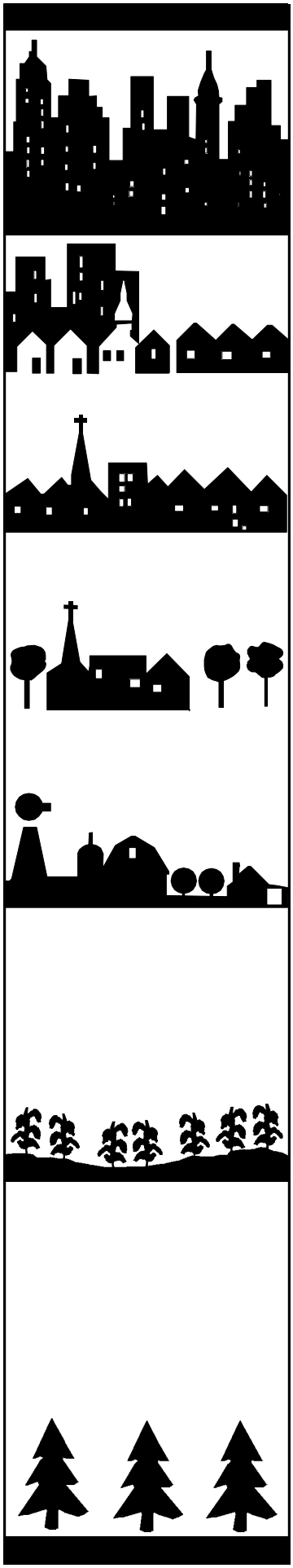

Managing Maryland's Growth

Models and Guidelines

Smart Growth: Municipal Implementation

2nd Edition

This document may not reflect current law and practice and may be inconsistent with current regulations.

The "Smart Growth" Areas Act of 1997

Maryland Office of Planning
Maryland Municipal League

The Maryland Office of Planning

State of Maryland
Parris N. Glendening, *Governor*

Maryland Office of Planning
Ronald M. Kreitner, *Director*

Maryland Municipal League
Scott Hancock, *Executive Director*

June 1, 1998

This booklet was written and designed by the Local Planning Assistance and Design Units of the Maryland Office of Planning and the Maryland Municipal League as a service to local governments and planning officials. The principal authors are Larry Duket, Rupert Friday, and Mike Paone. Graphic design and production by Mark S. Praetorius. Word processing and other valuable support services by Betsy Zentz.

Additional copies are available from the Maryland Office of Planning, 301 West Preston Street, Baltimore, Maryland, 21201-2365. Phone: 410-767-4550. FAX: 410-767-4480. Questions and requests for information may be directed to the Office, as well as to the Maryland Municipal League (phone: 1-800-492-7121 or 410-268-5514)

Publication #98-07

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This 2nd Edition includes an update of the Appendix: State Rated School Capacity, and minor changes to Chapter Four's "Model Municipal-County Agreement on School Facility Planning" relating to the role of the School Board.

CHAPTER ONE:
HOW "SMART GROWTH" AFFECTS MUNICIPALITIES

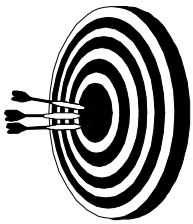
Introduction

Smart Growth: Municipal Implementation is part of an on going series of Models and Guidelines produced by the Maryland Office of Planning to provide technical assistance to Maryland's local governments. The Maryland Municipal League joins the Office as a partner in producing this publication.

Smart Growth: Municipal Implementation is an introductory guide to the "Smart Growth" and Neighborhood Conservation - "Smart Growth" Areas Act of 1997 (the Smart Growth Areas Act), Chapter 759 of the Laws of Maryland of 1997. This publication offers useful guidance on ways to meet the requirements of the Smart Growth Areas Act and to take advantage of the Act's benefits. It provides basic information about the law, technical background, model municipal-county agreements, and tools for coordinating with the State.

This booklet contains examples and suggestions and is not intended to represent the only means of implementing the Smart Growth Areas Act. It covers major topics and common situations, but is not intended to be an exhaustive demonstration of all possible circumstances under which the law might be applied. Please contact the Office of Planning or the Maryland Municipal League if you need additional information or have questions about this booklet (see telephone numbers, inside front cover).

