Implementation of the Smart Growth Areas Act, Fiscal Year 2021

Maryland Smart Growth Subcabinet

Implementation of the Smart Growth Areas Act

FY 2021

Special Secretary of Smart Growth Wendi W. Peters (Chair)

Secretary Robert S. McCord, Maryland Department of Planning (Vice Chair)

Secretary Joseph Bartenfelder, Maryland Department of Agriculture

Secretary David R. Brinkley, Maryland Department of Budget and Management

Secretary Kelly M. Schulz, Maryland Department of Commerce

Secretary Benjamin H. Grumbles, Maryland Department of the Environment

Secretary Ellington E. Churchill, Jr., Maryland Department of General Services

Secretary Dennis R. Schrader, Maryland Department of Health

Secretary Kenneth C. Holt, Maryland Department of Housing and Community Development

Assistant Secretary Carol Anne Gilbert, Maryland Department of Housing and Community Development, Office of Neighborhood Revitalization

Secretary Tiffany Robinson, Maryland Department of Labor

Secretary Jeannie Haddaway-Riccio, Maryland Department of Natural Resources

Secretary Gregory I. Slater, Maryland Department of Transportation

Secretary James D. Fielder, Jr., Ph.D., Maryland Higher Education Commission

Director Mary Beth Tung, Esq., Ph.D., Maryland Energy Administration

Executive Director Gerrit J. Knaap, Ph.D., National Center for Smart Growth Research and Education (ex officio)

The Maryland Smart Growth Subcabinet's FY21 report on the Implementation of the Smart Growth Areas Act is submitted in accordance with Annotated Code of Maryland, State Government Article § 9-1406(i). The report summarizes growth-related program commitments of the following state agencies for FY21 to fulfill the requirements of the Smart Growth Areas Act (Annotated Code of Maryland, State Government Article § 9-1406)

- Maryland Department of Commerce (Commerce)
- Maryland Department of General Services (General Services)
- Maryland Department of Housing and Community Development (Housing)
- Maryland Department of the Environment (Environment)
- Maryland Department of Transportation (Transportation)

The law defines certain capital projects and funding activities of these state agencies as "growth related."[1] There is no statutory requirement that funding for the Interagency Commission on School Construction (IAC), or the Maryland Historical Trust (MHT) be used within Priority Funding Areas (PFAs). The IAC follows COMAR guidelines for PFA spending.[2] MHT voluntarily seeks to fund projects in PFAs when possible. Expenditures are included separately for informational purposes only.

Introduction

The State of Maryland, through the Governor's Smart Growth Subcabinet (Subcabinet), is committed to making more efficient and effective investments of taxpayer dollars for infrastructure while preserving the state's rural landscape. Subcabinet coordination has reduced pressures on critical farmland and natural areas, and increased the availability of funding to spend on roads, schools, and infrastructure to sustain Maryland towns, cities, and rural areas.

In FY21, the statutory framework set out by the Maryland General Assembly in the Smart Growth Areas Act was met by the Subcabinet agencies whose programs are subject to PFA restrictions. The Smart Growth Areas Act allows agencies to seek exceptions to the law for individual projects through one of two avenues - the Board of Public Works[3] (BPW) or the Smart Growth Coordinating Committee[4] (SGCC). The Subcabinet is required to report annually on those exemptions.[5]

Five new projects were granted exceptions by the Subcabinet in FY21 in accordance with the procedures prescribed in the law (see Appendix A, page 14). There were no exceptions sought by agencies from the BPW (see Appendix B, page 17). Appendix C (Page 18) notes that no programs and policies were reviewed or revised to ensure compliance with the state's policy. Projects funded under Chapter 759, § 2 of the Acts of 1997 can be found in Appendix D (page 19).

1 Maryland Annotated Code, State Finance and Procurement Article, § 5-7B-01.
2 Code of Maryland Regulations, 23.03.02.03(c).
3 Maryland Annotated Code, State Finance and Procurement Article, § 5-7B-05.
4 Maryland Annotated Code, State Finance and Procurement Article, § 5-7B-06. The law calls for a process to be "established jointly by the applicable state agency and the Department of Planning." Id. (See also Planning Publication No. 2010-009, "Priority Funding Area Exception and Extraordinary Circumstances Process" for more information).
5 Maryland Annotated Code, State Government Article, § 9-1406(h)(1).

