Town of Ramapo.[2] By 1991, more than one-third of California's municipalities had APFOs.[3]

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[1] Porter, Douglas R. 1997. Managing Growth in America's Communities. Washington, DC: Island Press. . White, S. Mark. 1996. Adequate Public Facilities and Transportation Management. Planning Advisory Service Report 465. Chicago: American Planning Association.

[2] 324 N.Y.S. 2d 178 (N.Y. 1971)

[3] Porter 1997, ibid.

In 2006, Florida instituted a mandatory Public Schools Facility Element into local government comprehensive plans. Interlocal Agreements between the school boards and local jurisdictions are required. The Interlocal Agreements established county-wide standards for student generation rates, mitigation fees and development review procedures.

MDP staff will continue to monitor APFOs in other states and will continue to identify other monitoring and reporting mechanisms enacted in other states to provide tools to promote infrastructure investments in growth areas.

APFOs IN MARYLAND

For a number of reasons, Maryland is a state well-suited to incorporate APFOs into local planning. First, major responsibility for land use planning rests with the state's 23 counties and Baltimore City. While there are 157 cities and towns in the state, not all of them exercise planning and zoning authority. Second, local governments in Maryland are required to prepare six-year capital improvement programs that are updated annually and also to revise their comprehensive plans every six years. Counties must prepare 10-year water and sewerage plans that include the needs and plans for cities/towns within their boundaries. These plans are required to be updated every three years and may be amended to manage infrastructure needs in growth areas. For capital improvement projects, these plans require financial statements and fiscal reports on debt service to all lending agencies. School districts are coterminous with county boundaries, and there are existing linkages between county elected officials and school budgets.[4] Thus, also unlike many other states, counties have the capacity to coordinate infrastructure and school funding so that development in Smart Growth areas is provided with needed services and facilities.

The 14 Maryland counties and 26 municipalities in Maryland that have adopted APFOs are listed in Table 1 for counties and Table 2 for municipalities.

All counties that have APFOs include schools and roads. Twelve of the 14 counties include water facilities and eleven counties include sewer facilities.

[4] Avin, Uri. 2004. "On the Trail of the Holy Grail: Maryland's APFO Lessons." Presentation to the American Planning Association National Conference. April.

Table 1: Counties with APFOs in Maryland

COUNTIES WITH ADEQUATE PUBLIC FACILITIES ORDINACES
IN MARYLAND, AS OF DECEMBER 31, 2012

County Regulations, 2012

Jurisdiction	Schools	Roads	Water	Sewer	Stormwater Drainage	Health Care	Fire	Police	Solid Waste Disposal
Anne Arundel	X	X	X	X	X		X		
Baltimore	X	X	X	X	X				
Calvert	X	X							
Caroline	X	X			X		X		X
Carroll	X	X	X	X			X	X	
Charles	X	X	X				X		
Frederick	X	X	X	X					
Harford	X	X	X	X					
Howard	X	X	X	X					
Montgomery	X	X	X	X		X	X	X	
Prince George's	X	X	X	X	X		X	X	
Queen Anne's	X	X	X	X					
St. Mary's	X	X	X	X	X		X		
Washington	X	X	X	X			X		

Table 2: Municipalities with APFOs in Maryland

MUNICIPALITIES WITH ADEQUATE PUBLIC FACILITIES ORDINACES IN MARYLAND, AS OF DECEMBER 31, 2012

Municipal Regulations, 2012

Jurisdiction	Schools	Roads	Water	Sewer	Stormwater Drainage	Health Care	Fire	Police	Solid Waste Disposal	Parks and Recreation
Aberdeen (Harford)	x									
Annapolis (Anne Arundel)	x	x	x	x	x		x	x	x	x
Bel Air (Harford)	x									
Boonsboro (Washington)	x	x	x	x						
Brunswick (Frederick)	x	x	x	x						
Frederick (Frederick)	x	x	x	x						
Funkstown (Washington)	#	#	#	#			#			
Hagerstown (Washington)	x									
Hampstead (Carroll)	x	x	x	x			x	x	x	
Indian Head (Charles)	x	x	x	x	x		x			
Keedysville (Washington)	x	x	x	x			x			
La Plata (Charles)	x									
Laurel (Pr. George's, Anne Arundel, Howard)	x	x	x	x			x	x		x
Manchester (Carroll)	x	x	x	x			x	x		
Mount Airy (Frederick, Carroll)	x	x	x	x			x	x		x
Poolesville (Montgomery)	x	x	x	x		x	x	x		
Ridgely (Caroline)	x	x	x	x	x		x	x	x	