Priority Funding Areas



The Smart Growth Areas Act is important to all municipalities in Maryland because municipalities are designated in the Act as "Priority Funding Areas" (PFAs). Beginning October 1, 1998, the State must direct funding for "growth related" projects to Priority Funding Areas. Growth related projects are defined in the legislation and include most State programs which encourage or support growth and development such as highways, sewer and water construction, economic development assistance, and State leases and construction of new office facilities. Land annexed after January 1, 1997 must meet certain criteria to be eligible as a PFA.

The Smart Growth Areas Act of 1997 has a direct impact on municipalities and their relationship with the State, counties, and school boards. Generally, requirements of the Act have the following effects:

Impacts on Municipal Government

In order to qualify for State funding of growth related projects, municipalities located in counties that collect school impact fees (i.e., municipalities in Anne Arundel, Calvert, Carroll, Charles, Frederick, Queen Anne's, and St. Mary's Counties) must help the County collect residential impact fees on new development in the municipality to help pay the costs of school construction.

In order to qualify for State funding of growth related projects, municipalities exercising zoning authority and located in counties that have adequate facility standards for schools (i.e., municipalities in Harford, Montgomery, Prince George's, and Washington Counties) must adopt adequacy standards that are substantially similar to either the county standards or the State Rated Capacity standards. This requirement is waived for municipalities located in counties that collect impact fees or have other provisions to defray the local cost of school construction attributed to new residential development (these counties are listed at the bottom of page one).

Municipalities not located in any of the counties named above may be required to address impact fees or school standards if the county adopts these tools in the future. Again, municipalities would be exempted from the requirement for school standards if the county has an impact fee or exacts other contributions to support school construction.

Municipalities annexing territory after January 1, 1997, will have to determine whether the area is eligible for PFA status, and should send PFA certifications to the Maryland Office of Planning to insure that the State has the information needed to make funding decisions.

County School Boards must provide information on an annual basis to municipalities that exercise zoning authority.

Counties must confer with municipalities when adopting new or revised school capacity standards.

The next Chapter explains Smart Growth benefits and requirements associated with municipal territory. It explains the criteria for determining whether land annexed after January 1, 1997 qualifies as a PFA and suggests ways to certify annexed land as a PFA. Chapter Three includes basic information on "impact fees," explains municipal impact fee requirements under the law, and provides a model for implementing the law. Chapter Four includes a brief explanation of an "adequate public facilities ordinance" (APFO), explains municipal requirements, and provides a model.

CHAPTER TWO:
BENEFITS AND REQUIREMENTS FOR MUNICIPAL TERRITORY

PFA: A Vested Benefit On or Before January 1, 1997

The "Smart Growth" Areas Act designates all municipalities as of January 1, 1997 as "Priority Funding Areas" (PFAs), thus making these places eligible for State funding of "growth related projects." It also designates additional PFAs and establishes a process for counties to designate PFAs.

Beginning October 1, 1998, State funding for "growth related projects" will be directed to PFAs. The Act does not create any new funds or change formulas that allocate funds, but does require that funding of growth related projects be targeted to PFAs. The types of projects affected by the new law are listed in the Act and include most State programs which encourage or support growth and development. There are provisions for grandfathered projects and exceptions, as well.

Annexation After January 1, 1997

Municipal territory annexed after January 1, 1997 must meet the criteria of the Act in order to qualify as a PFA. For residential projects, annexed territory must have the following characteristics:

Developed or Undeveloped Land

1) Land that was developed before January 1, 1997 must have public or community sewer service and an average residential density of at least two dwelling units per acre. If the land has a public or community water system (but not a sewer system), it can qualify as a PFA for limited purposes provided there is an average density of two units per acre. Funding in this case is limited to projects that maintain the character of the community and do not cause an increase in growth capacity except for limited peripheral and in-fill development. These limitations on the type of project that can be funded do not apply once public or community sewer is provided for the project. Also, the limitations do not apply to mobile homes and communities with less than ten units.

2) Land that was undeveloped as of January 1, 1997, must have public or community water and sewer service and an average permitted residential density of at least 3.5 dwelling units per acre.

Calculations

For annexation purposes, the average permitted density can be determined for each parcel annexed in a single petition and zoned for residential use, or can be determined for the aggregate of all residential parcels included in a petition. Land that cannot be developed for specific reasons is excluded from the calculation. This includes land dedicated for public use, land protected from development by easements and local ordinances, cemeteries, and non-tidal wetlands.