Priority Funding Areas

The 1997 Priority Funding Areas Act established PFAs to provide geographic focus for state investment in growth and to strategically direct the use of limited state funding for roads, water and sewer plants, economic development, and other growth-related needs. PFAs are existing communities and places where local governments want state funding for future growth. The criteria for PFAs are defined in the Annotated Code of Maryland, State Finance and Procurement Article (SF&P), §5-7B-02 and §5-7B-03. PFAs were established to meet three goals:

1. To preserve existing communities;
2. To make the most efficient and effective use of taxpayer dollars for infrastructure by targeting state resources to build on past investments; and
3. To reduce development pressure on critical farmland and natural resource areas by encouraging projects in already developed areas.

The PFA review requirement was approved in 2011 and is now part of COMAR

(Sec. 14.39.02.03.) Capital Improvement Program regulations for the administration of the Public School Construction Program. Local Educational Agencies (LEAs) seeking state funding to construct new schools, and replacement schools that increase capacity outside of a PFA must undergo review. A waiver option is available to LEAs as part of this review process. The 2011 regulations are restricted to school construction projects seeking school site, planning, and funding approvals in the Capital Improvement Program (CIP).

FY21 Expenditures

FY21 growth-related spending on PFA-restricted projects and programs totaled $2,410,387,673, as reported to the Maryland Department of Planning (Planning) by Housing, General Services, Commerce, Environment, and Transportation..

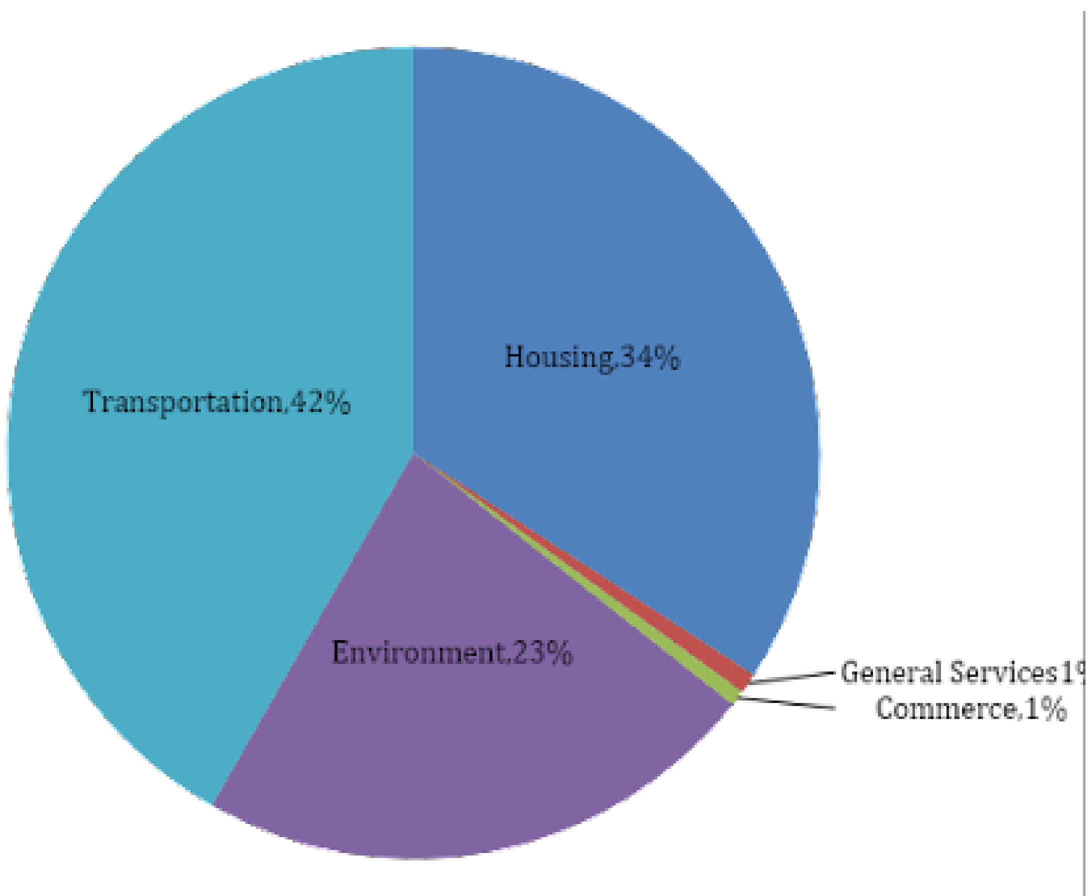
Of that amount, $1,655,435,186, or 69%, of growth-related spending was devoted to projects and programs within PFAs; $24,682,577, or 1%, was devoted to projects outside PFAs; and $730,269,910, or 30%, was devoted to Transportation and Environment projects that were not place-specific.