Jurisdiction	Schools	Roads	Water	Sewer	Stormwater Drainage	Health Care	Fire	Police	Solid Waste Disposal	Parks and Recreation
Rockville (Montgomery)	x	x	x	x			x			
Smithsburg (Washington)	x	x	x	x			x			
Sykesville (Carroll)	x	x	x	x	x	x	x	x	x	
Taneytown (Carroll)	x	x	x	x	x		x	x	x	x
Thurmont (Frederick)	x	x	x	x						
Union Bridge (Carroll)	x	x	x	x	x		x	x	x	x
Walkersville (Frederick)	x		x							
Westminster (Carroll)	x	x	x	x	x	x	x	x	x	
Williamsport (Washington)	#	#	#	#			#			

= town has adopted the county ordinance

RESEARCH OBJECTIVES AND APPROACH

The research reported here includes the results of APFO annual reports received in 2011 and 2012 and follow-up interviews with specific counties that reported multiple deficiencies with schools and or roads. The research also included the collection and then evaluation of the specific APFO adequacy standards established by each jurisdiction and the extent to which, if any, the adequacy standard may address public health issues; may go beyond addressing public health concerns; the types of facilities addressed by APFO; any provisions for variances; and any provisions for relief.

Since the passage of SB 273/HB 294 in 2009, APFO reports are required by each jurisdiction. APFO reports are due only if restrictions are experienced during the reporting period. It is recommended that APFO reports be submitted to indicate progress in providing adequate facilities in designated growth areas. APFO reports are due every two years (biennial) and are to cover a reporting period of the previous two calendar years. APFO reports received in 2012 cover the period between January 1, 2010 and December 31, 2011 or calendar years (CY 2010-2011). The most recent APFO reports were due to the Maryland Department of Planning by July 1, 2012. This is the second cycle for local jurisdictions submitting APFO reports.

Although the APFO reports generally comply with the intent, there are some noted limitations. Some jurisdictions have submitted APFO reports with data from the "off" year (CY 2010), while others did not submit APFO reports for CY 2011. This may be related to limitations in the reporting requirements for APFO, as reports are only required to be submitted if there were restrictions within the PFA. If APFO reports are not received then it can be assumed, but not confirmed, that no APFO restriction occurred within that jurisdiction. There are also no incentives or penalties for compliance. There are, however, some encouraging signs that local jurisdictions are willing to improve the quality and consistency of the APFO reports. When contacted for this report, many jurisdictions were willing to discuss their APFO reports and process. The Maryland Department of Planning will continue to work with local jurisdictions to improve upon reporting techniques and communication. The next cycle of APFO reports are not due until July 1, 2014 for CY 2012 and 2013.

APFOs AND REPORTED RESTRICTIONS

There are 14Counties and 26 Municipalities that have APFOs. Of these, MDP received reports from ten (10) Counties and nineteen (19) Municipalities on impacts of APFOs on PFAs for calendar year 2011. In 2011, for calendar year 2010, MDP received reports from nine (9) Counties and (5) jurisdictions. During the reporting period for calendar years 2010 and 2011, there are few restrictions identified. This is possibly attributed to the limited amount of new building activity and national recession experience during this timeframe. A summary of the reported restrictions are provided in the comments below:

Table 3: County APFO Restriction Summary

CY 2010-2011

Counties	Type	Comments
Anne Arundel	Schools	2010: There was one unit on the waiting list due to lack of school capacity in the PFA. No other impacts were reported. 2011: There were no APFO restrictions reported.
Baltimore	Schools Water Roads Sewer	2010: There were seven (7) intersections operating at Level of Service (LOS) F (failing) within the County's Urban-Rural Demarcation Line (URDL); to address this, the County is embarking on capacity improvements; There were two areas of deficiency for water found in 2009 - these were to be resolved in 2010. 2011: At the end of CY 2011 there were 15 overcrowded school districts. The FTE enrollments of these 15 elementary schools (no middle or high schools) were at or over 115% of the 2011-2012 State rated capacity. Resolutions include additions, expansions, and construction of schools as well as age restricted housing. Three of the 15 overcrowded districts are being address: an addition to Hampton ES is under construction, an addition and renovation of Stoneleigh ES is being designed and a new ES with funding in places is planned at Mays Chapel. The deficient transportation zones are identified by signalized intersections having an F LOS. New development is limited in the traffic sheds where these intersections are located until the conditions are improved. There were a total of seven F LOS intersections in Baltimore County. The F Level intersections in 2011 were: Harford Road (MD 147) and Putty Hill Ave Frederick Rd (MD 144) and Bloomsbury Ave/Ingleside Avenue Falls Rd (MD 25) and Greenspring Valley Rd (MD130) Loch Raven Blvd (MD 542) and Joppa Rd York Rd (MD 45) and Burke Ave Falls Rd (MD 25) and Seminary Ave Falls Rd (MD 25) and Joppa Rd In 2011, only one sewer deficient area, Richlyn Manor, was identified. This small sewerage treatment facility is currently being converted to a pumping station, scheduled to be completed in approximately 5-10 years. There are several areas of concern, all of which are in the process of being resolved.
Charles	None	2010: There were no reported APFO issues in the Annual Report. 2011: There were no APFO restrictions reported.

Counties	Type	Comments
Carroll	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Frederick	Schools Roads	2010: At the end of CY 2010 there were 12 elementary, three middle, and three high schools whose enrollments were at or over 100 % of the state rated capacity. Many of these school districts include areas in both the county and a municipality and not all of the municipalities have their own APFO's. Recent amendments to the roads portion of the County's APFO have generally tightened the thresholds for road adequacy. The one part of the County that is particularly affected is the MD 85 corridor from I-270 south to English Muffin Way. The Maryland State Highway Administration has an active project to widen MD 85 between Guilford Dr. and English Muffin Way. 2011: There were no APFO restrictions reported.
Harford	Schools Roads	2010: Impacts being addressed by a study group looking at capacity and redistricting solutions. There are some road intersections within the development envelope that are operating at LOS E of worse; there are some state and county funded capital projects that will help resolve these issues. 2011: There were no APFO restrictions reported.
Howard	Schools	2010: There were 17 residential subdivisions including 200 housing units delayed due to allocation limitations in the Elkridge Planning area in 2009; it is expected all of these projects will move forward by the end of the following year. 2011: There were 18 residential subdivisions (211 housing units) delayed due to allocation limitations in the Elkridge Planning Area. Howard County Public School System acquired two school sites in 2012 (one for a middle school and one for an elementary school), both in the Elkridge area. As a result, 15 of the 18 projects totaling 174 housing units were allowed to proceed.
Montgomery	Schools Roads	SCHOOLS: If projected school enrollment exceeds 105% of projected school capacity then residential development within the affected school cluster will be required to make a School Facility Payment (SFP) in order to move forward; in 2009/2010 there were 9 restricted school districts that required a fee. These districts were primarily within PFAs but some were outside of PFAs. There were 16 areas in the County that coincide closely with local PFAs that require additional transportation mitigation measures provided by the developer to move forward. 2011: Residential development projects in 14 PFA restricted school districts require fees for the purpose of expanding school capacity under the FY2010 Schools Test. This process kicks in when projected school enrollment exceeds 105% of projected school capacity. Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR) estimate impacts of development on transportation and determine where additional transportation mitigation measures should be provided by the developer. There are 19 policy areas (closely matched to PFAs) that require additional mitigation.

Counties	Type	Comments
Prince George's	Roads	2010: In 2009, there were 29 properties in the PFA that were affected by APFO transportation restrictions. These restrictions were mitigated by developers providing transportation improvements required as a condition of approval. 2011: There were no APFO restrictions reported.
Queen Anne's	Schools	2010: There were no APFO restrictions reported. 2011: The plan for Walters Properties, LLC to construct residential lots in Grasonville was put on hold because the school districts would be over capacity. After a code update on January 28, 2012 that changed the school capacity threshold from 100% to 120%, the capacity was thought to be adequate; however, a citizen ballot initiative reversed this change in November 2012 to the 100% level.
St. Mary's	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Washington	Schools	2010: One level (ES, MS, HS) of school in every school district in the County, except for Hancock, is over capacity. The County has established mitigation measures requiring developers to phase the timing of future development as well as make a financial contribution over and above the local excise tax. This mitigation relief has been approved in the past by the BOCC in most cases. 2010.2011: There were no APFO restrictions reported.