The reader should distinguish between density calculations for annexed land that was developed before January 1, 1997, and annexed land that

was not developed as of January 1, 1997. The former is based on actual development, while the latter is based on what is permitted by zoning.

Industrial Zoning and Employment Uses

The law also permits PFA designation for annexed land that has industrial zoning as of January 1, 1997. Land classified as industrial after this date may be designated as a PFA if it is served by a public or community sewer system and is within a locally designated growth area.

Land used principally for employment may be designated as a PFA if it is within a locally designated growth area and has public or community sewer or is planned for sewer service in the 10-year Water and Sewer Plan.

Locally Designated Growth Areas

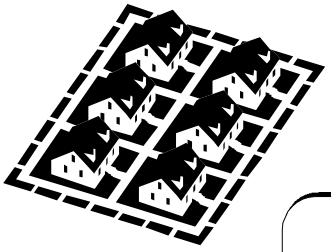
Finally, land within locally designated growth areas may be designated as a PFA provided sewer service is planned in the 10-Year Sewer and Water Plan, and provided the designation represents a long term and orderly development policy that promotes efficient use of land and public services.

Certify Annexed Territory

To ensure the eligibility of annexed land for PFA designation, a municipality should certify to the Maryland Office of Planning that annexed land qualifies under the law's criteria. It should provide maps and supporting documentation to the Office, including information needed to precisely locate the area, and information on zoning density, developed density, land use, and sewer and water service.

Following are model "certification letters" and a simple method for calculating density. Variations in the certification letter are included in order to address residential, industrial, employment, commercial, and mixed uses. The models illustrate one approach under which municipalities can implement the law and are not intended to discourage other methods.

MODELS FOR CERTIFYING ANNEXED TERRITORY AS A PFA



Residential Land Use. This Model takes the form of a letter to the Maryland Office of Planning and includes a simple format for sending information and a method for calculating residential density. Terms in [brackets] are illustrative or explanatory.

Mayor and Council
Town of Smartville

[October 1, 1997]

Mr. Ronald M. Kreitner, Director
Maryland Office of Planning
301 West Preston Street
Baltimore, Maryland 21201

RE: "PFA" Certification of Annexed Territory

Dear Mr. Kreitner::

The [Mayor and Council] of [Smartville] offer this letter and supporting documentation as certification that the [Smith Property] meets the qualifications for designation as a Priority Funding Area under the "Smart Growth" Areas Act of 1997.

The [Smith Property] is identified on the attached map and is shown in relation to the corporate limits of [Smartville] and the surrounding area. The property qualifies as a Priority Funding Area (PFA) because it ... [select (A) or (B)]

(A) ....was developed before January 1, 1997 and has public [or community] sewer and an average residential density of at least two dwelling units per acre.

(B) ....was undeveloped as of January 1, 1997 and has public [or community] water and sewer and an average permitted residential density of at least 3.5 dwelling units per acre

I understand that this certification will be filed by the Office, that the Office may include comments as part of the file, and that the Office will coordinate with State funding agencies to inform them about the property's designation as a PFA. If you have any questions about this certification, please call [mayor, council, town administrator].

[closing, signature, and title]

Attachments: Map, Data, Calculations (See following for suggested format and method)

Priority Funding Area Certification
For Residential Annexations After January 1, 1997
SUPPORTING DATA AND CALCULATIONS

A. **Basic Data**

1. Municipality: _____
2. Property Name/Description:
   [list all properties included in a single annexation petition]
3. Locator Map (attach map)
4. Public/Community Water? __Yes __10-Year Plan __No
5. Public/Community Sewer? __Yes __10-Year Plan __No

B. **Status as of January 1, 1997**

_____ Developed before January 1, 1997
_____ Not developed as of January 1, 1997

C. **Calculation of Average Density**

1. Formula for Land Developed as of January 1, 1997:

DU / (GA - LE) = Average Density

Where:
GA = Gross Acres
LE = Acres of Land Excluded*
DU = Number of Dwelling Units

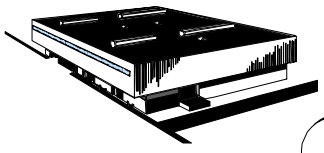
*Under the "Smart Growth" Areas Act of 1997, LE includes land: dedicated for public use by perpetual easement or fee simple acquisition; dedicated to recreational use; subject to a State agricultural easement or a local agricultural easement under a State-certified preservation program; used for cemetery purposes; and identified by local government as a stream buffer, 100-year floodplain, habitat of threatened and endangered species, steep slope, or delineated non-tidal wetland on which development is prohibited by local ordinance.

