

Implementation of the Smart Growth Areas Act, Fiscal Year 2017



Maryland Smart Growth Subcabinet
Implementation of the Smart Growth Areas Act
Fiscal Year 2017

The Smart Growth Subcabinet

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The Maryland Smart Growth Subcabinet's Fiscal Year 2017 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 the growth-related program commitments of the following state agencies for Fiscal Year 2017 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 Public School Construction Program (PSCP) or the Maryland Historical Trust (the Trust) be used within Priority Funding Areas (PFAs). The PSCP follows COMAR guidelines for PFA spending.² The Trust 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 (the 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 development 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 Fiscal Year 2017, 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 Works³ (BPW) or the Smart Growth Coordinating Committee⁴ (SGCC) and the Subcabinet is required to report annually on those exemptions.⁵

Ten projects were granted exceptions by the Subcabinet in Fiscal Year 2017 in accordance with the procedures prescribed in the Smart Growth Areas Act (Appendix A, page 13) and did not violate the intent of the law. There were no exceptions sought by agencies from the BPW (see Appendix B, page 19). Appendix C notes that there were no programs or policies that required review or change 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 21).

Priority Funding Areas

The 1997 Priority Funding Areas Act (the Smart Growth Act) established Priority Funding Areas (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 PFAs and Schools regulation was approved in 2011 as an amendment to COMAR 23.03.02, 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 a PFA 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) for Fiscal Year 2013 and beyond.

Fiscal Year 2017 Expenditures

Fiscal Year 2017 growth-related spending on PFA restricted projects and programs totaled \$1,373,854,621,⁶ as reported to the Maryland Department of Planning (Planning) by Housing, General Services, Commerce, Environment, and Transportation.

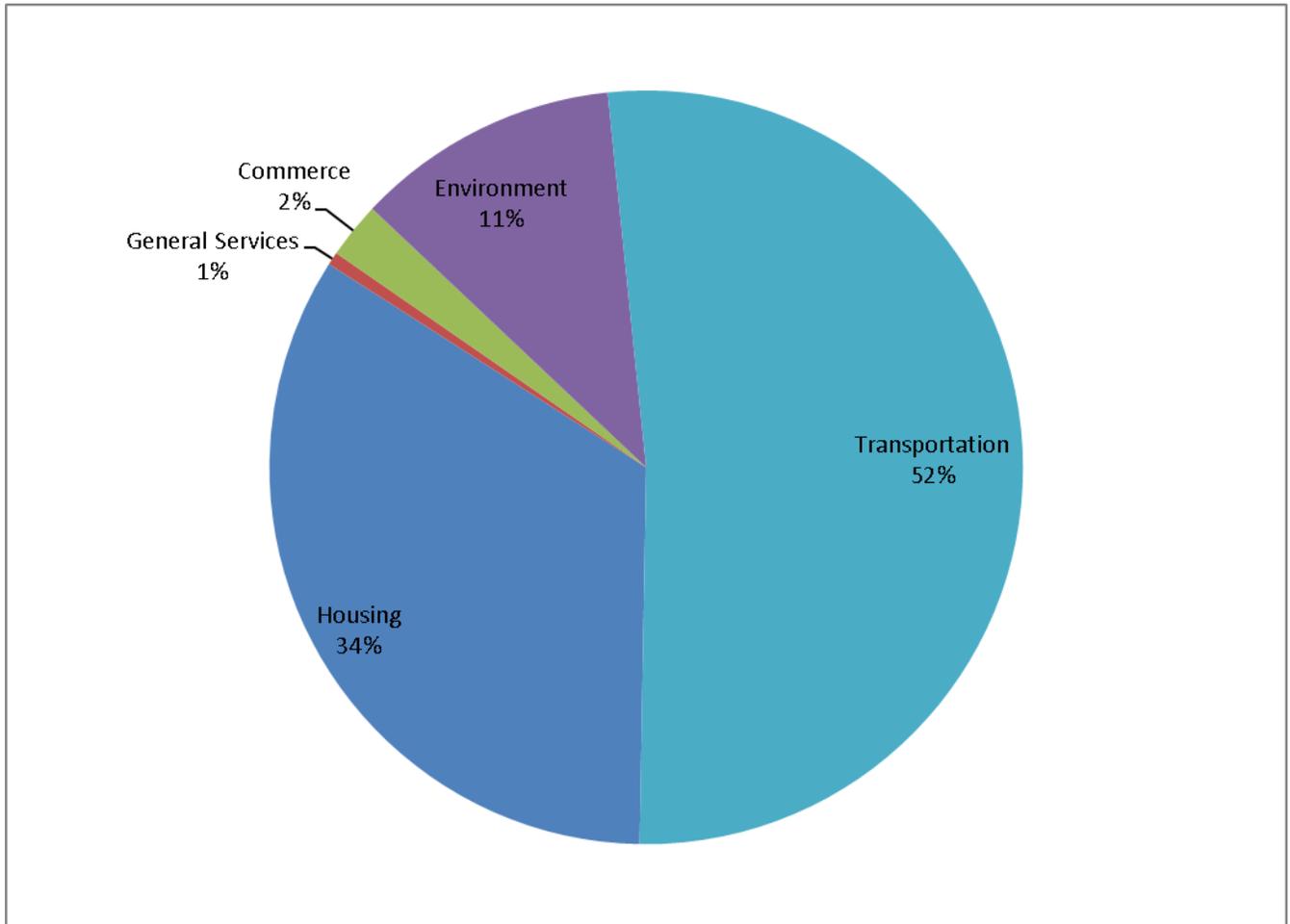
Of that amount, \$1,075,302,954, or 78 percent, of growth-related spending was devoted to projects and programs within PFAs; \$92,958,667, or 7 percent, was devoted to projects outside PFAs; and \$200,570,000, or 15 percent, was devoted to Transportation and Housing projects that were not place-specific.