Table 4: Municipal APFO Restriction Summary

CY 2010-2011

Municipality	Type	Comment
Aberdeen	Schools	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Annapolis	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Bel Air	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Boonsboro	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Brunswick	Schools	2010: There was one development project in 2010 that the Planning Commission determined would fail the test for school capacity. 2011: There were no APFO restrictions reported.
Frederick	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Funkstown	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Hagerstown	Schools	2010: In their Medium Range Growth Area, all ES and HS are over capacity; new schools and redistricting are used to address capacity issues as well as remediation plan by developer to be approved by County; one project of 105 units was held up in 2009 due to limited school capacity – to date, there has been no action on the part of the developer to start the remediation process for this project. Their APFO only applies to schools. 2011: A new "West City" ES was in planning stages in 2011 to replace two existing elementary schools, opening by 2016. A replacement for Bester ES was being planned in 2011 as well, opening in August 2014. The redistricting plan will create additional capacity but will not put every school below the local-rated capacity. Because of the lack of adequacy, major new development plans cannot be approved unless the County Commissioners approve a remediation plan.
Hampstead	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Indian Head	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Keedysville	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
La Plata	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Laurel	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Manchester	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.

Municipality	Type	Comment
Mount Airy	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Poolesville	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Ridgely	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Rockville	Schools	2010: There were no APFO restrictions reported. 2011: There was a site plan application for the Avalon Twinbrook Station, a 240 unit apartment complex that was put forth in 2009. The application was not able to be approved because Twinbrook ES and Julius West MS would be at or above 113% capacity utilization, exceeding the 110% APFO cap. There was not appeal for a "conditional" approval and the project is currently on hold.
Smithsburg	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Sykesville	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Taneytown	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Thurmont	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Union Bridge	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Walkersville	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Westminster	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.
Williamsport	None	2010: There were no APFO restrictions reported. 2011: There were no APFO restrictions reported.

PART II - APFOs IN PRACTICE

GENERAL RESULTS

The application of APFOs differs from jurisdiction to jurisdiction in terms of the following: what facilities or standards are covered; what constitutes "adequacy" with regard to facilities or services; what approaches are taken when a development proposal is judged as leading to service or facility inadequacy; and the degree to which various jurisdictions link their APFOs to their capital improvement plans to assure that infrastructure and services are put in place in a timely fashion to support development in areas designated for growth in comprehensive plans.

Schools

Review of the 14 county APFOs in Maryland show divergence in APFO design and implementation, and in their effort to define adequacy levels for public school capacity. The 14 counties can each be characterized by the degree of strictness of the school APFO standards (since it is school adequacy that has caused most moratoria in growth areas). The most common level of service standard for schools is associated with the percentage of state school-rated student capacity, or utilization rate. While some APFOs reference a locally rated student capacity, each appears to have some relationship to the state-rated student capacity or utilization rate applied to each school.

The State-Rated student capacity is generally standardized; however, the school rated-capacity is not necessary constant. There are many factors that may cause any given school to have its school rated-capacity adjusted up or down, depending on the considerations, conditions and policies affecting that school. In 2011, for example, Charles County adjusted their School Allocation Policy to reduce the measurement of each schools capacity from "Local Core Capacity" to "State-Rated Capacity." In most cases, this adjustment reduced the capacity of each school by no longer including re-locatable classrooms and additional lunch shifts into the measurement of that schools capacity. It should be noted that when the Interagency Committee (IAC) evaluates state funding requests for school construction, one of the prerequisites used is the extent to which 7-year enrollment projections exceed State-Rated capacity for the applicable school. Temporary classroom facilities may be a useful tool to utilize within growth areas while new schools or additions have been programmed.

As shown in Table 5, there is a wide definition of school capacity that varies from jurisdiction to jurisdiction. Additionally, local APFO standards for schools often apply exceptions, time limitations, or fee payment options that may allow development to proceed.

For purposes of the typology shown in Table 5, "stricter" school APFO counties are those that define acceptable enrollment thresholds at less than 105% of State-Rated capacity. "Moderate: school APFO counties are those between 100% and 115% of State-Rated capacity. "Flexible" school APFO counties are those that define acceptable, projected enrollment thresholds above 115% of State-Rated capacity.

Table 5 is perhaps an over-generalization of how strict the school level of service standard may actually be and may be more appropriate for illustrative purposes only, as the standard is relative to the level of enrollment at each school. Similarly, when reviewing the MD Public School Construction State-wide Utilization Rate tables, there are an abundance of schools identified with student populations that exceed the State-Rated Capacity.