It should be noted that $19.5 million (78.9%) of the $24.68 million spent outside PFAs was associated with Transportation projects that were exempt, or grandfathered, from the PFA requirements or met the criteria for granting exceptions to the law, as reported by Transportation. The remaining $5.2 million (21.1%) spent outside PFAs were devoted to four Environment projects and two Housing projects, which are detailed in their respective sections.

FY20 Expenditures by Agency for Growth-Related Programs

Program	Total Funding	PFA Funding	Funding Outside PFA	Not Place Specific Funding
Housing	$ 824,663,568	$ 824,210,365	$ 453,203	$ 0
General Services	$ 19,043,703	$ 19,043,703	$ 0	$ 0
Commerce	$ 15,343,526	$ 15,353,526	$ 0	$ 0
Environment	$ 545,026,696	$ 385,837,862	$ 4,746,830	$ 154,442,004
Transportation	$ 1,006,310,180	$ 410,999,730	$ 19,482,544	$ 575,827,906
Total	$ 2,410,387,673	$ 1,655,435,186	$ 24,682,577	$ 730,269,910
		69%	1%	30%

Agency Percentage of Total Funding



The Department of Housing and Community Development

Housing programs defined as growth-related and thus limited to PFAs are:

- The construction or purchase of newly constructed single-family homes by the Community Development Administration's (CDA) Maryland Mortgage Program (MMP), which provides low interest mortgages to qualified first-time homebuyers;
- The acquisition or construction of newly constructed multifamily rental housing by CDA; and
- State funded neighborhood revitalization projects, which include funding from Community Legacy (CL), Community Investment Tax Credit (CITC), Neighborhood Business Works (NBW), and Strategic Demolition and Smart Growth Impact Fund (SGIF).

Housing spending outside the PFA in FY21 of $453,203 represents two projects financed under MMP. These loans were not reserved correctly by participating lenders. Program staff have advised the lenders of the error and are working closely with lender partners to assure future compliance. In addition, the program will be running timely reports before loans move through the pipeline to catch and correct errors prior to disbursement of funds.

It should also be noted that, although it is not required by the Smart Growth Areas Act, Housing also requires Community Development Block Grants be limited to PFAs. The program is not covered by this act because it consists solely of federal funds and the law covers only state-funded projects.

Maryland Department Housing and Community Development
FY21 Expenditures by Growth-Related Program

Program	Total Projects	Total Funding	PFA Projects	PFA Funding	Outside PFA Projects	Outside PFA Funding	Not Place Specific Projects	Not Place Specific Funding
MMP	223	$79,377,468	221	$78,924,265	2	$453,203	0	$0
NMRH	25	$718,810,500	25	$718,810,500	0	$0	0	$0
CL	68	$6,465,000	68	$6,465,000	0	$0	0	$0
CITC	57	$1,750,000	57	$1,750,000	0	$0	0	$0
NBW	26	$12,710,600	26	$12,710,600	0	$0	0	$0
SGIF	9	$5,550,000	9	$5,550,000	0	$0	0	$0
TOTALS	**408**	**$824,663,568**	**406**	**$824,210,365**	**2**	**$453,203**	**0**	**$0**

The Department of General Services

While it has no capital budget, General Services is responsible for acquiring, leasing, and maintaining most of the state's facilities. Thus, it is responsible for ensuring that the state's growth-related funding is limited to PFAs for state leases of property and land acquisition. However, the law explicitly exempts projects for "maintenance, repair, additions or renovations to existing facilities, acquisition of land for telecommunications towers, parks, conservation and open space, and acquisition of agricultural, conservation, and historic easements."[6]

General Services sends every lease and project to Planning's State Clearinghouse for Intergovernmental Assistance to ensure compliance with the Smart Growth Areas Act.