2. Formula for Land Undeveloped as of January 1, 1997:

DU / (GA - .2GA - LE) =
Average Permitted Residential Density

Where:
GA = Gross Acres
.2GA = 20% deduction guideline for roads, utilities, sidewalks (if a subdivision or site plan is available, the actual acreage should be used)
LE = Acres of Land Excluded
DU = Number of Dwelling Units Permitted by Zoning

3. Multiple-Parcel Annexation Under One Petition: Density can be derived for each parcel or for all parcels combined, but the municipality should adopt one method and use it consistently.



Industrial Land Use. The following brief letter is suggested for certifying industrial land and employment uses as a PFA.

Mayor and Council
Town of Smartville

[October 1, 1997]

Mr. Ronald M. Kreitner, Director
Maryland Office of Planning
301 West Preston Street
Baltimore, Maryland 21201

RE: "PFA" Certification of Annexed Territory

Dear Mr. Kreitner:

The [Mayor and Council] of [Smartville] offer this letter as certification that the subject property meets the qualifications for designation as a Priority Funding Area under the "Smart Growth" Areas Act of 1997.

The [Jones Property] is identified on the attached map and is shown in relation to the corporate limits of [Smartville] and the surrounding area. The property qualifies as a Priority Funding Area because it... [SELECT (A), (B), (C), or (D)]

(A) ... was zoned by January 1, 1997 principally for industrial use.

(B) ...was zoned after January 1, 1997 as industrial, is in a locally designated growth area, and is served by a [public or community] sewer system.

(C) ...is in a locally designated growth area, is an area where the principal uses are for employment, and is served by a [public or community] sewer system.

(D) ...is in a locally designated growth area, is an area where the principal uses are for employment, and a [public or community] sewer system is planned in the approved 10-year Water and Sewer Plan.

I understand that this certification will be filed by the Office, that the Office may include comments as part of the file, and that the Office will coordinate with State funding agencies to inform them about the property's designation as a PFA. If you have any questions about this certification, please call [mayor, council, town administrator].

[closing, signature, and title]

Commercial and Mixed Use. The following brief letter is suggested for certifying commercial and mixed land uses as a PFA.

Mayor and Council
Town of Smartville

[October 1, 1997]

Mr. Ronald M. Kreitner, Director
Maryland Office of Planning
301 West Preston Street
Baltimore, Maryland 21201

RE: "PFA" Certification of Annexed Territory

Dear Mr. Kreitner:

The [Mayor and Council] of [Smartville] offer this letter as certification that the subject property meets the qualifications for designation as a Priority Funding Area under the "Smart Growth" Areas Act of 1997.

The [Brown Property] is identified on the attached map and is shown in relation to the corporate limits of [Smartville] and the surrounding area. The property qualifies as a Priority Funding Area because it is within a locally designated growth area that represents a long term policy for orderly and efficient growth and is planned for service in the 10-Year Water and Sewer Plan [and the residential portion of the annexed area has a permitted density of not less than 3.5 dwelling units per acre.

I understand that this certification will be filed by the Office, that the Office may include comments as part of the file, and that the Office will coordinate with State funding agencies to inform them about the property's designation as a PFA. If you have any questions about this certification, please call [mayor, council, town administrator].

[closing, signature, and title]

CHAPTER THREE:
IMPACT FEES

IMPACT FEES UNDER THE "SMART GROWTH" AREAS ACT OF 1997

In order to qualify for State funding of a growth related project, municipalities in a county that levies and collects a residential development impact fee to finance the cost of school construction must help the county collect the fee for new development in the municipality.

The law permits the municipality to collect the fee and remit it to the county, or to require that the fee be paid directly to the county in accordance with the county's operative ordinance. This provision of the law does not affect any existing agreement between a municipality and a county concerning the levying and collection of impact fees.

Table One (below) includes counties that collect residential impact fees for schools and the amount of the fee. The following Technical Summary is for readers that want additional background on the topic of impact fees. The Chapter concludes with a Model Municipal-County Agreement on Impact Fee Collection.

Table One

RESIDENTIAL IMPACT FEES FOR SCHOOLS

(Note: Data are subject to change; this Table is only a guide.)