Table 5: Adequate Public Facility Provisions - Schools

Jurisdictions with LOS Requirements of 100% or Less	
Anne Arundel	100% of state-rated capacity; does not include temporary or re-locatable structures; 6 year wait period.
Calvert	100% of county-rated capacity; 7 year wait period.
Caroline	100% of county-rated capacity.
Charles	100% of state-rated capacity; considers re-locatable classrooms and CIP.
Frederick	100% of state-rated capacity; school construction fee option.
Queen Anne's	100% of state-rated capacity; option to propose a mitigation plan, but cannot include temporary or re-locatable structures.
Washington	Elementary schools - 90% of state-rated capacity. Middle and high schools - 100% of state-rated capacity. Options to request redistricting or create improvements.

Jurisdictions with LOS Requirements Between 100% and 115%	
Baltimore	115% of state-rated capacity or adequacy in CIP in district or adjacent district.
Carroll	109% of state-rated capacity is adequate; conditional approval if adequacy in 6 year CIP. 110-119% of state-rated capacity is "approaching inadequate" and subject to permit restrictions.
Harford	110% of state-rated capacity within 3 years.
Howard	Open/closed chart defined by school region, approved by County Council. No more than 300 allocations if district over 100%. Close if ES and MS in district is over 115%.
Prince George's	105% of state-rated capacity.
St. Mary's	Elementary schools - 107% of state-rated capacity. Middle schools - 109% of state-rated capacity. High schools - 116% of state-rated capacity. Based on capacity within 3 years.
Jurisdictions with LOS Requirements of 120% or More	
Montgomery	120% state-rated capacity; school facilities fee option for 105%-120%; does not include re-locatable structures, considers first 5 years of CIP.

In CY2011, APFO related school restrictions were rarely reported, with only restrictions reported in 3 counties and two municipalities. In each instance, the local jurisdiction has indicated a remedy to resolve the restriction. Reported remedies include new school construction, school expansions or school site acquisition. When analyzing schools with state-rated over-capacity in jurisdictions with APFOs vs. non-APFO jurisdictions, there are a significant amount of over-capacity schools in communities without APFOs. For example, in Prince George's County, 31 of 141, or 21% of their elementary schools inventory reported over-capacity conditions. Collectively, the County utilizes 84% of total student capacity, meaning that other schools have excess capacity. In Wicomico County, where there is no APFO for schools, 10 of 18 elementary schools have over-capacity conditions. Collectively the County utilized 98% of total study capacity. While APFOs have the ability to act as a tool to restrict growth, the APFO, if properly administered, provides opportunities for jurisdictions, school boards and developers to apply the necessary resources to affected schools. APFOs can be a valuable tool or mechanism to provide direct new capacity of the school facility to where it is needed. Jurisdictions without APFO may have more limited options to fund or mitigate over-capacity conditions.

In general, we continue to find that while there are some positive aspects of APFO implementation in many of the 14 counties, that overall there are inconsistent standards established measuring adequacy and no certainty that any exceeding the applicable standard will necessarily result in an improvement or expansion of the facility. Communication between county and school board staff was often limited.

Roads/Transportation

The LOS for roads is generally a consistent format of a commonly used level of service standard ranging from a high LOS of "A" to a low LOS of "F" which reflects the volume of traffic or delay on a roadway or intersection. While rated capacity of a public school can be more readily available, limited information can be found on the rated capacity and available capacity of roadways or intersections, with the exception of Baltimore County and Montgomery County who provided additional information when interviewed.

The role of public transit or transportation demand strategies (TDMs) are also notably missing from APFO standards or mitigation strategies, with Montgomery County being a noted exception by providing bus and operating capital as alternative mitigation options.

Sewer/Water

The capacity of wastewater and water treatment facilities is another problematic area. Treatment and transmission capacity are common deficiencies. While capacity is generally reported as design capacity, the operating or permitted capacity of a wastewater treatment plant is generally 80% of design capacity, or less. In general, when a wastewater treatment facility reaches 80% of permitted or design capacity, then the Maryland Department of Environment (MDE) requires a management plan for the facility. One aspect of this study was to determine the number of wastewater treatment plants serving PFA's that were required to submit management plans to MDE. However; given the relatively short turn-around of the APFO Workgroup study, this information was not received as of the time this report was prepared. It is hopeful that the receipt of this information will shed light on the availability of sewer capacity. MDP should continue to work with MDE and facility providers to identify the facility capacity of each public wastewater and water facility, including available capacity.