It should be noted that \$55,984,000 (60 percent) of the \$93 million spent outside PFAs was associated with state 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 \$36,974,667 (40 percent) spent outside PFAs was devoted to three Environment projects that received exceptions to the PFA requirement because the public water and wastewater treatment facility improvements for areas outside of the PFA were needed to address public health and safety concerns.

Fiscal Year 2017 Expenditures by Agency for Growth-Related Programs

Program	Total Funding	Funding Inside PFA	Funding Outside PFA	Not Place Specific Funding
Housing	\$ 464,229,307	\$ 464,162,307	\$ 0	\$ 67,000
General Services	\$ 7,618,253	\$ 7,618,253	\$ 0	\$ 0
Commerce	\$ 33,198,525	\$ 33,198,525	\$ 0	\$ 0
Environment	\$ 155,620,536	\$ 118,645,869	\$ 36,974,667	\$ 0
Transportation	\$ 713,188,000	\$ 451,678,000	\$ 55,984,000	\$ 200,503,000
Total	\$ 1,373,854,621	\$ 1,075,302,954 78%	\$ 92,958,667 7%	\$ 200,570,000 15%

Agency Percentage of Total Funding



The Department of Housing and Community Development

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 (NMRH) 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 had three CITC projects in FY 2017 that were Not Place-Specific because they (1) may provide services within Priority Funding Areas (PFA), but the services may not be associated with a fixed address; or (2) the location of the service, such as Maryland Therapeutic Riding, may be located outside of the PFA, but the intended service is to people within the PFA.

It should also be noted that, although it is not required by the Smart Growth Areas Act, Housing also requires that 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 of Housing and Community Development Fiscal Year 2017 Expenditures by Growth-Related Program

Program	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA	Not Place Specific Projects	Not Place Specific Funding
MMP	119	\$ 34,539,544	119	\$ 34,539,544	0	\$ 0	0	\$ 0
NMRH	19	\$ 391,562,263	19	\$ 391,562,263	0	\$ 0	0	\$ 0
CL	67	\$ 5,928,000	67	\$ 5,928,000	0	\$ 0	0	\$ 0
CITC	66	\$ 1,970,000	63	\$ 1,903,000	0	\$ 0	3	\$ 67,000
NBW	0	\$ 0	0	\$ 0	0	\$ 0	0	\$ 0
SGIF	40	\$ 8,729,500	40	\$ 8,729,500	0	\$ 0	0	\$ 0
Totals	311	\$ 442,729,307	308	\$ 442,662,307	0	\$ 0	3	\$ 67,000