	Fee (per dwelling unit)				
County	Single-Family	Townhouse	Multi-Family	Accessory Apartment	Mobile Home
Anne Arundel	2,096 (all types)				
Calvert	3,000	2,000	n/a	1,000	1,500
Carroll	4,023	2,954	1,473	n/a	n/a
Charles	3,500	3,354	1,372	n/a	n/a
Frederick	2,000	1,715	565	n/a	n/a
Queen Anne's	2,335 (all types)				
St. Mary's	2,000	1,500	n/a	n/a	n/a

Technical Summary

A development impact fee is essentially a cash payment made by the developer to the local jurisdiction in order to help finance necessary capital improvements and municipal services reasonably attributable to a new real estate development project. This is generally a one-time predetermined charge assessed against residential, commercial, and industrial development and is normally paid prior to development . The

required fee is earmarked for the construction or expansion of a specific capital improvement such as a school.

The fees, especially those associated with school construction, are usually based on a predetermined formula. The process of calculating school fees varies from jurisdiction to jurisdiction but typically involves determining the expected number of school age children from each development as well as the average proportional cost of providing a student's education.

Where jurisdictions require developers to donate land for schools or donate land and construct the school, most allow for land and construction services to be donated in return for credits applied towards the impact fees. For example, in Anne Arundel County, any land or construction services received and accepted by the County from a developer are credited against the development impact fee due if it provides expanded capacity beyond existing service levels.

Other capital improvements that are funded by impact fees include, roads, parks, solid waste disposal facilities, landfills, and police and fire services.

Administration of an Impact Fee

The administration of an impact fee may seem straightforward enough. The ordinance stipulates the amount due and the municipality collects payment from the developers. However, establishing a development impact fee system also means creating an administrative apparatus for managing revenues and expenditures, with emphasis on ensuring that fees collected from a particular development are used to address the impact created (and are not used for some other project or purpose).

Under the "Smart Growth" Areas Act of 1997, municipalities have the option of requiring developers and other building permit applicants to simply pay the impact fee directly to the county. Municipalities choosing this option may wish to request periodic impact fee reports from the county summarizing how the collected fees are being used to support schools which serve the municipality. In terms of timing, most jurisdictions assess and collect the impact fee at the building permit stage.

Legal Issues

Impact fees have been challenged in almost every state where local jurisdictions have the authority to implement them. Generally, courts place the burden on the developer who challenges the fee to show that there is not a relationship between a particular new development and an increased need for public facilities.

Courts typically focus on the following issues in reviewing the validity of the impact fee. First, the court reviews the statutory authority for the particular fee. The court then addresses constitutional issues including the relationship and connection between the development to be charged and the purpose and amount of the required fee. The court also considers the planned use of the collected fee, including whether it is specifically earmarked for certain facilities and considers the timing and location of the fee's expenditure. The courts generally uphold development impact fees if the jurisdiction has a specific and justifiable formula for determining the fee and a definite plan for spending the revenues.

Authority for Impact Fees in Maryland. In 1990, the Maryland Court of Appeals held that counties wanting to enact impact fees need specific authority from the Maryland General Assembly to do so. *Eastern Diversified Properties, Inc., v. Montgomery County, Maryland*, 319 Md. 45 (1990). Under the "Smart Growth" Areas Act, municipalities in counties that have specific authority to collect impact fees will act as an agent for fee collection (or will choose to have the fees paid directly to the county).

Municipalities have authority under Section 2(b)(33)(ii) of Article 23A to "establish and collect reasonable fees and charges... associated with the exercise of any governmental or proprietary function." An Attorney General's Opinion issued four years prior to the *Eastern Diversified* case (71 Op. Att'y Gen. 214, 1986) advised Ocean City that its impact fee for funding beach replenishment was allowed by Article 23A.

The "Rational Nexus" Test. When courts are asked to evaluate constitutional issues associated with impact fee programs, such as equal protection, due process, and compensation for a "taking" of private property, the basic rule articulated by the courts is the rational nexus test. This test requires the following of any impact fee program:

> *There must be a reasonable connection between the need for additional facilities and the growth resulting from new development.*
>
> *The fees charged must not exceed a proportionate share of the cost incurred or to be incurred in accommodating the development paying the fee, after crediting that development for other contributions it will make toward the infrastructure cost by other means, such as payment of taxes or donation of land.*
>
> *There must be a reasonable connection between the expenditure of the fees collected and the benefits received by the development paying the fee.*

Model for Impact Fees. Municipalities can require building permit applicants to pay an impact fee directly to the county, or they can act as an agent and collect the fee and remit it to the county. The following brief agreement is for municipalities that wish to act as an agent. It can be adapted by municipalities that want a formal arrangement with the county.