Maryland Department of General Services
FY21 Expenditures by Growth-Related Program

Program	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA
Leases of Property	64	$19,043,703	64	$19,043,703	0	$0
Land Acquisition	0	$0	0	$0	0	$0
Total	**64**	**$19,043,703**	**64**	**$19,043,703**	**0**	**$ 0**

6 Maryland Annotated Code, State Finance and Procurement, § 5-7B-01(c)(2)(i).

The Department of Commerce

Commerce programs – defined by the Smart Growth Areas Act as growth-related – have been renamed and/or consolidated. Programs subject to the law's restrictions include:

- The Maryland Small Business Development Financing Authority (MSBDFA), which provides financing for small businesses that do not qualify for financing from private lending institutions or owned by socially and economically disadvantaged persons;
- The Maryland Economic Development Assistance Authority and Fund (MEDAAF), which provides loans and grants to businesses and local jurisdictions;
- The Economic Development Opportunities Fund (Sunny Day Fund or SDF), which promotes Maryland's participation in extraordinary economic development opportunities that provide significant returns to the state through creating and retaining employment as well as the creation of significant capital investments in PFAs; and
- The Maryland Economic Adjustment Fund (MEAF), which assists businesses with modernization of manufacturing operations, the development of commercial applications for technology and exploring and entering new markets.

Maryland Department of Commerce
FY21 Expenditures by Growth Related Program

Program	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA
MSBDFA	15	$5,678,686	15	$5,678,686	0	$0
MEDAAF	17	$4,664,840	17	$4,664,840	0	$0
SDF	1	$5,000,000	1	$5,000,000	0	$0
MEAF	0	$0	0	$0	0	$0
Total	**33**	**$15,343,526**	**33**	**$15,343,526**	**0**	**$ 0**

The Maryland Department of the Environment

The following Environment programs are subject to PFA restrictions:

- The Maryland Water Quality Revolving Loan Fund (MWQRLF), which provides financial assistance to public entities and local governments for wastewater treatment plant upgrades, and other water quality and public health improvement projects, and to public or private entities for nonpoint source pollution prevention projects;
- The Water Supply Financial Assistance Program (WSFAP), which provides financial assistance to local government entities for the acquisition, construction, rehabilitation, and improvement of publicly-owned water supply facilities;
- The Supplemental Assistance Program (SAP), which provides grants to local governments for planning, design, and construction of needed wastewater facilities; and
- The Maryland Drinking Water Revolving Loan Fund (MDWRLF), which provides financial assistance to publicly and privately-owned community water systems and nonprofit, non-community water systems for projects that address public health, public safety, environmental, or regulatory issues.

A PFA exception is required if any part of the project or area served by the project is outside the PFA. Four projects were funded outside of the PFA in FY21, three of the projects received exceptions based on the public health and safety criteria of the law for drinking water system and wastewater treatment improvements located outside of the PFA, and one received a categorical exclusion due to it being a replacement water project that does increase capacity to serve non-PFAs. The $4.75 million in expenditures outside of the PFA accounted for 1% of total funding. The two projects that are not place specific; the MWQRLF project for $154 million is replacement/rehabilitation of existing sewers in the Washington Suburban Sanitary Commission (WSSC) Sewer Basin that serves both Montgomery and Prince George's counties, and the DWSFAP project for $553 thousand is for Denton Water Main Replacements. Denton, the county seat of Caroline County, reported on Feb. 23, 2021 that it had issued all of its 20 residential building permits in 2020 within the PFA.

Maryland Department of the Environment
FY21 Expenditures by Growth Related Program

Program	Total Projects	Total Funding	PFA Projects	PFA Funding	Outside PFA Projects	Outside PFA Funding	Not Place Specific Projects	Not Place Specific Funding
MWQRLF	10	$426,050,697	8	$270,068,465	1	$2,093,542	1	$153,888,690
DWSFAP	5	$2,132,647	2	$627,043	2	$952,290	1	$553,314
SAP	0	$0	0	$0	0	$ 0	0	$ 0
MDWRLF	8	$2,428,436	7	$115,152,354	1	$1,700,998	0	$ 0
TOTALS	**23**	**$545,026,696**	**17**	**$385,837,862**	**4**	**$4,746,830**	**2**	**$154,442,004**

The Maryland Department of Transportation

For Transportation, growth-related projects include all major capital projects defined as "any new, expanded, or significantly improved facility or service that involves planning, environmental studies, design, right-of-way, construction, or purchase of essential equipment related to the facility or service."[7] Transportation lists such projects in its Consolidated Transportation Program (CTP) as major projects and details the PFA status of each project as part of the annual report. The modal administrations of Transportation for which major capital projects are subject to PFA restrictions include:

- The State Highway Administration (Highways)
- The Maryland Transit Administration (Transit)
- The Maryland Aviation Administration (Aviation)
- The Maryland Port Administration (Port Administration)
- The Motor Vehicle Administration (Motor Vehicles)
- The Secretary's Office
- Payments to Washington Metro Area Transit Authority (WMATA)

Transportation projects that are excluded from the Smart Growth Areas Act include those pertaining to existing Maryland Transportation Authority facilities, studies currently in the project planning phase (pre-decisional), minor capital projects, and projects that preserve or rehabilitate existing facilities or services without increasing capacity.[8] It should also be noted that 39 of Transportation's major capital projects are not location-specific, meaning that they involve system-wide improvements, such as the bus communications system upgrade and Maryland Area Regional Commuter improvements program for Transit, the CIP for WMATA, information technology improvements for Motor Vehicles, the dredged material management program for Port Administration, the regional aviation assistance program for Aviation, as well as the coordinated highway action response team and highway user revenue program for Highways.

There are four Highways projects for which the PFA status has yet to be determined:

1) the Traffic Relief Plan for I-270 (Eisenhower Memorial Highway) and I-495 (Capital Beltway), 2) the MD 51 (Old Town Road) bridge replacement over Town Creek, 3) I-270 and I-495 Full Delivery Stream Restoration, and 4) MD 225 (Hawthorne Road) bridge replacement over Mattawoman Creek.

Of the 145 major capital projects in Transportation's capital program for FY21, 10 were considered to be outside the PFA. Of these, two had received final review before the Smart Growth Areas Act was enacted and are thus exempt (grandfathered). These include a Port Administration project for dredge disposal at Hart Miller Island and a Highways project for corridor upgrades/widening along MD 5 (Point Lookout Road)

7 Maryland Annotated Code, Transportation, § 2-103.1(a)(4).

8 Maryland Annotated Code, State Finance and Procurement, § 5-7B-01(c)(1)(i).

Of the remaining projects outside of the PFA, six have been granted exceptions in compliance with statute. This category includes MD 200 (Intercounty Connector)[9], safety and capacity improvements along MD 32 (Patuxent Freeway) in Howard County, the MD 97 (Georgia Avenue) bypass project in Brookeville, a slope failure project along MD 24 in Harford County, and two bridge replacement projects that were evaluated and shown to add no significant highway capacity. These include bridges on US 40 over the Little Gunpowder Falls/Big Gunpowder Falls, and MD 273 over Big Elk Creek.

Two dredge placement projects, the Mid-Chesapeake Bay Island Project and the Paul S. Sarbanes at Poplar Island Project, being prepared by the Port Administration are outside of the PFA boundary and will require an exception. These projects are for ecosystem restoration and reflect a beneficial use of dredged material.

FY21 Maryland Department of Transportation
Major Transportation Projects[10]

Program	Total	Total Funding	Projects Inside PFA	Funding InsidePFA[8]	Projects Outside PFA	Funding Outside PFA	Not Place Specific Projects	Not Place Specific Funding
Highways	68	$ 351,007,947	55	$ 83,408,843	7	$ 8,694,234	6	$ 258,904,870
Transit	41	$ 325,814,383	21	$ 277,940,467	0	$ 0	20	$ 47,873,916
Aviation	13	$ 14,554,653	12	$ 11,914,632	0	$ 0	1	$ 2,640,021
Port Admin	14	$ 54,150,687	8	$ 37,735,788	3	$ 10,788,310	3	$ 5,626,589
Motor Vehicles	2	$ 13,683,381	0	$ 0	0	$ 0	2	$ 13,683,381
Secretary's Office	1	$ 4,285,129	0	$ 0	0	$ 0	1	$ 4,285,129
WMATA	6	$ 242,814,000	0	$ 0	0	$ 0	6	$ 242,814,000
Total[11]	**145**	**$1,006,310,180**	**96**	**$410,999,730**	**10**	**$19,482,544**	**39**	**$575,827,906**

9 The MD 200 project is currently an Maryland Transportation Authority facility (supported by toll revenues). Due to the fact the project involved coordination through Maryland Department of Transportation's State Highway Administration in early phases, the project was evaluated and granted a PFA exception. Reporting on this project is included here for continuity.