While most APFO standards for wastewater treatment and potable water are based upon facility capacity, there is limited correlation between the AFPO standards, the quality or adequacy of wastewater and water treatment, the condition of the receiving resource being protected from wastewater treatment, or the daily usage of water and adequacy for fire-suppression.

BENEFITS OF AFPOs

Even with their limitations, APFOs continue to be one of the most popular growth

management tools in Maryland. The APFO reports themselves do not provide any information concerning their appropriateness of use or benefit. There was no indication provided in the APFO Annual Reports that adequate public facility ordinances were applied inconsistent with their intent.

The linkage between any APFO fees and the funding for infrastructure or services necessary to offset the project impacts could be improved. The APFO Annual Reports are not required to identify the amount of fees or mitigation provided and the corresponding improvements associated with the APFO fees.

APFOs AND INFRASTRUCTURE FUNDING

APFO consistency with comprehensive plans only works if adequate funding is allocated to provide the infrastructure needed to support development in the plan's growth areas. Problems of infrastructure funding are compounded by uncertainty about when a moratorium will be lifted. Of the six counties studied in the Baltimore region, only two – Anne Arundel and Howard – have a provision that limits the length of a moratorium: Anne Arundel's wait period is six years; Howard's can be as long as nine. In 2012, Carroll County amended its APFO to remove the time limit.

In the Washington region, the requirements are more complex and varied. A moratorium based on lack of school capacity can last up to seven years in Calvert County and indefinitely in Charles County. A developer in Charles County may attempt to lift a moratoria by choosing to participate in a "Pay-and-Go" arrangement, but the county is under no obligation to accept such an agreement and it does not relieve the applicant of the requirement to comply with the code. Proposed developments in Frederick County can be held up indefinitely. In Frederick, developers will do a "pre-test" for school capacity and, if they fail, they will not even apply for review. Time limits on moratoria should also be considered, especially in designated growth areas.

In Montgomery County, one way a building moratorium can be lifted is by having developers pay school fees: $8,000 to $12,000 for a single family home depending on size and $12,500 per student for a "school facilities payment" if projected enrollment is above the county standard (100% of capacity for high schools, 105% for elementary and middle schools) but below 110%. The Montgomery County AFPO reports identifies that mitigation was required for certain development; however, the APFO reports are not required to indicate what corresponding capacity improvements were made with the funds.

St. Mary's County also charges a school fee of $4,500 and has no waiting period, yet at least 6 elementary schools continue to be over-capacity.

Frederick County's APFO allows for developers to construct new schools, but does not

allow the developer 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.

When roads, schools or other infrastructure are judged to be insufficient to meet the standards established within APFOs, the result is often a moratorium on building until the infrastructure is ready to come on line or programmed in the CIP. Mitigation of impacts, instead of a moratorium, should be considered, especially in designated growth areas.

APFOs and CIPs

Finally, there continues to be little evidence if the jurisdictions are using their APFOs to inform decisions about which projects should receive priority funding in county capital improvement programs (CIPs). There is little linkage or information about capacity improvement reported in APFO reports. APFO standards themselves are often lacking detail in available facility capacity. Available capacity, or capacity improvements resulting from developer contributions or local government CIPs are simply not identified.

APFOs AND SCHOOL FUNDING

County efforts to ensure that school facilities are adequate to meet the needs of new development continue to have political challenges. The standard that defines "at capacity" varies from county-to-county. Schools in Calvert, Carroll, Frederick and Montgomery (for high schools) are "adequate" only if enrollment is under 100% of their rated capacity; in St. Mary's it is 107%; in Baltimore and Howard counties, it is 115%. In 2012 Queen Anne's County adopted a new standard for capacity, by changing the standard from 100% to 120%. However, a ballot petition in November 2012 reversed that decision and the standard remains at 100%. Charles County uses a calculation whereby schools can be judged to be at capacity between 100% and 120% of the state-rated capacity.