A MODEL MUNICIPAL-COUNTY AGREEMENT ON IMPACT FEES.
Terms in [brackets] are illustrative or explanatory.

AGREEMENT

THIS AGREEMENT entered into this _____ day of ____, 1997, by and between the County [Commissioners/Council] of [Chesapeake]County, Maryland, a body corporate and politic of the State of Maryland, hereinafter referred to as "County", and the [Mayor and Council of the Town of Bayfront] a municipal corporation of the State of Maryland, hereinafter referred to as "Town."

WHEREAS, in 1997, the Maryland General Assembly passed Chapter 759 of the Laws of Maryland: the "Smart Growth" and Neighborhood Conservation - "Smart Growth" Areas Act of 1997, directing municipalities in a county with a residential development impact fee that finances the cost of school construction, to help the county collect that fee for new residential construction in the municipality.

NOW THEREFORE, WITNESSETH, that for and in consideration of the Statements set forth above, which are a material and integral part of this Agreement, and the promises and covenants hereinafter set forth, the County and the Town agree as follows:

1. The Town shall act as an agent for the County in the collection of impact fees to help pay the costs of school construction associated with residential development in Town.

2. Prior to the Town initiating fee collection, the County shall provide the Town with specific information as to the circumstances under which the impact fees are payable and the amount to be collected by the Town in each circumstance, and shall provide a copy of, or relevant portions of, the County's Impact Fee Ordinance.

3. After approval of the building permit, but prior to the issuance of the permit, the Town shall collect from the applicant the impact fee.

4. Any dispute by a building permit applicant as to the amount or applicability of the impact fee shall be resolved between the applicant and the County.

5. All payments of impact fees received by the Town shall be remitted to the County on [an annual] basis.

6. The Town shall maintain a record of each transaction including the building permit number, the fee charged, and the fee collected. The County shall maintain records of the Town building permit number, the date the associated fee was received from the Town, and the expenditure of the fee.

7. The Town shall not be responsible for any errors or omissions made in good faith in the collection of the appropriate impact fee in any particular situation.

8. This agreement supersedes all prior understandings and agreements between the parties.

IN WITNESS WHEREOF, the County and the Town, by their respective authorized officials, have executed and sealed this Agreement the date and year first above written.

[Signatures, Dates, and Witnesses of County and Municipal Officials]

CHAPTER FOUR:
ADEQUATE PUBLIC FACILITIES ORDINANCE

ADEQUATE PUBLIC FACILITIES ORDINANCE (APFO): STANDARDS AND COORDINATION UNDER THE "SMART GROWTH" AREAS ACT OF 1997

APFO Standards for Schools

Before the State can fund growth related projects in a municipality that 1) exercises zoning authority and 2) is located in a county with adequate school capacity standards, the municipality must adopt adequate school capacity standards that will be applied to proposed development. This requirement, however, does not apply where an impact fee is collected or where other provisions are made to defray the local cost of school construction attributed to new residential development.

The municipality may either adopt standards substantially similar to school capacity standards adopted by the county, or use the State rated capacity standards established by the Public School Interagency Committee on School Construction (see the Appendix for a definition of the State rated standard). Table Two, below, indicates those counties that have adequate public facility standards for schools.

Table Two

Adequate Public Facility Standards for Schools

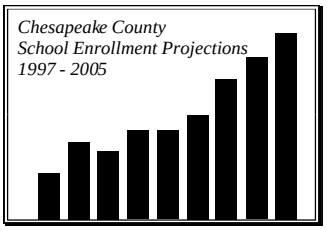
(Percentage of State Rated Capacity, except where otherwise noted.)

County	Standard	County	Standard
Anne Arundel	100	Howard	115
Calvert	110	Montgomery	110
Carroll[1]	105/110	Prince George's	120
Charles	110	St. Mary's[2]	100
Frederick[1]	105/110	Washington[2]	105
Harford	120		

[1]Elementary/Secondary. [2]Local Board Guideline. Note: Some counties permit standards to be exceeded upon certain conditions or findings. Baltimore and Howard Counties have an APFO but no municipalities. *Data are subject to change; this Table is only a guide.*

Counties Must Confer with Municipalities

Effective October 1, 1997, before a county can establish or change school capacity standards in an APFO, county officials must confer with municipal corporations that exercise zoning authority.