The Department of General Services

While it has no capital budget, the Department of General Services (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.”⁷

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 Fiscal Year 2017 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	61	\$ 7,618,253	61	\$ 7,618,253	0	\$ 0
Land Acquisition	0	\$ 0	0	\$ 0	0	\$ 0
Total	61	\$ 7,618,253	61	\$ 7,618,253	0	\$ 0

The Department of Commerce

Department of Commerce (Commerce) programs – defined by the Smart Growth Areas Act as growth-related – have been renamed 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 Fiscal Year 2017 Expenditures by Growth Related Program

Program	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA
MSBDFA	25	\$ 12,467,907	25	\$ 12,467,907	0	\$ 0
MEDAAF	19	\$ 10,263,625	19	\$ 10,263,625	0	\$ 0
SDF	1	\$ 10,000,000	1	\$ 10,000,000	0	\$ 0
MEAF	3	\$ 466,993	3	\$ 466,993	0	\$ 0
Total	48	\$ 33,198,525	48	\$ 33,198,525	0	\$ 0

The Maryland Department of the Environment

The following Maryland Department of the Environment (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 system 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. The three projects funded outside of the PFA in Fiscal Year 2017 received exceptions based on the public health and safety criteria of the law for drinking water system improvements and wastewater treatment facilities located outside of the PFA. The \$37 million in expenditures outside of the PFA accounted for 24 percent of the total funding.

Maryland Department of the Environment Fiscal Year 2017 Expenditures by Growth Related Program

Program	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA
MWQRLF	6	\$ 56,707,586	5	\$ 23,534,028	1	\$ 33,173,558
WSFAP	2	\$ 3,901,750	1	\$ 1,500,000	1	\$ 2,401,750
SAP	3	\$ 1,150,000	3	\$ 1,150,000	0	\$ 0
MDWRLF	7	\$ 93,861,200	6	\$ 92,461,841	1	\$ 1,399,359
Total	18	\$ 155,620,536	15	\$ 118,645,869	3	\$ 36,974,667

The Maryland Department of Transportation

For the Maryland Department of Transportation (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.”⁸ 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 (MDTA) 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.⁹ It should also be noted that 29 of Transportation’s major capital projects are not location-specific, meaning that they involve system-wide improvements, such as local transit assistance programs and transit vehicle acquisition by Transit, information technology improvements by Motor Vehicles, and the capital improvement program of WMATA.

Of the 174 major capital projects in Transportation's capital program for Fiscal Year 2017, 19 were considered to be outside the PFA. Of these, seven 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 six Highways projects for upgrades/widening in the MD 5, MD 404, US 113, and US 50 corridors and for construction of new interchanges at MD 5 and MD 373.

Of the remaining projects outside of the PFA, 12 have been granted exceptions in compliance with statute. This category includes the MD 200 (InterCounty Connector), an MPA project to construct a Pearce Creek Waterline, three projects for the Howard County portion of the MD 32 corridor, the MD 97 (Georgia Avenue) project at Brookeville, a slope failure project along MD 24, and a new interchange project at US 301 and MD 304. This category also includes four bridge replacement or repair projects that were evaluated and shown to add no significant highway capacity.

There are two Highways projects for which the PFA status is still being evaluated by the Smart Growth Coordinating Committee. These include a study on the access needs of MD 26 between the Liberty Reservoir and MD 32, and the relocation of US 219 between I-68/US 40 and the Pennsylvania State line.