Information about intergovernmental coordination efforts between counties and school boards is not a current requirement of APFO reports. An interview conducted with Baltimore County staff communicated that quarterly meetings with school board staff are held to address school capacity and other planning issues. Communication between the planning departments and the school boards in the other jurisdictions with school APFOs is unknown. In 2006, only two of the 13 counties studied, Baltimore County and Charles County, allow potential space from the use of re-locatable classrooms to be counted as available capacity. In 2011, Charles County removed the use of re-locatable classrooms to be counted towards capacity. Prince George's County employs AFPO capacity tests only for planning purposes and charges a school surcharge of either $7,412 or $12,706 depending on location of development. The amount of the Prince George's County surcharge is adjusted every July 1 based on changes in the Consumer Price Index for urban areas and has increased every year since it was first imposed.

APFOs AND SCHOOL REDISTRICTING

The question of whether schools should be redistricted to even out enrollment by shifting students from high enrollment schools to schools that are at least temporarily under capacity remains a volatile issue. Redistricting could avert moratoria and accommodate growth, but usually angers parents, who often move to areas so their children can attend certain schools. As a result, local officials are usually left to choose between three alternatives, none of which are particularly popular: 1) redistrict their schools on an almost annual basis; 2) respond to the complaints of parents by imposing a building moratoria; or 3) raise taxes and fees to pay for the additional necessary capacity. As communicated in the interview with Baltimore County staff, redistricting is one potential remedy to alleviate school capacity issues; however, it is up to the school board to implement any changes to school district boundaries. For CY 2011, no jurisdiction reported the use of redistricting as a remedy for overcrowding.

PART III - CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

APFOs continue as *one* of the primary planning tools used by jurisdictions to manage growth. When sufficiently funded they can be used to guide development consistent with Smart Growth principles.

Continued discussion is needed of what 'adequate' means for a given service or facility and how those standards can be achieved in a manner that facilities growth in PFA areas.

RECOMMENDATIONS & DISCUSSION ITEMS

The Maryland Sustainable Growth Commission and MDP should continue to review APFO reports and prepare updates to the Annual Report Review.

1. Create model guidelines for APFOs within Priority Funding Areas (PFAs).
2. Consider establishing minimum Level of Service (LOS) standards for PFA areas. In lieu of moratoria, include options to consider underutilized facility capacity within designated PFA areas.
3. Require biennial APFO reports to indicate the amounts and types of capital improvements necessary to maintain sufficient adequate public facilities needed to support existing level of service standards, the facility improvements made with fees collected and projected growth and redevelopment within designated PFA areas for the next reporting cycle.
4. Time limits on a moratorium should be considered in PFA areas.
5. Mitigation of project impacts, instead of moratorium, should be considered, in PFA areas.
6. Increase the capacity of schools in PlanMaryland Targeted Growth and Revitalization Areas to limit the impacts of APFO restrictions within PlanMaryland Targeted Growth and Revitalization Areas by:

    a) Encouraging the coordination of the local board capital improvement program with the county comprehensive plan;

    b) Coordinating local infill and redevelopment plans with local school boards and school capacity and capital improvement needs assessments;

    c) Considering the use of infill and redevelopment sites; adaptive reuse; or use of smaller sites for mitigation and increased school capacity;

    d) Encouraging redistricting or clustering of adjacent and accessible school service areas to utilize available unused school capacity, consistent with State Public School Construction Program regulations for determination of eligible enrollment capacity in projects requested for funding assistance;

    e) Considering a tiered approached to amending APFO standards to up to 120% of State-Rated Capacity within PlanMaryland Targeted Growth and Revitalization Areas, with corresponding local funding and capital improvement mechanisms needed to support the

increment of student population growth; and

f) Evaluating the need to adjust the definition of State-Rated Capacity to support adequate school capacity in targeted areas.

7. MDP should work with MDE, SHA, MDSE and other public facility providers to create a database whereby available public facility capacity or utilization rates within PFA areas can be easily obtained and monitored.

8. MDP should continue to improve technical assistance and outreach to APFO jurisdictions to provide more complete and consistent reporting for the next APFO report cycle.

9. MDP should continue to monitor APFOs enacted in other states that may provide useful mechanisms for reporting and coordinating infrastructure investments to growth areas.

10. Greater communication between school boards and planning commissions concerning development approvals and school capacity improvement should be encouraged.

11. APFO standards for wastewater treatment could be expanded to identify the level of treatment to be provided by each facility and the relationship of that standard to the receiving resource.

12. APFO standards for potable water could be expanded to discuss the level of treatment necessary to achieve satisfactory levels of potability, include a range of consumption or usage, and ability to meet fire suppression needs.

13. A coordinated plan should be prepared, detailing State and local actions and improvements necessary for the provision of adequate infrastructure in PFA areas.