County Board of Education Requirements
Annually, county Boards of Education must provide each municipality that exercises zoning authority with five-year enrollment projections for each school serving students in or near the municipality, as well as information about the student capacity of each school.

The following Technical Summary is for readers that want additional background on the topic of APFOs. The Chapter concludes with a Model Municipal-County Agreement on School Facility Planning.

Technical Summary

In 1978, the Maryland General Assembly passed Article 66B, Section 10.01, specifically enabling municipalities and non-charter counties to adopt an APFO.

APFOs are an effort to pace the timing and rate of development to ensure that major facilities are adequate to serve new development or are reasonably assured to be in place in time to serve new development. An APFO ties development approval under zoning and subdivision laws to specifically defined public facility capacity standards. APFOs are an important growth management tool for municipalities, helping to create an orderly pattern of growth. In many municipalities that already have an APFO, the approach is to model the process after the county, including adoption of county standards.

Legal Issues
Even prior to the adoption of Article 66B, Section 10.01, the Courts upheld the ability of local jurisdictions to adopt ordinances that conditioned development approval on a finding that adequate infrastructure exists to sustain a project's anticipated impact. *Malmar Associates v. Prince George's County*, 272 A.2d 6 (1971). In this case, the Court sustained an ordinance requiring the applicant to show that adequate educational facilities were in place.

APFOs can be developed in response to a crisis in existing capacity , a financial overburden on services required for new development, or as part of a comprehensive review of the long range demand for public services. In all situations, the requirements must be reasonably and rationally related to a valid governmental interest.

APFOs should set quantifiable levels of service for public facilities, since these standards provide the basis for the evaluation of the proposed projects in relation to existing or planned facilities.

Following is a Model Municipal-County Agreement for School Facility Planning intended to encourage a timely flow of information from the county and school board. The Model addresses requirements in the Smart Growth Areas Act of 1997. It covers additional points that municipalities may want to consider in their discussions with the county. The intent is to promote improved school facility planning from a joint municipal-county perspective. A copy of this Models and Guidelines publication has been referred to county officials, School Boards, and the Public School Interagency Committee on School Construction.

MODEL MUNICIPAL-COUNTY AGREEMENT ON SCHOOL FACILITY PLANNING

THIS AGREEMENT entered into this _____ day of ____, 1998, by and between the County [Commissioners/Council] of [Chesapeake]County, Maryland, a body corporate and politic of the State of Maryland, hereinafter referred to as "County;" the [Chesapeake County] Board of Education, hereinafter referred to as "Board;" and the [Mayor and Council of the Town of Bayfront] a municipal corporation of the State of Maryland, hereinafter referred to as "Town."

WHEREAS, in 1997, the Maryland General Assembly enacted Chapter 759 of the Laws of Maryland: the "Smart Growth" and Neighborhood Conservation - "Smart Growth" Areas Act of 1997, directing counties to confer with municipalities when adopting new or revised school capacity standards and requiring boards of education to annually provide municipalities that exercise zoning authority with five year enrollment projections for each school serving students in or near the municipality and with information about student capacity in each school.

WHEREAS, the County, Board, and Town have determined that a formal interjurisdictional educational facilities planning program is mutually beneficial to the parties to this Agreement.

NOW THEREFORE, WITNESSETH, that for and in consideration of the Statements set forth above, which are a material and integral part of this Agreement, and the promises and covenants hereinafter set forth, the County , Board, and Town agree as follows:

1. Within 90 days of the date of this Agreement, the County, Board, and Town shall identify the specific schools that serve students living in or near the Town.

2. In addition to providing required five year enrollment projections to the Town, the Board shall notify the Town about plans to study redistricting of school attendance boundaries; proposed changes to any of the nine mandatory elements of the Educational Facilities Master Plan; and other changes in policy or practice that may affect the Town or school facilities serving residents in and near the Town. The Board's notice shall direct the Town as to the timing and format of any review comments that the Town wishes to submit to the Board for consideration. The Town shall exercise good faith in meeting all deadlines established by the Board. The Town's comments shall be advisory in nature.