**Fiscal Year 2017 Maryland Department of Transportation
Major Transportation Projects¹⁰**

Program	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA	Not Place Specific Projects	Not Place Specific Funding
Highways ¹¹	106	\$ 211,752,000	87	\$ 163,186,000	17	\$ 43,543,000	0	\$ 0
Transit	37	\$ 186,257,000	16	\$ 145,510,000	0	\$ 0	21	\$ 40,747,000
Aviation	11	\$ 55,062,000	11	\$ 55,062,000	0	\$ 0	0	\$ 0
Port Admin	11	\$ 129,800,000	7	\$ 87,861,000	2	\$ 12,441,000	2	\$ 29,498,000
Motor Vehicles	2	\$ 3,411,000	0	\$ 0	0	\$ 0	2	\$ 3,411,000
Secretary's Office	3	\$ 59,000	3	\$ 59,000	0	\$ 0	0	\$ 0
WMATA	4	\$ 126,847,000	0	\$ 0	0	\$ 0	4	\$ 126,847,000
Total¹²	174	\$ 713,188,000	124	\$ 451,678,000	19	\$ 55,984,000	29	\$ 200,503,000

Maryland Historical Trust

While they are not required to do so by the Smart Growth Areas Act, the Maryland Historical Trust (the Trust), a division of Planning, currently gives more weight, during its review and analysis, to certain programs within PFAs to further the goals of smart growth.

The Trust gives preference to commercial applicants for the Heritage Structure Rehabilitation Tax Credit (Tax Credit), formerly known as Sustainable Communities Tax Credit, whose projects are located within PFAs. The program provides Maryland income tax credits equal to 20 percent of the qualified capital costs expended in the rehabilitation of a certified heritage structure. Beginning in FY 2011, projects involving certified historic structures that are high-performance commercial buildings became eligible to receive a 25 percent credit.

Maryland Historical Trust Fiscal Year 2017 Expenditures

Program	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA
Residential Tax Credits	184	\$ 1,938,396	178	\$ 1,894,516	6	\$ 43,879
Commercial Tax Credits	8	\$ 9,108,845	8	\$ 9,108,845	0	\$0
Small Commercial Tax Credits	15	\$ 504,107	15	\$ 504,107	0	\$ 0
Total	207	\$ 11,551,348	201	\$ 11,507,468	6	\$43,879

The Public School Construction Program

While Maryland public schools are not required by statute to be located within PFAs, 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 Public School Construction Program (PSCP) provides funding to local boards of education to construct, renovate, and maintain school facilities. The Program's funds support 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 Interagency Committee on Public School Construction (IAC) considers several factors when evaluating proposed Capital Improvement Projects including: (1) how the projects align with local boards of education priorities, state construction procedures, and procurement practices, and (2) how the projects align with 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 Fiscal Years 2017 and 2018 is shown on the chart below. Generally, the amount of major construction expenditures inside PFAs is far greater than outside. For the 2018 Fiscal Year, 91 percent of the total funds for major construction projects were spent within PFAs. It should be noted that 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 a number of years.

**Public School Construction Program Fiscal Years 2017 & 2018
Expenditures by Project Type**

Total Major Construction Funding	Project Types	Funding Inside PFA	Funding Outside PFA
Fiscal Year 2017			
\$ 238,877,009			
	New	\$ 37,228,809	\$ 5,010,000
	Replacement	\$ 106,770,530	\$ 4,274,200
	Renovation/Replacement Projects that do not add capacity	\$ 14,058,470	\$ 9,964,000
	Renovation/Additions/Replacement Projects that increase capacity	\$ 61,571,000	\$ 0
Total for Fiscal 2017		\$ 219,628,809	\$ 19,248,200
Fiscal Year 2018			
\$ 232,051,009			
	New	\$ 37,228,809	\$ 0
	Replacement	\$ 116,968,530	\$ 14,974,000
	Renovation/Replacement Projects that do not add capacity	\$ 11,059,470	\$ 5,459,200
	Renovation/Additions/Replacement Projects that increase capacity	\$ 46,361,000	\$ 0
Total for Fiscal 2018		\$ 211,617,809	\$ 20,433,200

The figures represent the Fiscal Year 2017 and 2018 allocation for major construction projects. Public School Construction Program figures listed above do not reflect total Fiscal Year 2018 spending for Systemic Projects (\$138,081,000). In addition, the figures exclude funding for the Air Conditioning Initiative and Systemic Projects.