10 Reported figures show committed funding as reflected in MDOT's CTP. These figures present the best available approximation of actual fiscal year expenditures although final project figures may vary slightly..

11 Note that beginning in FY15, MDOT was able to improve the accuracy of the spending report to more accurately portray year end invoicing for state-specific funding. As a result, figures for FY15 through FY21 may not be directly comparable with prior reporting periods in which federal and local funding sources were less clearly broken out.

Maryland Historical Trust Programs

MHT, a division of Planning, limits certain programs related to the PFAs to further the goals of Smart Growth.

MHT gives preference to commercial applicants for the Historic Revitalization Tax Credit (HRTC), whose projects are located within PFAs. The program provides Maryland income tax credits equal to 20% of the qualified capital costs expended in the rehabilitation of a "certified heritage structure." Projects involving "certified historic structures" that are high-performance commercial buildings or have been approved to receive Low Income Housing Tax Credits may be eligible to receive a 25% credit. Projects in a Qualified Opportunity Zone may earn an additional 5% credit (Level 1) or 7.5% credit (Level 2).

Maryland Historical Trust
FY21 Expenditures

Program[12]	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA
HRTC Residential	135	$ 1,148,330	132	$ 1,133,304	3	$ 15,026
HRTC Commercial	6	$ 9,907,431	5	$ 9,147,431	1	$ 760,000
HRTC Small Commercial	30	$ 943,609	30	$ 943,609	0	$ 0
Total	**171**	**$11,999,370**	**167**	**$11,224,344**	**4**	**$775,026**

12 Commercial, small commercial, and residential HRTC figures represent Part 2 approvals for FY21.

Interagency Commission on School Construction

While Maryland public schools are not required by statute to be located within PFAs, the Public School Construction Program (PSCP) follows COMAR guidelines for PFA spending. It is informative to identify the level of secondary school construction funding occurring inside and outside of PFAs to further the goals of Smart Growth.

Established in 1971 as an independent agency, the PSCP became staff to IAC as of June 1, 2018. IAC replaced the former Interagency Committee on School Construction, although the program remains the same. State school funding supports building replacements, renovations, additions, new construction, systemic renovations, and other improvements. While the cost to acquire land and to design and equip public schools is a local responsibility, state and local governments share public school construction costs.

The IAC considers several factors when evaluating proposed capital improvement projects, including how the projects align with local board of education priorities, state construction procedures and procurement practices, and state and local planning, and growth policies. School site approval is a prerequisite for planning approval and is valid for five years. Planning approval is required prior to funding approval for most major projects.

Information on expenditures for public school construction for major construction projects for FY21 and FY22 is shown on the chart below. Generally, the amount of major construction expenditures inside PFAs is far greater than outside. For FY22, 96% of the total funds for major construction projects were spent within PFAs. The number of requests for projects in and out of PFAs varies from year-to-year, and funding allocations on most major projects are carried out over several years.

Public School Construction Program FY21 and FY22 Expenditures by Project Type

Total Major Construction Funding	Project Types	Funding Inside PFA	Funding Outside PFA
FY21			
$ 295,811,295	New	$63,427,000	$9,501,000
	Replacement	$145,522,000	$14,255,000
	Renovation/Replacement Projects that do not add capacity	$19,432,295	$0
	Renovations/Additions/ Replacement Projects that increase capacity	$43,674,000	$0
Total for FY21		**$272,055,295**	**$23,756,000**
FY22			
$ 262,262,200	New	$76,554,910	$0
	Replacement	$105,408,490	$0
	Renovation/Replacement Projects that do not add capacity	$1,958,000	$10,539,000
	Renovations/Additions/ Replacement Projects that increase capacity	$47,297,849	$0
Total for FY22		**$251,723,200**	**$10,539,000**

The figures represent the FY21 and FY22 allocation for major construction projects. Public School Construction Program figures listed above do not reflect total FY22 spending for Systemic Projects ($107,144,519).

Appendix A

Exceptions to the PFA Law Approved by the Smart Growth Coordinating Committee

The Smart Growth Areas Act allows for growth-related projects located outside the PFAs to receive state funding if: "it is required to protect public health or safety;" the project involves federal funds and "compliance with [the Smart Growth Areas Act] would conflict or be inconsistent with federal law;" or it is a "growth-related project related to a commercial or industrial activity, which, due to its operational or physical characteristics, shall be located away from other development."[13] The Smart Growth Coordinating Committee(Coordinating Committee), the staff level working group of the Smart Growth Subcabinet, is tasked with approving exceptions based on these criteria.