3. In addition to the Board's current practice of referring drafts of the Educational Facility Master Plan to the County planning agency, the Board shall simultaneously refer a copy to the Town. The Town shall review the draft Plan and may provide comments to the Board according to the schedule established by the Board. The Town's comments shall be advisory in nature.

4. The County or Board shall notify the Town about scheduled site visits to school facilities that serve students living in or near the Town and shall invite the Town to participate.

5. No later than six months from the date of this Agreement, the County, Board, and Town shall establish formal reciprocal notification agreements so that each has timely notice and opportunity to comment on land use proposals in the County or Town that may affect student enrollment, enrollment projections, or school facilities that serve students living in or near the Town. The notification agreement shall include proposed amendments to the Comprehensive Plan, zoning ordinance, and subdivision regulations; major residential or mixed use development proposals and rezonings; and other projects that have reasonable potential to adversely impact school facilities and long range planning for such facilities.

6. The County, Board, and Town shall institute, within 90 days of the date of this Agreement, on-going interjurisdictional coordination for comprehensive land use planning with a focus on land use trends, emerging development patterns, demographics, and other factors that need to be addressed in educational facility planning.

IN WITNESS WHEREOF, the County, Board, and the Town, by their respective authorized officials, have executed and sealed this Agreement the date and year first above written.

[Signature, Date, and Witness of the County, Board, and Town]

APPENDIX

STATE INTERAGENCY COMMITTEE ON SCHOOL CONSTRUCTION: STATE RATED CAPACITY

1. The State Rated Capacity is defined as the maximum number of students that reasonably can be accommodated in a facility without significantly hampering delivery of the educational program.

It is not intended to be a standard of what class sizes should be. School system staffing varies widely depending on a number of factors. It is, however, a criterion used in evaluating whether a particular school is overcrowded such that relief is needed and provision of additional space may be warranted.

2. The following formula shall be used to determine the State Rated Capacity of existing facilities:

a. Elementary Schools (for pupils in grades pre-k-5/6, inclusive)

The State Rated Capacity is derived through multiplying the number of classrooms by the State approved capacity:

Prekindergarten classrooms	x 20
Kindergarten classrooms	x 22
Grades 1 - 5/6	x 25
Special Education (self-contained)	x 10

Adding these totals will yield the SRC for the school.

Elementary grade classrooms and self-contained special education rooms are rooms that are used by the same group of pupils for half or more of the normal school day.

A prekindergarten or kindergarten classroom is a room that is used by the same group of pupils for an entire prekindergarten or kindergarten session, be it morning session, afternoon session, or all of the normal school day.

Spaces in an elementary school which are used by different, small groups of pupils throughout the day (i.e., resource rooms, special reading/remedial rooms, libraries, media centers, cafeterias, physical education rooms, art rooms, computer labs, music rooms, assembly areas, science rooms) are not counted as elementary grade classrooms.

Classrooms or spaces used as classrooms that are smaller than 550 square feet in floor area will generally not be counted for capacity purposes.

For classrooms located in an instructional area in which the classrooms are not structurally defined, i.e., open space, the classrooms shall be computed by dividing the open space area by 800 square feet and rounding to the nearest multiple of 800. A reasonable amount of square footage for circulation will be excluded.

b. Secondary Schools (for pupils in middle, junior, and senior high grades 6-12, inclusive)

The State Rated Capacity is 90 percent of the product of the number of teaching stations and 25, and then adding the product of the number of teaching stations for special education and 10.

A teaching station is any space in which scheduled instruction takes place, such as general classrooms, special purpose rooms, laboratories, career technology rooms, business education rooms, band and chorus rooms, art rooms, mechanical drawing rooms, home economics rooms, weight rooms, and wrestling rooms.

A gymnasium which has a standard inter-scholastic basketball court is counted as two teaching stations.

Teaching stations or spaces used as teaching stations that are smaller than 500 square feet will generally not be counted for capacity purposes.

For teaching stations located in an instructional area in which the teaching stations are not structurally defined, i.e., open space, the teaching stations shall be computed by dividing the open space area by 700 square feet and rounding to the nearest multiple of 700. A reasonable amount of square footage for circulation will be excluded.

c. Career Technology Schools and Centers

The State Rated Capacity shall be the product of the number of teaching stations and 20 or 25 where classes are established at this size or larger. Career technology resource classrooms shall not be counted as capacity.

(Note: This information, while current as of the date of publication, is subject to change from time to time.)

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