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 Priority Funding Areas (PFA) 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 FY 2017, the Coordinating Committee approved ten PFA exceptions. PFA exception approval alone, however, does not ensure that projects will be funded. Specific details regarding the PFA exception approvals are as follows:

September 2016 – Sewer connection to 2855 Scenic Meadow Street – Waldorf (Charles County)

The Maryland Department of the Environment requested a PFA exception to provide public sewer to a single-family dwelling, built in 1984 with an on-site sewage disposal system (OSDS). The OSDS is over thirty years old, and there are two intermittent streams near the property. The aging septic system poses both a public health and environmental concern. Furthermore, the property is located within the S-1 Mattawoman Sewer Service Area, planned for public sewer service. Charles County will not permit the installation of a new septic system and requires that the property connect to the sewer system. Once connected, the sewage will be treated at the Mattawoman Enhanced Nutrient Removal (ENR) Wastewater Treatment Plant (WWTP) and provide an 88% reduction in total nitrogen.

Agency Submitting Request	Environment
Grounds for Exception	Public health or safety
Funding	Bay Restoration Fund \$20,000

October 2016 – Puzzley Run Water Treatment Plant (Garrett County)

The Maryland Department of the Commerce requested a PFA exception to fund a water facility to provide potable water and fire suppression support to the Keyser’s Ridge Business Park (KRBP). The water facility also provides potable water to businesses and residents in, and outside, of the PFA. Other than meeting the water demands of the existing Keyser’s Ridge WSA, including the KRBP, Garrett County will not expand the Keyser’s Ridge Water Distribution System outside of the Keyser’s Ridge WSA. The County further advised that the Keyser’s Ridge aquifers have documented salt contamination. The salt contamination of the Keyser’s Ridge aquifer is a continuing public health concern. Garrett County seeks to resolve this concern by connecting residents to a community water system.

Agency Submitting Request	Commerce
Grounds for Exception	Public health or safety
Funding	MD Economic Development Assistance Authority Fund \$1,000,000

March 2017 – Edgewater Beach Septic to Sewer Project (Anne Arundel County)

The Maryland Department of the Environment requested a PFA exception to connect the Edgewater Beach residential community to public sewer. Located in Anne Arundel County, the Edgewater Beach community was developed in the 1950’s on conventional drinking water wells and septic systems. Edgewater Beach has been identified as an On-site Wastewater Management Problem Area in the Anne Arundel County Master Plan for Water Supply and Sewerage Systems. Edgewater Beach is limited by small lot sizes, well setbacks, high water table, impermeable soils, and periodic flooding during periods of high tide. The median lot size is 11,900 square feet, far less than the current State requirement of 20,000 square feet for properties on well and septic. Replacement of the on-site sewage disposal systems is not an option for this community. The project will serve 158 properties, of which 11 are vacant and one is of commercial use.

Agency Submitting Request	Environment
Grounds for Exception	Public health or safety
Funding	Bay Restoration Fund, Septic Connection Grant and Environment’s Water Quality State Revolving Loan \$8,843,802

**March 2017 – Edgewater Beach Public Water Extension Project
(Anne Arundel County)**

The Maryland Department of Environment requested a PFA exception to extend public water service to the Edgewater Beach residential community. Located in Anne Arundel County, the Edgewater Beach community was developed in the 1950’s on conventional drinking water wells and septic systems. The Anne Arundel County Department of Health has identified 41 private water supply wells with elevated nitrate-nitrogen levels, three of which have nitrate-nitrogen levels exceeding safe drinking water standards. The new water supply system will provide safe drinking water and adequate fire suppression. The project will serve 158 properties, of which 9 are vacant and one is of commercial use.

Agency Submitting Request	Environment
Grounds for Exception	Public health or safety
Funding	Environment’s Water Supply Assistance Grant and Drinking Water Revolving Loan Fund \$3,844,054

March 2017 – CECO Sewer Line to Cherry Hill WWTP (Cecil County)

The Maryland Department of the Environment requested a PFA exception to convey sewage flow from CECO Utilities to the Cherry Hill Wastewater Treatment Plan (WWTP) in Cecil County. The project will fund the construction of about 1,000 linear feet of 8-inch gravity sewer; a new sewer pump station; about 4,500 linear feet of 4-inch diameter force main; the investigation and repair of suspected infiltration and inflow in the existing CECO sewer collection system; and the decommissioning of the existing CECO lagoon wastewater treatment system.