In FY21, the Coordinating Committee approved five exceptions. PFA exception approval alone, however, does not ensure that projects will be funded. Specific details regarding the PFA exception approvals are as follows:

August 2020 – Harbour View Area (Cecil County)

Environment requested a PFA exception to allow state funding to be used to connect 12 residences to the public sewer system in the Harbour View area of Cecil County. The onsite septic systems are believed to be in high ground water and potential failure could occur; furthermore, given the small size of the lots, the replacement of the onsite septic system would not meet state standards. The July 22, 2020 letter from the Cecil County Health Department indicated their support for the 12 residential sewer connections to address this public health concern. This project would allow the residences to connect to the existing public sewer collection system. The PFA exception was granted with the condition that no additional state-funded residential sewer connections take place in the Harbour View area without receiving a PFA exception.

Agency Submitting Request	Environment
Grounds for Exception	Public health or safety
Funding	Bay Restoration Fund (BRF) – Septic Connections Program, 12 BRF Connections – up to $20,000 per existing property or actual cost whichever is lower; maximum of $240,000

13 Maryland Annotated Code, State Finance and Procurement Article, § 5-7B-06(a)(3).

August 2020 – Benton’s Pleasure Subdivision (Queen Anne’s County)

Environment requested a PFA exception to allow state funding to connect 26 properties to public sewer in the Benton’s Pleasure Subdivision of Queen Anne’s County. Benton’s Pleasure Subdivision was platted in 1947. Many of the older homes in the subdivision are already connected to the public sewer system; however, the remaining 26 lots with housing units rely on on-site septic disposal systems. The existing sewer collection system provides these lots easy access to nearby sanitary sewer mains. According to the Queen Anne’s County Health Department letter dated June 3, 2020, the existing septic systems do not have adequate separation between the drain field trench and groundwater, and there is no treatment by filtering wastewater through soil before it goes into ground water; therefore, the wastewater and associated nitrogen is discharging directly into groundwater, which is a regulatory failure of the system. Also, because this area is in a sewer service area, once the septic system fails the property must connect to the sewer system. The PFA exception was granted with the condition that no additional state-funded residential sewer connections take place in the Benton’s Pleasure Subdivision without receiving a PFA exception.

Agency Submitting Request	Environment
Grounds for Exception	Public health or safety
Funding	BRF – Septic Connections Program, 26 BRF Connections – up to $20,000 per existing property or actual cost whichever is lower; maximum of $520,000

October 2020 – South Overlea Drive Area (Montgomery County)

Environment requested a PFA exception to allow state funding to connect 16 residences to the public sewer system in the South Overlea Drive area of Montgomery County. This project involves connecting the 16 existing residences with onsite septic systems to the public sewer system, which was designated a special sewer service area by Montgomery County Council in July 2017 under Resolution No. 18-888. The designation resulted from a septic system survey conducted by the county’s Departments of Environmental Protection and Permitting Services at the request of nine property owners. The majority of properties studied either would not meet standards for septic system replacement (e.g., soils that do not perc, no remaining areas for replacement fields) or face other barriers (e.g., removal of forested area, proximity to streams or wells) that would likely prohibit septic system replacement. The PFA exception was granted for the South Overlea Drive due to the necessity to protect public health or safety.

Agency Submitting Request	Environment
Grounds for Exception	Public health or safety
Funding	BRF – Septic Connections Program, 16 BRF Connections – up to $20,000 per existing property or actual cost whichever is lower; maximum of $320,000

October 2020 – St. Clements Shore (St. Mary's County)

Environment requested a PFA exception to allow state funding to connect 140 existing residential properties to the public sewer system in the St. Clements Shore area of St. Mary's County. This project involves connecting 140 existing residences to public sewer, which either have failing onsite septic systems or the onsite septic system is anticipated to fail in the future due to this area having high ground water and poorly drained soils, as well as the size of lots being too small to accommodate a replacement septic system. The project is in the Compton community of St. Mary's County, near Leonardtown, and involves the subdivisions of Saint Clement Shores, St. Clement Woods, Society Hills, and Foxview Estates. These subdivisions date from the 1920s for Saint Clement Shores (platted in 1926) to the late 1980s for Foxview Estates. The sewer collection system already serves existing homes in these neighborhoods, but there are scattered single family dwellings still with onsite septic systems. The PFA exception request is to connect the remaining 140 existing dwelling units, using the BRF, to the existing public sewer with no anticipated expansion of the service area. The PFA exception was granted for the St. Clements Shore area 140 residential sewer connections due to the necessity to protect public health or safety.