Agency Submitting Request	Environment
Grounds for Exception	Public health or safety
Funding	Bay Restoration Fund - Sewer Rehabilitation and Environment’s Water Quality Revolving Loan Fund \$2,850,000

March 2017 – Lewistown WWTP ENR Upgrade and Expansion (Frederick County)

The Maryland Department of the Environment requested a PFA exception to upgrade the Lewistown Wastewater Treatment Plant (WWTP) to Enhanced Nutrient Removal (ENR) levels and expand the WWTP treatment capacity. The existing Lewistown WWTP treats an average daily flow of 22,000 gpd and serves the Lewistown Elementary School and Lewistown Volunteer Fire Department. The WWTP is over fifty years old and at the end of its useful life. To remedy this public health concern, the project will upgrade the Lewistown WWTP to ENR levels. The existing Lewistown WWTP is located near the proposed but never built Lewistown Mills WWTP that was permitted for 4,990 gpd of average daily flow. State funding will only be used to support the existing design capacity (22,000 gpd) of the WWTP expansion and ENR upgrade. The remaining WWTP capacity will be privately funded.

Agency Submitting Request	Environment
Grounds for Exception	Public health or safety
Funding	Bay Restoration Fund – ENR Grant, Biological Nutrient Removal Cost-Share Grant Program, and Environment’s Water Quality Revolving Loan \$1,124,820

March 2017 – Lewistown WWTP Sewer Collection System (Frederick County)

The Maryland Department of the Environment requested a PFA exception to provide public sewer to the Lewistown area in Frederick County, which has faced ongoing chronic public health challenges with numerous on-site disposal system (OSDS) problems. Due to the shallow depth to groundwater and small lot sizes, many existing septic systems had failed on properties with no room for replacement systems. The 2013 Sanitary Survey identified 37 failing septic systems and 6 residences dependent upon holding tanks. Furthermore, 55% of the OSDS did not comply with the regulatory setbacks from wells, streams, and other surface features. The study also found many of the drinking water wells in the Lewistown area were not compliant with current standards. These drinking water wells are vulnerable to contamination because of the large number of nonconforming and failing septic systems. The service area will serve the Lewistown Elementary School, the Lewistown Volunteer Fire Company, and 84 equivalent dwelling units (EDUs). Of the 84 EDUs, 6 are vacant lots.

Agency Submitting Request	Environment
Grounds for Exception	Public health or safety
Funding	Bay Restoration Fund – Environment’s Wastewater Grant Program and Water Quality Revolving Loan \$519,045

**March 2017 – 19955 Piney Point Road, Callaway, MD - Sewer Extension
(St. Mary’s County)**

The Maryland Department of the Environment requested a PFA exception to provide public sewer to the property at 19955 Piney Point Road in Callaway, Saint Mary’s County. The property was improved in 2006 with an innovative on-site sewage disposal system (OSDS). Due to the poor topography, poor soils, and high groundwater, the property cannot support a conventional septic system. The OSDS has since failed and the existing system is maintained through scheduled pump-outs to prevent sewage from breaking to the ground surface. To remedy this public health concern, this project will connect 19955 Piney Point Road to the abutting Piney Point Pump-over and treat the flow at the Marlay-Taylor Wastewater Treatment Plant (WWTP).

Agency Submitting Request	Environment
Grounds for Exception	Public health or safety
Funding	Bay Restoration Fund - Grant \$20,000

March 2017 – Trappe Water Main Replacement (Talbot County)

The Maryland Department of the Environment requested a PFA exception to replace an existing water main along Main Street in the Town of Trappe, Talbot County. The existing water main is over ninety years old and prone to failure. Within just the last year, the main has failed multiple times, resulting in disrupted service and expensive repair and maintenance costs. To remedy this public health concern, the project will replace the existing 6-inch main with an 8-inch main between Maple Avenue and Old Trappe Road. The new water main will provide reliable service and fire flow to the existing customers. Some of the existing water main customers, specifically those near Old Trappe Road, are located outside the PFA. A PFA exception is requested for these customers currently served by the Main Street water main.

Agency Submitting Request	Environment
Grounds for Exception	Public health or safety
Funding	Environment’s Water Supply Assistance Grant Program \$1,190,639

June 2017 – Town of Rising Sun Water Line Connection (Transmission Line) to Chester, PA (Cecil County)

The Maryland Department of the Environment requested a PFA exception to fund a transmission line from the Town of Rising Sun to Chester, PA. This project seeks to eliminate these public health and safety concerns by connecting the existing Rising Sun Water System to the Chester Water System. This interconnection will provide water service and fire flow to the existing Rising Sun Water Service Area. The Chester Water Authority has agreed to provide at least 170,000 gpd of water to the Town of Rising Sun. The interconnection will begin at the Pennsylvania/Maryland border around Freemont Road and Red Pump Road. The transmission line will then continue along adjacent private properties, running south towards Route 1, before connecting to the existing water distribution system on Walnut Street. Since portions of this line pass outside the PFA, a PFA exception is requested.

Agency Submitting Request	Environment
Grounds for Exception	Public health or safety
Funding	Environment’s Water Supply Assistance Grant Program \$500,000

Appendix B

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

The Board of Public Works 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 FY 2017, the Board of Public Works did not receive any requests for exceptions to the Smart Growth Areas Act.

Appendix C

Listing of Programs and Policies Reviewed and Changed To Ensure Compliance with the State's Smart Growth Policy in Fiscal Year 2017

The Smart Growth Subcabinet through its Smart Growth Coordinating Committee meets monthly to discuss opportunities for state agencies to collaborate and improve the effectiveness of Maryland's smart growth policy.¹⁵ In FY 2017, no specific programs or policies were identified that required review and change to ensure compliance with the state's policy.

Appendix D

List of Projects or Programs Approved and Funded Under Chapter 759, § 2 of the Acts of 1997 in Fiscal Year 2017¹⁶

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

- (a) Approval has been granted or a commitment made before October 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 October 1, 1998;
- (e) Final review through the State Clearinghouse for Intergovernmental Assistance is completed by January 1, 1999; or
- (f) An appropriation has been included by October 1, 1998 in the development and evaluation portion of the Consolidated Transportation Program.

In FY 2017, Transportation reported that seven projects had received final review before the Smart Growth Areas Act was enacted and were thus exempt (grandfathered). This includes a Maryland Port Administration (MPA) project for dredge disposal at Hart Miller Island and six State Highway Administration projects for upgrades/widening in the MD 5, MD 404, US 113, and US 50 corridors and for construction of one new interchange at MD 5 and MD 373. Other than Transportation's projects, no other projects or programs were approved and funded under Chapter 759, § 2 of the Acts of 1997.

Endnotes

- 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.*
- ⁵ Maryland Annotated Code, State Government Article, § 9-1406(h)(1).
- ⁶ This total includes two SHA projects, totaling \$5,023,000, for which the PFA status is still being evaluated by the Smart Growth Coordinating Committee.
- ⁷ Maryland Annotated Code, State Finance and Procurement, § 5-7B-01(c)(2)(i).
- ⁸ Maryland Annotated Code, Transportation, § 2-103.1(a)(4).
- ⁹ Maryland Annotated Code, State Finance and Procurement, § 5-7B-01(c)(1)(i).
- ¹⁰ Reported figures show committed funding as reflected in MDOT’s Consolidated Transportation Program. These figures present the best available approximation of actual fiscal year expenditures although final project figures may vary slightly.
- ¹¹ Includes two SHA projects, totaling \$5,023,000, for which the PFA status is still being evaluated by the Smart Growth Coordinating Committee.
- ¹² Note that beginning in Fiscal Year 2015, MDOT was able to improve the spending report to more accurately portray year-end invoicing for state-specific funding. As a result, figures for FY 15 and FY 16 or FY 17 may not be directly comparable with prior reporting periods in which federal and local funding sources were less clearly broken out.
- ¹³ Maryland Annotated Code, State Finance and Procurement Article, § 5-7B-06(a)(3).
- ¹⁴ Maryland Annotated Code, State Finance and Procurement Article, § 5-7B-05(a)(3)(iv).
- ¹⁵ Maryland Annotated Code, State Government Article § 9-1406.
- ¹⁶ Maryland Annotated Code, State Government Article § 9-1406.



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Publication Number: 2017-003
December 2017