Agency Submitting Request	Environment
Grounds for Exception	Public health or safety
Funding	BRF – Septic Connections Program, 140 BRF Connections – up to $20,000 per existing property or actual cost whichever is lower; maximum of $2,400,000

January 2021 – Five Edgemere Properties (Baltimore County)

Environment requested a PFA exception to allow state funding to connect five properties (four residential properties and one business) with failing onsite septic systems to the public sewer system in the Edgemere community at the intersection of North Point Road and Millers Island Road in Baltimore County.

The Baltimore County Department of Environmental Protection and Sustainability (EPS) reported in its Dec. 15, 2020 letter, "The results of our investigation indicate overwhelming evidence that there are problems with sewage disposal at all of the improved properties currently in use. Consequently, EPS is recommending extension of sanitary sewer as a Health Project to serve all five improved properties."

The PFA exception for the five properties was granted with the conditions – that a maximum of five equivalent dwelling units of sewer service be allocated to the five properties as specified in the MDE-provided list of developed properties, and that Baltimore County amend its Master Water and Sewer Plan to indicate the planned sewer service for these properties.

Agency Submitting Request	Environment
Grounds for Exception	Public health or safety
Funding	BRF – Septic Connections Program, up to $20,000 for four residential connections and $10,000 for the one business; $90,000 max total or actual cost whichever is lower

Appendix B

Exceptions to the PFA Law Approved by the Board of Public Works in FY21

BPW may grant an exception if it determines that “extraordinary circumstances” exist, e.g., “the failure to fund the project in question creates an extreme inequity, hardship, or disadvantage that clearly outweighs the benefits from locating a project in a priority funding area” or it is a Transportation project that either maintains the existing system, serves to connect two PFAs, has as its sole purpose of providing control of access on existing highway or “due to its operational or physical characteristics, must be located away from other development.”[14]

In FY21, there were no projects submitted to BPW for exceptions to the Smart Growth Areas Act.

14 Maryland Annotated Code, State Finance and Procurement Article, § 5-7B-05(a)(3)(iv).

Appendix C

Listing of Programs and Policies Reviewed and Changed To Ensure Compliance with the State's Smart Growth Policy in FY21

The Subcabinet, through its Coordinating Committee, meets monthly to discuss opportunities for state agencies to collaborate and improve the effectiveness of Maryland's policy.[15] In FY21, no specific programs or policies were identified that required review and change to ensure compliance with the state's policy.

15 Maryland Annotated Code, State Government Article § 9-1406.

Appendix D

List of Projects or Programs Approved and Funded Under Chapter 759, § 2 of the Acts of 1997 in FY21[16]

Chapter 759, § 2 of the Acts of 1997 stipulates that the law shall not apply to any project or program for which:

(a) Approval has been granted or a commitment made before Oct. 1, 1998;

(b) A valid permit has been issued;

(c) A commitment for a grant, loan, loan guarantee, or insurance for a capital project has been granted;

(d) Final review under the National Environmental Policy Act or the Maryland Environmental Policy Act is completed by Oct. 1, 1998;

(e) Final review through the State Clearinghouse for Intergovernmental Assistance is completed by Jan. 1, 1999; or

(f) An appropriation has been included by Oct. 1, 1998 in the development and evaluation portion of the Consolidated Transportation Program.

In FY21, Transportation reported that two projects had received final review before the Smart Growth Areas Act was enacted and are thus exempt. These include a Port Administration project for dredge disposal at Hart Miller Island and the Highways project for construction of corridor upgrades/widening along MD 5 (Point Lookout Road). Other than Transportation's projects, no other projects or programs were approved and funded under Chapter 759, § 2 of the Acts of 1997.

16 Maryland Annotated Code, State Government Article § 9-1406(i)(5).

CHANGING
Maryland
FOR THE BETTER

State of Maryland

Larry Hogan, Governor

Boyd Rutherford, Lt. Governor

Maryland
DEPARTMENT OF PLANNING

Maryland Department of Planning

Robert S. McCord, Secretary

Sandy Schrader, Deputy Secretary

Publication Number 2021-103

December 2021